

Residential Tenancies Tribunal

Application 2024-1054-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 7-January-2025 at 9:02 am.
2. The applicant, [REDACTED], attended via teleconference.
3. The respondent, [REDACTED], also attended via teleconference.

Preliminary Matters

4. The respondent acknowledged that they received notice of the hearing more than 10 days in advance.
5. The landlord raised the issue of jurisdiction. S. 3(1) of the *Residential Tenancies Act*, 2018 (the *Act*) states that the *Act* applies where the relationship of landlord and tenant exists in respect of residential premises.
6. The facts of this case, as agreed by the parties, are that the applicant contacted the respondent on or about 15-October-2024 in response to an advertisement for an apartment for rent. The parties agreed on the essential terms. The applicant paid the respondent \$700.00. Later, the applicant became aware she would be unable to move and seeks the return of this \$700.00. The applicant characterizes this sum as rent paid, whereas the respondent characterizes it as a holding deposit. This distinction is relevant to the issue of jurisdiction as rent suggests a landlord and tenant relationship, whereas a holding deposit does not necessarily imply such a relationship has already been established (see Residential Tenancies Program Policy and Procedure Guide 01-003).
7. Whether or not there is a landlord and tenant relationship must be determined on a case-by-case basis according to the individual facts of each case. The respondent provided documentary evidence in the form of screenshots of SMS text messages between the parties (LL#1 and LL#2). LL#1 page 10 shows a text from the applicant dated 16-October-2024 stating, among other things, "How much do you want for a deposit to hold it for me." The respondent replies "No deposit necessary. You can just e transfer the rent on the first and forget the damage deposit..."

8. I note that the applicant specifically asks the respondent what she would like in terms of a holding deposit, and the respondent replies that a deposit is not necessary. Subsequently, the applicant says on 19-October-2024 (LL#1 page 12) that she cannot take the unit. The next day the applicant expresses regret and asks if the unit is still available. She adds "I definitely would give you a deposit to hold it for me" (LL#1 page 12). The applicant sent the \$700 payment to the respondent on 20-October-2024 and 21-October-2024. On 23-October-2024 the applicant once again said she was unable to take the unit. Subsequently, the respondent explicitly and in writing takes the position that the payment was a holding deposit and the applicant explicitly and in writing takes the position that the payment was the first month's rent. The applicant testified that they had agreed on a rent rate of \$700/month, and the respondent did not contradict this.
9. Considering the evidence in its totality, I find on a balance of probabilities that the payment was a rent payment paid in advance. I find also that a landlord and tenant relationship had been established in respect of the residential premises. I note that there was discussion about moving items into the premises (LL#1 page 15). I therefore find that this tribunal has jurisdiction to decide the issue.
10. The applicant is hereinafter referred to as the tenant and the respondent is hereinafter referred to as the landlord.

Issues before the Tribunal

11. Should the tenant's claim for a refund of rent succeed?

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018 (the *Act*).

Issue 1: Refund of Rent

Tenant's Position

13. The tenant added to the above context that after the landlord refused to refund the \$700.00, she asked for the key to the premises (seen in LL#2 page 2), which the landlord did not provide. She testified that she did this to secure her rights and was considering subletting or assigning the lease to a relative or friend.

Landlord's Position

14. The landlord testified that after the tenant backed out of the agreement the second time, the online advertisement was put back up but she was unable to find a new tenant for November, leaving her out a month's rent. She agreed she was asked for the key and did not provide it to the tenant's agent or offer alternative access to the tenant. She testified that she had only intended to enter a 1-year lease, not rent a month at a time. She also testified that she had agreed to rent to the tenant, not to one of the tenant's friends or relatives.

Analysis

15. As the tenant was denied the use of the premises for the month of November, she cannot be expected to pay rent for that month. In regard to the landlord's assertion that she did not agree to rent to anyone other than the tenant, I note that s. 10(1) of the *Act* lists a number of statutorily imposed conditions on all leases covered by the *Act*. The third of these conditions states that the tenant may assign or sublet the residential premises subject to the written consent of the landlord, and the landlord shall not arbitrarily or unreasonably withhold consent. It is therefore not open to a landlord under the *Act* to categorically deny the possibility of a sublease/assignment.
16. The tenant's claim for a refund of rent succeeds in the amount of \$700.00.

Decision

17. The tenant's claim for a refund of rent succeeds in the amount of \$700.00.
18. As the tenant's claim was successful, she may seek reimbursement for her reasonable hearing expenses. In this case, she seeks only the \$20.00 application fee.

Summary of Decision

19. The landlord shall pay \$720.00 to the tenant as follows:

Rent.....	\$700.00
Hearing Expenses.....	\$20.00
Total.....	\$720.00

15-January-2025

Date


Seren Cahill
Residential Tenancies Office