

Residential Tenancies Tribunal

Application 2022 No. 262NL

Decision 22-0262-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:15 AM on 20 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 refund of the \$500.00 security deposit.
 - An order for a refund of rent in the amount of \$157.84, and
 - An order for a return of possessions valued at \$1000.00.

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 are sections 14 and 33 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 his application, the tenant submitted an affidavit stating that the landlord had been served with the application, by registered mail, and the associated tracking history shows that the landlord signed for that mail on 11 April 2022. 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 - \$500.00

Relevant Submissions

7. The tenant stated that he had entered into a verbal rental agreement with the landlord on 01 July 2009. The agreed rent was set at \$800.00 and the tenant stated that he had paid a security deposit of \$500.00. The tenant stated that up to about 1 year ago, his rent was paid in cash and the landlord issued no receipts for those payments or for the payment of the security deposit.
8. On 07 March 2022, the landlord served the tenant with a termination notice and a copy of that notice was submitted with the tenant's application. That notice did not identify any section of the *Residential Tenancies Act, 2018* under which it was issued, but the landlord writes on the notice that it was issued for safety issues surrounding alcohol consumption and the smoking of cigarettes. That notice had an effective termination date of 13 March 2022, and the tenant stated that he vacated on the following day, 14 March 2022.
9. The tenant stated that the landlord did not return the security deposit to him after he vacated and he testified that he 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 he had paid \$500.00 to the landlord on 01 July 2009 as a security deposit and that it has not been returned to him. I also accept his claim that he 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.
14. According to the schedule of security deposit interest rates (<https://www.gov.nl.ca/dgsnl/files/security-deposit-interest-rate-schedule.pdf>), that deposit has accrued \$2.52 in interest, as calculated in Appendix 'A'.

Decision

15. The tenant's claim for refund of the security deposit, plus the accrued interest, succeeds in the amount of \$502.52.

Issue 2: Refund Rent - \$157.84

Relevant Submissions

16. The tenant testified that he had paid \$500.00 towards the \$800.00 rent that was owing for March 2022. He argued that as he moved out on 14 March 2022, he

only had to pay a pro-rated rent to that date. He calculated that that pro-rated rent comes to \$342.16 and he is therefore entitled to a refund of \$157.84.

Analysis

17. I agree with the tenant that as he only had use and enjoyment of his apartment up to 14 March 2022, he cannot be charged rent after that period.
18. As the tenant had paid \$500.00 towards the rent for March 2022, I find that he is entitled to a rebate of \$138.66 (\$500.00 less \$361.34 (\$800.00 for March 2022 ÷ 31 days = \$25.81 per day x 14 days)).

Decision

19. The landlord's claim for a payment of rent succeeds in the amount of \$138.66.

Issue 3: Missing Possessions: \$1000.00

Relevant Submissions

20. The tenant stated that when he vacated on 14 March 2022, he left behind his washer and dryer, as well as his snow blower.
21. With respect to the washer and dryer, the tenant stated that he had entered into an agreement with the landlord that he could keep the washer and dryer and he would pay him \$200.00.
22. Later that same day though, the landlord wrote a message to the tenant informing him that the floors need cleaning and replacing at the unit and that because this would be costly, he won't be sending any money to the tenant for the washer and dryer and that he will not return those appliances to him. He also writes that the snow-blower will remain in the garage and will not be returned.
23. The tenant is seeking an order for a return of these items.

Analysis

24. I accept the tenant's claim that the landlord is currently in possession of his washer and dryer, and his snow-blower, and his evidence shows that the landlord is refusing to allow the tenant to collect those items as he believes that the tenant has caused damage to the unit.
25. But section 33 of the *Residential Tenancies Act, 2018* states:

Seizure of property

33. A landlord shall not take a tenant's personal property to compensate for a contravention of an obligation by the tenant, including a failure to pay rent.

26. Section 47.(1) of this Act outlines the sorts of orders the director may make on hearing an application, and subsection (f) reads:

Order of director

47. (1) After hearing an application the director may make an order

...

(f) directing a landlord to deliver to a tenant possession of personal property taken in contravention of this Act or the rental agreement or to compensate a tenant for the value of the personal property taken;

27. Accordingly, under this subsection, I order that the landlord deliver up these items to the tenant.

Decision

28. The landlord shall deliver up to the tenant these following items which he left at the unit when he vacated on 14 March 2022:
 - The tenant's washer and dryer
 - The tenant's snow-blower
29. The landlord shall pay to the tenant any costs charged to the tenant by the Office of the High Sheriff should the tenant be required to have the Sheriff enforce the attached Order of Delivery.

Issue 3: Hearing Expenses

30. The tenant submitted a hearing expense claim with his application, as well as receipts showing that he paid a fee of \$20.00 to file to application, that he had paid \$14.88 to send the application to the landlord by registered mail, and \$33.83 for photocopying documents in preparation for the hearing. As the tenant's claim has been successful, the landlord shall pay these hearing expenses.

Summary of Decision

31. The tenant is entitled to a payment of \$709.89, determined as follows:

a) Refund of Security Deposit	\$502.52
b) Refund of Rent.....	\$138.66
c) Hearing Expenses.....	\$68.71
d) Total.....	<u>\$709.89</u>

32. The landlord shall deliver up to the tenant the following items:

- The tenant's washer and dryer
- The tenant's snow-blower

33. The landlord shall pay to the tenant any costs charged to the tenant by the Office of the High Sheriff should the tenant be required to have the Sheriff enforce the attached Order of Delivery.

16 August 2022

Date

[Redacted]
John R. Cook
Residential Tenancies Tribunal

Appendix 'A'

Security Deposit Interest Calculation

Year	Number of Days	Rate	Amount	Interest
2009	(184 days / 365 days)	x 1.00%	x \$500	= \$2.52
2010	(365 days / 365 days)	x 0.00%	x \$500	= \$0
2011	(365 days / 365 days)	x 0.00%	x \$500	= \$0
2012	(366 days / 366 days)	x 0.00%	x \$500	= \$0
2013	(365 days / 365 days)	x 0.00%	x \$500	= \$0
2014	(365 days / 365 days)	x 0.00%	x \$500	= \$0
2015	(365 days / 365 days)	x 0.00%	x \$500	= \$0
2016	(366 days / 366 days)	x 0.00%	x \$500	= \$0
2017	(365 days / 365 days)	x 0.00%	x \$500	= \$0
2018	(365 days / 365 days)	x 0.00%	x \$500	= \$0
2019	(365 days / 365 days)	x 0.00%	x \$500	= \$0
2020	(366 days / 366 days)	x 0.00%	x \$500	= \$0
2021	(365 days / 365 days)	x 0.00%	x \$500	= \$0
2022	(74 days / 365 days)	x 0.00%	x \$500	= \$0
Original Deposit				\$500
+ Total Interest				\$2.52
Total				\$502.52