

Residential Tenancies Tribunal

Application 2022 No. 144NL

Decision 22-0144-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:15 AM on 13 June 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 the following:
 - An order for a payment of \$600.00 in compensation for inconvenience, and
 - An order for a refund of the \$595.00 security deposit.

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 and I was unable to reach him by telephone. 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 the landlord had been served with the application, by e-mail, 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: Refund of Security Deposit - \$595.00

Relevant Submissions

7. The tenant stated that she had entered into a verbal rental agreement with the landlord in September 2021. The agreed rent was set at \$900.00 per month and tenant stated that she had paid a security deposit of \$595.00. With her application, the tenant submitted a copy of her banking records showing that she had e-mailed that deposit to the landlord on 24 May 2021.
8. In mid-January 2022, the tenant informed the landlord that she was terminating their agreement and she vacated on 30 January 2022.
9. The tenant stated that the landlord did not return 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 refund of the full amount of the security deposit.

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 \$595.00 to the landlord in May 2021 as a security deposit and that it has not been returned to her. 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 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.

Decision

14. The tenant's claim for refund of the security deposit succeeds in the amount of \$595.00.

Issue 2: Compensation for Inconvenience - \$600.00

Relevant Submissions

15. The tenant stated that the reason that she had terminated her rental agreement with the landlord was because the landlord was constantly sending text-messages to her, while she was at work, telling her to close her windows, turn down the heat in her apartment, and turn off her lights. She also complained that the landlord had been peeking in her windows, and she knew this because, in one text-message, the landlord had sent her a picture of one of her open windows. This prompted her to call the police on a couple of occasions. She also stated that while she was moving, the landlord was telling her friends, who were helping her move, to close the tenant's windows and turn down the heat.
16. The tenant stated that she suffers from high anxiety, and when she received these text-messages she would get upset and she would be nervous about returning to her apartment after work. She also stated that the landlord's intimidating behaviour during the move also triggered her anxiety. As a result, the tenant stated that she visited her doctor and was advised that she should take some time off work. In support of that statement, the tenant pointed to a doctor's note she had submitted with her application, which states that the tenant

"has been, or will be, off work for medical reasons between the following dates: January 24 – 30, 2022".

17. The tenant stated that she was not paid during those 5 days she was off work and she suffered a loss income in the amount of, approximately, \$593.00 during that period. As it was the behaviour of the landlord which caused her to miss work during that period, she is seeking compensation for that loss of income.

Analysis

18. I was not persuaded by this portion of the tenant's claim.
19. The doctor's note submitted with the tenant's application only states that the tenant is off work for those 5 days for "medical reasons", but it does not state what those reasons are or whether those reasons, whatever they are, are connected to the behaviour of the landlord. Furthermore, no evidence was submitted by the tenant showing that she had suffered any loss of income or to show that she would earn \$593.00 for 5 days work.

Decision

20. The tenant's claim for compensation for inconvenience does not succeed.

Issue 3: Hearing Expenses

21. The tenant paid a fee of \$20.00 to file this application and she is claiming it as a hearing expense.
22. Policy with this Section is that the party that receives an award will have their hearing expenses awarded also. However, with respect to the filing fee, that fee will only be awarded as a hearing expense if the amount awarded is greater than the amount of the security deposit. As the tenant was only successful in her claim for the security deposit, she will not be awarded the filing fee.

Summary of Decision

23. The tenant is entitled to a refund of the security deposit in the amount of \$595.00

06 July 2022

Date


John R. Cook
Residential Tenancies Tribunal