

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0047-03

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 PM on 28 June 2021 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", also participated in the hearing. [REDACTED] was in attendance as well.

Issues before the Tribunal

4. The tenant is seeking the following:
 - An order for a refund of the security deposit in the amount of \$1000.00, and
 - An order for a refund of rent in the amount of \$500.00.

Legislation and Policy

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

Issue 1: Refund of Security Deposit - \$1000.00

Relevant Submissions

The Tenant's Position

7. The tenant stated that she had entered into a 6-month, fixed-term lease with the landlord on 01 February 2021. The agreed rent was set at \$1000.00 per month and the tenant testified that she had also paid a \$1000.00 security deposit. With her application, the tenant submitted a copy of her banking records showing that that deposit was paid on 10 December 2020.
8. The tenant stated that she had not entered into a formal or written rental agreement with the landlord, but she submitted into evidence an e-mail the landlord had written for her, as a requirement of proof of her residency in Newfoundland, which states that she will be residing at the rental unit, "for a 6 month fixed term (renewable) from February 1st, 2021 to July 31st, 2021."
9. The tenant stated that she was trying to purchase her own home near the end of this tenancy, but there was some uncertainty as to when the sale could be completed by 31 July 2021. She stated that on 10 May 2021 she contacted the landlord and inquired about the possibility of continuing on as a tenant until the end of August 2021. The landlord was receptive to that proposal and on 12 May 2021 he writes in an e-mail: "Hi Jessica. The rental Agreement, as you know, is month to month for 6 months. Your damage deposit will be returned once you and family leave August August 31st, 2021"
10. The tenant stated that it turned out that the sale was able to be completed on time after all, and on 01 June 2021 she informed the landlord that she was terminating her agreement, effective 31 July 2021.
11. On 12 July 2021, the tenant stated that the landlord had contacted her and had informed her that he had new tenants lined up and ready to move in for 15 July 2021, and he requested that she move out early. The tenant complied with that request and vacated the unit on 14 July 2021.
12. The tenant stated that the landlord had not returned the security deposit to her after she vacated and she testified that she had not entered into any written agreement with him on its disposition. She is seeking an order for a return of that \$1000.00 deposit.

The Landlord's Position

13. The landlord acknowledged that the tenant had paid \$1000.00 on 10 December 2020, but he claimed that that payment was a holding deposit and it was non-refundable. He stated that the tenant had paid that deposit to him so that he would not rent the unit to anyone else during the month of January 2021. He argued that it would not have made any sense for him to let that unit sit vacant during the month of January 2021, while he was holding it for the tenant and while he was paying the utilities, if he was not going to be compensated.
14. █ stated that she managed the property for the landlord during this tenancy and she claimed that this payment was not a deposit at all, but rather a payment of rent for January 2021.

15. The landlord acknowledged that he had written the e-mail, quoted in paragraph 8, above, but he denied that this represented the terms of the rental agreement and he said it was only composed to assist the tenant with her proof of residency requirements.

Analysis

16. Is the \$1000.00 that the tenant paid to the landlord on 10 December 2020 a holding deposit, a security deposit, or a payment of rent?
17. Typically, a “holding deposit” is understood to be an amount of money paid to a landlord as an indication that a prospective tenant is interested in entering into a rental agreement with him. Before such an agreement is executed, the landlord may conduct reference and credit checks on his potential tenants, and the rental unit is “held” while until those references are completed. Typically, that deposit would be returned to the prospective tenant, unless the tenant backs out before the checks are completed and before the parties enter into a rental agreement. Where the parties do not enter into a rental agreement, the *Residential Tenancies Act, 2018* does not govern their relationship as there is no landlord-tenant relationship between them. For that reason, this Tribunal does not have jurisdiction to deal with holding deposits, as described here.
18. However, in the case at hand, these parties had entered into a rental agreement and the tenant resided at the property from 01 February to 14 July 2021 in exchange for a monthly rent of \$1000.00, and, according to section 3 of the *Residential Tenancies Act, 2018*, they therefore do stand in a landlord-tenant relationship and the *Act* applies to their relationship, including any exchange of money between them.
19. Is that \$1000.00, then, rent, or a security deposit? It is quite common for landlords and tenants to agree to commence a tenancy, and commence monthly rent payments, on a date that precedes the date the tenants actually take occupancy, and it is not unconceivable that that could have been the arrangement these parties could have entered into. They could have agreed in December 2020 that, although the tenant would not be moving in until February 2021, the tenancy would begin on 01 January 2021, and the tenant would pay rent to the landlord from that date onward. Although they could entered into such agreement, the landlord conceded at the hearing that he could produce no corroborating evidence to show that this was, in fact, their agreement.
20. On the other hand, the tenant produced a letter, written by the landlord, in which he writes that this tenancy begins on 01 February 2021, for a 6-month term, ending 31 July 2021. That evidence contradicts the landlord’s claim that this tenancy began a month earlier. If the tenancy was not beginning until 01 February 2021, why would there be an expectation that rent would be paid for the month previous? She also produced e-mail exchanges, written by the landlord, in which he writes that the tenant had indeed paid a deposit to him and that that

