

## Residential Tenancies Tribunal

Application 2022 No. 0493NL

Decision 22-0493-00

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:49 PM on 07 September 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant," participated in the hearing. The respondent, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".

### Issues before the Tribunal

3. The tenant is seeking an order for refund of the security deposit in the amount of \$1500.00.

### 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*.

### Issue 1: Refund of Security Deposit - \$1500.00

#### The Tenant's Position

6. The tenant stated that she had entered into a 1-year, fixed-term rental agreement with the landlord on 01 December 2021, and a copy of that executed agreement was submitted with her application. The agreed rent was set at \$2000.00 per month and it is acknowledged in the lease that the tenant had paid a security

deposit of \$1500.00 on 02 December 2021. The tenant also submitted a copy of her banking records showing the payment of that deposit.

7. The tenant terminated her agreement with the landlord early, and she vacated the unit on 31 May 2022.
8. 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 her on its disposition. She is seeking an order for a return of the full amount of the security deposit.

#### The Landlord's Position

9. The landlord acknowledged that the tenant had paid a \$1500.00 security deposit back in November 2021, and she also acknowledged that she had not entered into any written agreement with the tenant on the disposition of that deposit.
10. The landlord is a property management company, and she stated that after this tenancy ended, on 31 May 2022, the owner of the property terminated their property management contract, and that owner assumed all the responsibilities for that property after that date. She stated that she has had nothing to do with that rental property since that date and she claimed that she had turned the security deposit over to the owner of the property and that it is no longer in her possession. The landlord argued that as she is no longer managing that unit, the tenant does not have a claim against her for a refund of the security deposit.

#### **Analysis**

11. This tenancy ended on 31 May 2022, and the landlord acknowledged, under questioning, that right up to that date, she was the tenant's landlord, and she testified that she had not severed their contract at any point prior to that date. The landlord also stated that at no time prior to that termination date did she ever inform the tenant that she was no longer her landlord or that she had been replaced by a new, successor landlord.
12. Based on that testimony, which was corroborated by the tenant, I was not satisfied that the owner of the property ever was, or ever became, the tenant's new landlord. Although I don't doubt that the contract between this property management company and the owner had been terminated, after 31 May 2022, that does not affect the landlord-tenant relationship under consideration here, as it ended prior to that date.
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. There is no dispute that the tenant had paid a security deposit of \$1500.00 and that that deposit was not returned to her after this 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 \$1500.00.

### **Issue 2: Hearing Expenses**

17. With her application, the tenant submitted a hearing expense claim form, as well as a receipt for \$25.00 for the cost of having her affidavit of service notarized, and a receipt for \$19.70 for the costs of sending the application to the landlord by

registered mail. As the tenant's claim has been successful, the landlord shall pay her hearing expenses.

18. However, policy with this Section is that the costs associated with having commissioners sign affidavits are not claimable expenses as commissioners are not permitted to charge a fee for their services.

### **Summary of Decision**

19. The tenant is entitled to the following:

- a) Refund of Security Deposit .....\$1500.00
- b) Hearing Expenses.....\$19.70
- c) Total Owing to Tenant.....\$1519.70

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15 September 2022

Date

John R. Cook  
Residential Tenancies Tribunal

