

Residential Tenancies Tribunal

Application 2024-0284-NL & 2024-0351-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was heard at 9:02 AM on 5 June 2024. The hearing will adjudicate two separate applications: 2024-0284-NL and 2024-0351-NL.
2. [REDACTED], hereinafter referred to as “the tenant”, attended by teleconference. [REDACTED], hereinafter referred to as “the tenant’s representative”, attended.
3. [REDACTED], hereinafter referred to as “the landlord”, attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit of service indicating the landlord was personally served with an Application for Dispute Resolution by registered mail ([REDACTED] [REDACTED]) on 13 May 2024 (T#1). The landlord did not dispute service. In accordance with Section 35 (5) of the *Residential Tenancies Act, 2018* where the notice is sent by registered mail, it shall be considered to have been served on the fifth day after mailing, therefore I find that the service was properly executed, and the hearing proceeded.
5. The landlord submitted an affidavit of service indicating the tenant was personally served with an Application for Dispute Resolution by registered mail ([REDACTED] [REDACTED]) on 17 April 2024 (LL#1). In accordance with the *Residential Tenancies Act, 2018* this is considered appropriate service.
6. The tenant disputed receiving any evidence for application 2024-0351-NL, beyond that of an itemized list of damages. The landlord testified he supplied the evidence to the Landlord Tenancies Program but was unsure if this evidence was provided to the tenant. I accept the fact the testimony of the tenant that the landlord failed to provide any evidence to the tenant prior to the hearing. As such,

the only evidence supplied by the landlord which will be considered in this decision is that of his sworn testimony and the itemized list of damages.

7. There was a written month to month rental agreement that commenced on 15 October 2023. The tenant vacated the premises on 15 March 2024. Rent was \$1,400.00, due on the 15th of each month. A security deposit of \$700.00 was paid on 15 October 2023 and is still in the landlord's possession.
8. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his account of events is more likely than not to have happened

Issues before the Tribunal

9. The tenant is seeking a refund of security deposit plus interest, and the landlord seeks to retain the security deposit to compensate for damages.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018*.
11. Also, relevant and considered in this decision is the following section of the *Act*: *Section 14: Security Deposit*.

Issue 1: Refund of Security Deposit plus Interest

Tenant Position

12. The tenant testified that she had paid a security deposit in the amount of \$700.00 on 15 October 2023 to the landlord and submitted a proof (T#2). The tenant testified that she vacated the rental premises on 14 March 2024 and the security deposit has not been returned to her. The tenant is seeking the refund of the security deposit in the amount of \$700.00 plus interest.
13. As part of her application, the tenant provided pictures of the apartment prior to moving in, and as well pictures when she moved out. She also provided pictures of neighborhood dogs and testified that there had been neighborhood dogs roaming around that may have caused some of the reported mess in the back yard.

Landlord Position

14. The landlord has acknowledged that he is in possession of the security deposit. However, the landlord stated that he believes that he is entitled to retain the security deposit to cover the costs of repairing damages. The landlord disputed the date which the tenant vacated the rental premises and testified she vacated on 15 March 2024.
15. The landlord testified that he was not sure when the unit has last been painted prior to the tenant moving in during October 2023, and that he had purchased the property in July 2023. He testified that when the tenant moved out he had the unit cleaned and painted and had to clean up the back yard.

Analysis

16. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

Security deposit

14. (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).

(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

17. The pictures supplied by the tenant prior to her move-in demonstrated some imperfections in the paint within the unit. Further, she provided pictorial evidence and testimony that neighborhood dogs contributed damages to the backyard. She also provided pictures that the unit dated at the time of move-out, demonstrating that the unit appeared clean.

18. The landlord was unable to establish when the unit was last painted, and that damages being claimed were a direct result of the tenant's actions. I find that there is insufficient evidence to determine what, if any, damages can be directly attributed to the tenant.
19. For these reasons, I find the landlord shall return the security deposit plus interest to the tenant.
20. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to the tenant for the entire period that the landlord has had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest is 1% for 2024.

Decision

21. The tenant's claim for refund of security deposit plus interest succeeds in the amount of **\$703.02**.

16 October 2024
Date


Michael J. Reddy
Residential Tenancies Office