

Residential Tenancies Tribunal

Application 2022 No. 0435 NL
Application 2022 No. 0464 NL

Decision 22-0435-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:17 AM on 27 July 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “tenant1”, participated in the hearing.
3. The applicant, [REDACTED], hereinafter referred to as “tenant2”, participated in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as “the landlord”, did not participated in the hearing.
5. An affidavit of services was provided, confirming that the landlord was served electronically by the tenants (T#1). Tenant1 testified that he knew to serve electronically because this was how they communicated with the landlord.
6. The details of the claim were presented as a fixed term agreement from 13 September 2021 to 30 April 2022. Monthly rent was \$1,000.00 and a security deposit in the amount of \$700.00 was collected. A copy of the written rental agreement was provided (T#2).
7. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

8. The tenants are seeking the return of a \$700.00 security deposit.

Legislation and Policy

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

Preliminary Matters

11. The landlord was not present or represented at the hearing regarding his counterclaim (2022-0464-NL). This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
12. 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 they have been properly served.
13. As the landlord was properly served, and any further delay in these proceedings would unfairly disadvantage the tenant, the landlord's counterclaim was dismissed and I proceeded with the hearing for 2022-0435-NL in his absence.

Issue 1: Security Deposit (\$700.00)

Relevant Submissions

14. The rental premises was a basement apartment located at [REDACTED]. Tenant1 referred to evidence provided of a proof of E-Transfer from Tenant2 to the landlord on 10 September 2021 (T#3) and testified that they paid full rent for May 2022 and vacated the rental premises on 07 May 2022.

Analysis

15. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(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.

(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.

16. Where the landlord did not appear at the hearing to present his counter claim, the tenants are entitled to full return of their security deposit.

Decision

17. The tenants' application for the return of their security deposit succeeds in the full amount of \$700.00.

Hearing Expenses

18. The tenants submitted a hearing expense claim for the costs of getting a commissioner of oaths signature of their affidavit (T#4). Tenant1 testified that this cost \$45.00.
19. As the tenants' claim has been successful, the landlord shall be required to pay this expense.

Summary Decision

20. The tenants are entitled to the full return of their \$700.00 security deposit.
21. The tenants are entitled to a payment of \$745.00, determined as follows:
- | | |
|--------------------------|-----------------|
| a) Security Deposit..... | \$700.00 |
| b) Hearing Expense..... | \$45.00 |
| c) Total..... | <u>\$745.00</u> |
22. The landlord's application, 2022-464-NL is dismissed.

01 August 2022

Date


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