

Residential Tenancies Tribunal

Application 2022 No. 0043NL

Decision 22-0043-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 AM on 26 April 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant,” participated in the hearing. She was represented by [REDACTED] (“[REDACTED”]), and a letter of authorization is on file.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord”, was also in attendance.

Issues before the Tribunal

4. The tenant is seeking an order for refund of the security deposit in the amount of \$787.50.

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 case are section 14 of the *Residential Tenancies Act, 2018*.

Issue 1: Refund of Security Deposit - \$787.50

The Tenant's Position

7. On 01 September 2020, the tenant stated that she had rented an apartment from the landlord, located at [REDACTED], and at that time she paid to the landlord a security deposit of \$400.00.
8. The tenant moved out of that apartment at the end of April 2021, and took up residence at the rented premises located at [REDACTED]. The rent at this second apartment was set at \$1050.00 per month and the landlord required that the tenant pay a \$787.50 security deposit. The tenant testified that the landlord retained the \$400.00 security deposit from the previous tenancy, and, on 03 April 2021, she paid to the landlord the balance of \$387.50.
9. The tenant moved out of this second rental unit on 31 December 2021 and she testified that the landlord has not returned that security deposit to her. The tenant also testified that she had not entered into any written agreement with the landlord on the disposition of that deposit.
10. She is seeking an order for a refund of a full amount of that security deposit—\$787.50.

Landlord's Position

11. The landlord acknowledged that the tenant had paid a total deposit of \$787.50 and that she had not returned it to the tenant after the tenancy ended. She also acknowledged that she had not entered into any written agreement with the tenant on its disposition.
12. The landlord stated that she had retained that deposit as the tenant had caused damages to the rental property and claimed that she was in possession of receipts for the costs she had incurred to carry out repairs.

Analysis

13. 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.*

...

(14) *Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.*

14. There is no dispute that the tenant had paid a security deposit totalling \$787.50 and that that deposit was not returned to her after this second tenancy ended. There is also no dispute that the landlord and the tenant had not entered into any written agreement on the disposition of that deposit.
15. As the landlord had not made an application to the Director of Residential Tenancies to determine the disposition of the security deposit, I find that, as per subsection 14.(12) of the Act, the landlord is required to refund the full amount of the security deposit to the tenant.

Decision

16. The tenant's claim for refund of the security deposit succeeds in the amount of \$787.50.

13 September 2022

Date

John R. Cook
Residential Tenancies Tribunal