

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0425-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:52 PM on 17 March 2022 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", was not in attendance.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$550.00.

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* and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The landlord was not present or represented at the hearing. I telephoned him before the hearing commenced and he informed me that he did not wish to participate. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly

served. With her application, the tenant submitted an affidavit stating that she had served the landlord, by e-mail, on 13 February 2022, and a copy of that e-mail was submitted with her application. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in his absence.

Issue 1: Security Deposit - \$550.00

Relevant Submissions

7. The tenant stated that she had entered into a 1-year, fixed-term lease with the landlord on 01 July 2020. The agreed rent was set at \$1100.00 per month and with her application, the tenant submitted a copy of an e-mail exchange she had had with the landlord, on 15 May 2020, in which he acknowledges receiving that deposit.
8. The tenant stated that her boyfriend was originally living with her, but they broke up and he moved out in April 2021. After that point, the tenant got a roommate to share the expenses. However, in August 2021, that roommate moved out and the tenant testified that she had also lost her job. She testified that she contacted the landlord, informed him of those issues, and it was agreed that the tenancy would end on 01 September 2021. The tenant vacated on that date.
9. 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 the landlord on its disposition.
10. The tenant is seeking an order for a return of the security deposit in the amount of \$550.00.

Analysis

11. 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.*

12. I accept the tenant's claim that she had paid a security deposit of \$550.00 to the landlord in May 2020 and that he had not returned it to her after she vacated. I also accept her claim that she had not entered into any written agreement with the landlord on the disposition of that deposit.
13. As the landlord had 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.

Decision

14. The tenant's claim for refund of the security deposit succeeds in the amount of \$550.00.

05 October 2022

Date

