

Residential Tenancies Tribunal

Application 2025-0162-NL & 2025-0192-NL

Michael Reddy
Adjudicator

Introduction

1. Hearing was held at 1:45 PM on 31 March 2025 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as the applicant, attended.
3. The respondent and counter- applicant, [REDACTED] represented by [REDACTED], hereinafter referred to as the respondent, attended.

Preliminary Matters

4. The parties both acknowledged that they received their respective notices of the hearing at least ten days before the hearing date.
5. During the hearing of the claim, an issue with respect to jurisdiction arose which requires a decision prior to proceeding with a hearing on the issues raised in the Applications for Dispute Resolution.

Issues before the Tribunal

6. The tribunal is required to adjudicate on its jurisdiction to hear this claim.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018* (*the Act*).
8. Also relevant and considered in this decision is Sections 9 of the *Residential Tenancies Act, 2018*, as well as Residential Tenancies Program Policy 02-004: Deposits, Payments and Fees.

Issue 1: Jurisdiction

Applicant's Position

9. The applicant is seeking the return of a deposit paid to the respondent. He provided a copy of an e-transfer (A#1) which shows the transfer of \$975.00 to the respondent on 6 February 2025, as well as text message communications between the parties which included references to a \$975.00 "holding fee". The applicant testified that he paid the deposit and intended to move into the property in question. The lease was to be sent to him for signature, and he waited a week but didn't receive it. During that time his circumstances changed, and he contacted the respondent to advise that he would not be able to proceed and requested his deposit be returned.

Respondent's Position

10. The respondent confirmed receipt of the deposit and testified that they had not been at the stage where the lease was signed, and they parties were supposed to meet at the rental property to sign the lease. He is seeking to retain the deposit, as well as a leasing fee in the amount of \$1495.00 as the applicant failed to rent the property.

Analysis

11. Section 9 of this Act states:

Landlord and tenant relationship

9. (1) A relationship of landlord and tenant takes effect *when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.*

12. Additionally, Residential Tenancies Policy 02-004: *Deposits, Payment and Fees* states the following:

"Holding Deposit: an amount of money received by a landlord from a prospective tenant before a rental agreement is entered into. A tenant may pay a holding deposit while deciding whether to accept the rental premises. Money or other value paid to hold the rental unit before a decision to accept or deny the tenant's application has been made by the landlord. Deposits outside the rental agreement do not come under the jurisdiction of the Residential Tenancies Act".

13. Based on the information provided by the applicant, the applicant and respondent had discussions about the rental premises in question. The applicant did complete an application for the rental premises and as presented in evidence supplied and made payment of a "holding deposit". Additionally, evidence was supplied indicating the respondent acknowledged receipt of this holding deposit. However, the applicant did not take possession of the rental premises. The parties did not enter into to the rental agreement; the lease was not signed and the exchange of keys to the rental premises were never exchanged.

14. In accordance with Section 9 of the Act as stated above, the applicant and respondent never entered into a tenant/landlord agreement. For this reason, I find this claim does not fall under the jurisdiction of the *Residential Tenancies Act, 2018*. This tribunal has no authority to decide on the issue(s) raised by the respondent/counter-applicant, and as such, dispute would have to be heard in another court of competent jurisdiction.

Decision

15. This claim does not fall under the jurisdiction of the *Residential Tenancies Act, 2018*.

19 June 2025

Date

Michael Reddy, Adjudicator
Residential Tenancies Office