

Residential Tenancies Tribunal

Application 2022 No. 0490NL

Decision 22-0490-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:52 PM on 21 July 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant," attended by teleconference. The respondent, [REDACTED], hereinafter referred to as "the landlord" did not attend the teleconference.

Issues before the Tribunal

3. The tenant is seeking an order for refund of rent in the amount of \$300.00.

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

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. The tenant submitted an affidavit with her application

stating that she had sent the application and notice of the hearing to the landlord, by registered mail, on 26 June 2022, and the tracking history shows that the landlord did not collect the mail. As per 35.(5) of the *Residential Tenancies Act*, documents are considered served five days after service by registered mail—in this case, 01 July 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 - \$300.00

Relevant Submissions

7. The tenant testified that she moved into the rental unit on 01 July 2021. The agreed monthly rent was set at \$500.00 and with her application, the tenant submitted a photograph of a receipt showing that she had paid a \$300.00 security deposit on 10 June 2021.
8. By mutual agreement, this tenancy terminated on 01 June 2022, and the tenant vacated on that day.
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 him on its disposition. She is seeking an order for a return of the full amount of the security deposit.

Analysis

10. 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.

11. I accept the tenant's claim that she had paid a \$300.00 security deposit to the landlord on 10 June 2021, and that he had not returned it to her after she vacated the following year. I also accept her testimony that she had not entered into any written agreement with the landlord on the disposition of that deposit.
12. 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

13. The tenant's claim for refund of the security deposit succeeds in the amount of \$300.00.

Issue 2: Hearing Expenses

14. The tenant submitted a receipt with her application showing that she had paid \$13.44 to send her claim to the landlord by registered mail, and a second receipt showing that she had paid \$86.16 for the costs of a printer to print documents for the hearing.
15. Policy with this Section is that the party that receives an award shall have their expenses awarded also. With respect to the costs of purchasing a printer, however, I am of the view that the tenant is not entitled to reimbursement for that expense. Almost all of the documents submitted by her were either .jpegs or form-fillable .pdfs, and even if she did have to print some documents, there are cheaper alternatives and she ought to have mitigated her damages. I allow the claim for the registered mail, only.

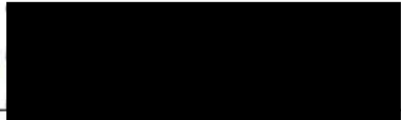
Summary of Decision

16. The tenant is entitled to the following:

- a) Refund of Security Deposit\$300.00
- b) Hearing Expenses.....\$13.44
- c) Total Owing to Tenant.....\$313.44

15 September 2022

Date


John R. Cook
Residential Tenancies Tribunal