

Residential Tenancies Tribunal

Application [REDACTED]
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Decision 21-0213-05

John R. Cook
Adjudicator

Introduction

1. Application 2021 No. 213SJ was heard on 09 August 2021 and Application 2021 [REDACTED] was heard on 01 December 2021.
2. The applicant, [REDACTED] hereinafter referred to as “the tenant”, participated in the hearing on 09 August 2021. She did not attend the hearing on 01 December 2021.
3. The respondent, [REDACTED] hereinafter referred to as “the landlord”, did not participate in the 09 August 2021 hearing, but was in attendance for the hearing held on 01 December 2021.

Issues before the Tribunal

4. The tenant is seeking an order for a refund of the \$111.86 of the security deposit.
5. The landlord is seeking a payment of “other expenses” totalling \$186.14 and a payment of hearing expenses.

Legislation and Policy

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

Preliminary Matters

8. The tenant amended her application and stated that she was seeking an order for a refund of \$138.14 of the security deposit.

A. [REDACTED] heard on 09 August 2021

Issue 1: Refund of Security Deposit

Relevant Submissions

9. The tenant stated that she had entered into a verbal rental agreement with the landlord on 01 April 2021. The agreed rent was set at \$500.00 and the tenant stated that she had paid a security deposit of \$250.00 to the landlord on 01 April 2021.
10. A week after the tenant moved in, she informed the landlord that she was terminating her agreement and she vacated on 30 April 2021. The tenant testified that the landlord placed advertisements to re-rent the room and she was able to secure a new occupant for 01 May 2021.
11. On 02 May 2021, the landlord sent the tenant an e-mail informing her that she was retaining \$78.14 of the security deposit for the costs she had incurred to place advertisements for the apartment, and she also assessed a \$60.00 fee for cleaning and sanitizing. On that same day, the landlord refunded the remaining \$111.86 of the security deposit to the tenant.
12. The tenant stated at the hearing that she did not agree with the reasons the landlord had provided to her as to why she was retaining that portion of the security deposit and she testified that she had not entered into any written agreement with the landlord on the disposition of the deposit.
13. The tenant is seeking an order for a refund of the remaining \$138.14 of the security deposit.

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. I accept the tenant's claim that she had paid a \$250.00 security deposit to the landlord when she moved in and that only \$111.86 had been returned to her after she had vacated. I also accept her claim that she had not entered into any written agreement with the landlord on the disposition of that deposit.
16. According to the tenant's submitted affidavit, she had served the landlord with her application on 03 July 2021. The landlord's application (██████████) was not filed with this Section until 30 July 2021, outside of the 10-day window contemplated in subsection 14.(11).
17. As the landlord has not made an application to the Director of Residential Tenancies within 10 days after she had been served with the tenant's application, she is required, as per subsection 14.(12) of the Act, to refund the remaining \$138.14 of the security deposit to the tenant.

Decision

18. The tenant's claim for refund of the remaining \$138.14 of the security deposit succeeds.

Issue 2: Hearing Expenses

19. The tenant submitted a receipt with her application showing that she was charged \$25.00 by a Commissioner of Oaths to have her affidavit notarized. As her claim (██████████) has been successful, the landlord shall pay these hearing expenses.

A. [REDACTED] heard on 01 December 2021

Issue 3: "Other Expenses" - \$138.14

Relevant Submissions

20. The landlord stated that the tenant had only given her notice on 08 April 2021 that she was moving at the end of that month, and she complained that this did not meet the notice requirements set out in the *Residential Tenancies Act, 2018*.
21. The landlord stated that she immediately posted an advertisement on Kijiji on that date so that she could secure a new occupant for that room as soon as possible. She testified that she had a verbal agreement with the tenant that if she was able to secure a new occupant for May 2021, she would not charge her a month's rent-in-lieu of a proper notice, so long as the tenant paid the costs of advertising the unit for rent.
22. With her application, the landlord submitted a copy of an e-mail receipt from [REDACTED] #1) showing that she was charged \$78.14 for the costs of placing that advertisement on 08 April 2021.
23. The landlord also stated that after the tenant moved out, she was required to clean and sanitize the tenant's room. She complained that the tenant had carried out no cleaning before she moved and she pointed to her submitted photographs showing that some garbage had been left behind in the waste basket ([REDACTED] #2, #3). She also stated that she was required to wash the bedding, and wash down the walls, floors, and the common areas. The landlord is seeking \$60.00 in compensation for 6 hours of her personal labour to clean and sanitize the tenant's unit after she vacated.

Analysis

24. With respect to the advertising fees, I agree with the landlord that she is entitled to an award for those costs. As the tenant had not given the landlord a full, 1-month's notice that she was terminating her agreement, as required by the *Residential Tenancies Act, 2018*, she is considered to have abandoned the rental property. Where a tenant abandons residential premises, she is liable for any damages that result from that abandonment, including any costs the landlord had incurred to mitigate those damages. I accept the landlord's evidence showing that she had paid \$78.14 to advertise the unit in an attempt to mitigate any lost rental income caused by the tenant's failure to provide proper notice. As such, that portion of her claim succeeds.

25. I was less convinced, though, by the landlord's claim that she needed to spend 6 hours cleaning and sanitizing the tenant's room. The only evidence she presented in support of her claim were photographs showing that there was some garbage left behind in a waste basket and at the hearing held on 09 August 2021, the tenant testified that she had cleaned her room before she vacated. I therefore find that this portion of the landlord's claim does not succeed.

Decision

26. The landlord's claim for compensation for "other expenses" succeeds in the amount of \$78.14.

Issue 4: Hearing Expenses

27. The landlord submitted a hearing expense claim form with her application, along with a receipt showing that she had paid \$20.00 to file this application, a receipt showing that she had paid \$13.44 to send the application to the tenant by registered mail, and another receipt showing that she had paid \$100.00 to have her affidavit notarized.

28. As the landlord's claim ([REDACTED]) has been successful, the tenant shall pay the landlord's hearing expenses. With respect to the filing fee, though, policy with this Section is that a landlord may only claim that fee as a hearing expense if the amount of the award she receives is greater than the amount of the security deposit. Hence, her claim for that fee does not succeed.

Summary of Decisions and Set-Off of Awards

29. The landlord is entitled to the following:

a) Advertising Fees	\$78.14
b) Landlord's Hearing Expenses	\$113.44
c) LESS: Refund of Remaining Deposit (\$138.14)	
d) LESS: Tenant's Hearing Expenses (\$25.00)	
e) Total Owing to Landlord	<u>\$28.44</u>

13 January 2022

Date