deposit would be returned to her after the tenancy ended. He does not write that that money was rent or that it was a non-refundable holding deposit.

21. The preponderance of evidence, then, supports the tenant's claim that her tenancy began on 01 February 2021 and that she had paid a security deposit of \$1000.00 on 10 December 2020.
22. 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.

23. I accept the tenant's claim that she had not entered into any written agreement with the landlord on the disposition of that \$1000.00 security deposit. As the landlord had not made an application to the Director of Residential Tenancies to determine its disposition, he is required, as per subsection 14.(12) of the Act, to refund the full amount of that deposit to the tenant.

Decision

24. The tenant's claim for refund of the security deposit succeeds in the amount of \$1000.00.

Issue 2: Refund of Rent - \$500.00

Relevant Submissions

The Tenant's Position

25. The tenant produced her bank records at the hearing showing that she had paid a total of \$7120.00 to the landlord during this tenancy. \$1000.00 of that amount was the security deposit, paid on 10 December 2020, and \$120.00 was for utilities for February 2021, as she had not had her electricity account set up for that month and the landlord was billed for the electricity she had used. The remaining \$6000.00 covers the monthly rent from 01 February to 31 July 2021.
26. The tenant argued that as the landlord had asked her to move out on 15 July 2021 so that he could put new tenants in place, she is entitled to a refund of half of the rent that she had paid for that month—\$500.00. She also pointed out that the landlord had attempted to e-transfer that amount to her on several occasions, but she refused as she was also seeking a refund of her security deposit.

The Landlord's Position

27. █ acknowledged that, on 12 July 2021, the landlord had requested that the tenant vacate on 15 July 2021, and she also conceded that the landlord had placed new tenants in the unit on that date.
28. However, █ argued that the tenant had not paid her rent for July 2021 and she is therefore not entitled to a refund. She agreed that the tenant had paid \$7120.00, but she claimed that \$1000.00 of that amount was for rent for January 2021.

Analysis

29. There is no dispute that the tenant had paid \$7120.00 to the landlord. On the tenant's reckoning, which I accept, \$1000.00 of that amount was a security deposit, and the remaining \$6000.00 covers rent from 01 February to July 2021.
30. I do not understand how the landlord or █ think that the tenant had not paid rent for July 2021. █ claimed that the tenant had not paid a deposit and that the \$1000.00 paid on 10 December 2020 was rent for January 2021. I don't agree with that version of events, but let's say it is true. Then the remaining \$6000.00, plus the \$120.00 for utilities, covers the period from 01 February to 31 July 2021. No matter which way you cut it, rent was paid for July 2021.
31. As the landlord had requested that the tenant move out of the unit for 15 July 2021, and as the tenant did not occupy or use the unit after that date, as a result of that request, I agree with the tenant that she cannot be charged rent for the last half of that month. I find, therefore, that the tenant's claim for a refund of rent succeeds in the amount of \$500.00.

Analysis

32. The tenant's claim for a refund of rent succeeds in the amount of \$500.00.

Summary of Decision

33. The tenant is entitled to the following:

- a) Refund of Security Deposit \$1000.00
- b) Refund of Rent..... \$500.00
- c) Total Owing to Tenant..... **\$1500.00**

08 September 2022

Date

