

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0516-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:10 am on 10 February 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED] hereinafter referred to as "the landlord", also participated.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$95.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018*.

Issue 1: Refund of Security Deposit - \$95.00

Relevant Submissions

The Tenants' Position

6. The tenant stated that she had entered into a 3-month, fixed-term lease with the landlord commencing 02 July 2020. The agreed rent was set at \$895.00 and with her application the tenant had submitted a copy of an INTERAC e-Transfer

receipt (AH #1) showing that she had paid the landlord a security deposit of \$600.00. She testified that that deposit was paid on 24 June 2020.

7. The tenant stated that on 01 October 2020 she issued the landlord a termination notice and she vacated the property on 22 October 2020.
8. The tenant stated that at the end of December 2020 the landlord returned to her \$505.00 of the security deposit.
9. The tenant stated that the landlord had informed her, in an e-mail, of the reasons he felt he was entitled to retain the remaining \$95.00 of the deposit, but she testified that she believed that the landlord was being unreasonable. She stated that she requested that they discuss the matter, but the landlord refused to communicate with her any further. She also testified that she had not entered into any written agreement with the landlord on the disposition of the security deposit.
10. The tenant is seeking an order for a refund of the remaining \$95.00 of the security deposit.

The Landlord's Position

11. The landlord acknowledged that he had retained \$95.00 of the security deposit and he reiterated the tenant's claim that he had sent an e-mail to the tenant in which he outlined the reasons why he had decided to keep that amount of the deposit.
12. He also agreed with the tenant, though, that they had not entered into any written agreement with her on the disposition of the security deposit. Nevertheless, the landlord argued that he had the legal right to retain the deposit and he had the right to defend himself against her claim that that portion of the deposit ought to be returned to her.
13. The landlord also complained that there was no indication in the Application for Dispute Resolution, which the tenant had served on him on 21 January 2021, stating that he was required to file an application to the Director within 10 days if he wished to retain that portion of the deposit. He claimed that, legally, such an obligation ought to have been outlined in those documents and he stated that he would have filed such an application if that requirement had been stated in the tenant's Application.

Analysis

14. 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.

15. It is not disputed that the tenant had paid a security deposit of \$600.00 and that only \$505.00 had been returned to her. It is also not disputed that the landlord and tenant had not entered into any written agreement on the disposition of that deposit.
16. As the landlord has not made an application to the Director of Residential Tenancies to determine the disposition of the security deposit, he is required, as per subsection 14.(12) of the *Act*, to refund the full amount of the security deposit to the tenant.
17. I don't accept the landlord's claim that, in addition to the *Residential Tenancies Act, 2018*, which has been promulgated, both in print and on the internet, and has been listed in the Table of Public Statutes by the Office of the Legislative Counsel, he is legally entitled to any additional notification that he had to make application to the Director within 10 days of receiving the tenant's application if he wished to retain the deposit. Ignorance of the law is no excuse.
18. Nevertheless, and contrary to the landlord's assertion, I directed him to Part 6 of the Application for Dispute Resolution and Notice of Hearing, which was sent to him on 21 January 2021, which states:

