

Residential Tenancies Tribunal

Application 2026-0028-NL
Application 2026-0113-NL

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 AM on 23 March 2026 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing.
3. The respondent, [REDACTED] hereinafter referred to as “the landlord”, was also in attendance.

Issues before the Tribunal

4. The tenant is seeking a refund of a \$1031.25 security deposit.
5. The landlord is seeking to retain a \$1031.25 holding deposit.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case are sections 3, 14 and 18 of the *Residential Tenancies Act, 2018*.

Issue 1: Refund of Security Deposit Issue 2: Retention of Holding Deposit

The Tenant’s Position

8. On 10 December 2025, the tenant and the landlord entered into a monthly rental agreement which was to commence on 01 January 2026. A copy of that agreement was submitted with the tenant’s application. The agreed rent was set

at \$1375.00 per month, and it is acknowledged in this agreement that the tenant had paid a security deposit of \$1031.25 on that same day.

9. On the following day, 11 December 2025, the tenant informed the landlord that she was cancelling their agreement and that she would not be moving in. The tenant testified that her partner was scheduled for knee surgery, and she determined that the unit would not be suitable for him after the surgery because there were multiple stairs located there.
10. The tenant testified that she immediately requested that the landlord return her deposit to her, but he refused and informed her that the deposit was paid to secure the property. He informed her that because the tenant was backing out, and because the landlord had already turned away other prospective renters, he was entitled to retain the deposit.
11. The tenant testified that the landlord was able to secure new tenants for the month of January 2026, despite the fact that she had backed out of their agreement, and she argued that she is therefore entitled to a refund of her deposit of \$1031.25.

The Landlord's Position

12. The landlord argued that the deposit paid by the tenant was a holding deposit, not a security deposit, and its purpose was to hold the apartment while reference checks were carried out. In support of that claim, he pointed to text-messages he had exchanged with the tenant in which he writes: "To hold the unit, I will be needing deposit which is 75% of \$1,375.00, which equals \$1,031.25 and a piece of ID." He stated that his normal practice with his rentals was that once these checks were completed, and once the tenants took possession of the property, then the deposit would be converted to a security deposit.
13. The landlord testified that once he received the deposit from the tenant, he took the unit off the market. He complained that this made it difficult for him to find new renters for January 2026 after the tenant backed out, and he also stressed that it is always difficult to rent apartments during the month of December.
14. The landlord argued that because the tenant had caused him to lose these rental opportunities, and because he had to exert extra time and money to find new renters, he is entitled to retain the deposit the tenant had paid. He also pointed out that he had not failed in any of his obligations under the lease and that the failure of this tenancy to commence as agreed was solely attributable to the tenant.
15. With respect to January's rent, the landlord stated that because he lost the opportunity to offer the unit to other prospective renters, he instead negotiated with his existing tenants and was able to convince them to stay on at the unit for that month. However, he stated that under their previous agreement, they were

paying a monthly rent of \$1450.00. Under the new agreement, though, he had to drop that price to \$1350.00 in order to secure their agreement.

16. The landlord argued that as the deposit was a holding deposit, as the tenant had breached their rental agreement, and as the landlord had lost the opportunity to rent the unit to prospective renters willing to pay the higher rent, he was therefore entitled to retain that deposit.

Analysis

17. Section 3 of the *Residential Tenancies Act, 2018* states:

Application of Act

3. (1) *Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.*

...

(3) *The relationship of landlord and tenant shall be considered to exist in respect of residential premises where the tenant*

(a) *uses or occupies residential premises and*

(i) *has paid or agreed to pay rent to the landlord, or*

(ii) *a governmental department or agency has paid or has agreed to pay rent to the landlord;*

(b) *makes an agreement with the landlord by which the tenant is granted the right to use or occupy residential premises in consideration of the payment of or the promise to pay rent; or*

(c) *has used or occupied residential premises and*

(i) *has paid or agreed to pay rent to the landlord, or*

(ii) *a governmental department or agency has paid or agreed to pay rent to the landlord.*

18. Typically, holding deposits are amounts paid by prospective tenants to a landlord to hold a property while the landlord conducts credit and reference checks, and reviews a rental application. If the landlord is not satisfied with the prospective tenant's references or credit history, he has the option to deny the prospective tenant's application, and the deposit would typically be returned. If the checks are satisfactory to the landlord, but the tenant decides not to take up the offer to enter into a rental agreement with the landlord, then the landlord would typically retain the deposit. But during the period where these checks are being carried out, no landlord-tenant relationship has yet been entered into, and any dispute

about the status of a holding deposit would fall outside the jurisdiction of this Tribunal.

19. In the present case, however, it was acknowledged by both the tenant and the landlord that there was indeed an agreement in place where the tenant had agreed to rent the residential premises from the landlord, commencing 01 January 2026, at a rental rate of \$1375.00 per month. That agreement was committed to writing on 10 December 2025, and it was signed by both parties. As such, the relationship of landlord and tenant exists between the parties, and the Act therefore applies.
20. Although the \$1031.25 paid by the tenant may have initially been a holding deposit, the rental contract that they had entered into, in which they cemented their landlord-tenant relationship, clearly states that the landlord is in receipt of a “security deposit” of that amount. The legislation concerning security deposits is found in section 14 of the Act, and the relevant subsections state:

(8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

21. As the tenant had entered into a rental agreement with the landlord on 10 December 2025, she was bound by the termination notice timelines outlined in the *Residential Tenancies Act, 2018*, where it is stated that, in section 18, that a tenant is required to provide the landlord with a 1-month written notice that she is terminating a monthly rental agreement, and such a notice must specify a termination date which falls on the last day of the rental period. According to that section of the Act, then, on 11 December 2025 the earliest the tenant could have terminated her agreement would have been 31 January 2026.

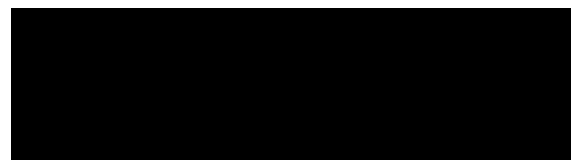
22. However, as the tenant did not provide the landlord with a written notice, as prescribed by the minister, indicating that she was terminating her agreement on 31 January 2026, she is deemed to have abandoned the rented premises and she is therefore liable for any damages suffered by the landlord as a result of her abandonment, subject to the caveat that the landlord mitigates those damages. In these circumstances, mitigation would require the landlord to take all reasonable steps to find new tenants as soon as possible so that he would not suffer a loss of rental income.
23. The landlord testified that he was able to put new tenants in place for January 2026, but he claimed that in order to ensure that they would rent the unit, he dropped the rent by \$25.00 from what he would have received had the tenant moved in in January 2026, as agreed. No other evidence was submitted by the landlord showing that he had suffered any other losses as a result of the tenant's abandonment.
24. Accordingly, I find that the landlord is entitled to retain \$25.00 of the security deposit paid by the tenant and is hereby ordered to return the remaining \$1006.25 to the tenant, plus the \$.062 that deposit had accrued in interest, according to the [Security Deposit Interest Rate Schedule](#).

Decision

25. The landlord is authorized to retain \$25.00 of the security deposit.
26. The tenant's claim for refund of the security deposit succeeds in the amount of \$1006.87.

29 April 2026

Date



John R. Cook
Residential Tenancies Tribunal