

Residential Tenancies Tribunal

Application 2022 No. 663NL

Decision 22-0663-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 18 January 2023 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 \$1500.00 in compensation for inconvenience,
 - An order for a payment of \$820.00 for "other" expenses, and
 - An order for a refund of the \$250.00 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 her 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 she 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, on 06 January 2023, 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 her absence.

Issue 1: Refund of Security Deposit - \$250.00

Relevant Submissions

7. The tenant stated that she had entered into a verbal rental agreement with the landlord on 09 May 2022. The agreed rent was set at \$550.00 per month, due on the 9th day of each month, and the tenant testified that she had paid a security deposit of \$250.00.
8. The landlord was renting an apartment in a residential complex, and the rental unit is a room in that apartment that the landlord had sublet to the tenant.
9. On 03 August 2022 the landlord issued the tenant a termination notice and a copy of that notice was submitted with her application. That notice was issued under section 24 of the *Residential Tenancies Act, 2018* (notice where tenant contravenes peaceful enjoyment and reasonable privacy) and it had an effective termination date of 09 August 2022. The tenant stated that the landlord had given her this notice because she had not paid her rent on the 01 August 2022, even though her rent for that month was not due until 09 August 2022. The tenant vacated on 15 August 2022.
10. 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.
11. The tenant is seeking an order for a refund of the full amount of the security deposit.

Analysis

12. 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.

13. I accept the tenant's claim that she had paid a security deposit of \$250.00 to the landlord 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.
14. As the landlord has not made an application to the Director of Residential Tenancies to determine the disposition of the security deposit, she is required, as per subsection 14.(12) of the Act, to refund the full amount of the security deposit to the tenant.

Decision

15. The tenant's claim for refund of the security deposit succeeds in the amount of \$250.00.

Issue 2: Compensation for Inconvenience - \$1500.00

Relevant Submissions

16. According to the breakdown submitted with the tenant's application, this portion of her claim concerns compensation for damages as a result of the landlord defrauding her.
17. The tenant stated that the landlord had informed her that the apartment was smoke-free, and the tenant testified that she has an allergy. She complained, though, that even though the landlord was not smoking in the apartment, there was another resident at the complex, in the apartment directly above theirs, who

was smoking, and the tenant claimed that she was able to smell that smoke in her room.

18. The tenant stated that she had lodged a complaint with R, the superintendent at the complex, and she claimed that a non-smoking notice was posted in the common area of the complex.
19. The tenant argued that because the landlord had informed her that this was a non-smoking apartment, and because there was a smell of smoke coming from this other apartment, the landlord had defrauded her.
20. With respect to the \$1500.00 the tenant is claiming here, she stated that those costs were related to the costs of purchasing allergy medication. No receipts were submitted with her application.

Analysis

21. When a landlord rents to a tenant and indicates to her that the rental unit is non-smoking, this typically means that the tenant is prohibited from engaging in that activity in the property. Where the landlord and the tenant will be living in the same unit, presumably this means that the landlord would not be smoking in the property either. The tenant had not alleged that her landlord had been smoking in the unit, so I do not see how there is any breach of their agreement here.
22. I was also not convinced that the landlord had been fraudulent. No evidence was submitted at the hearing to establish that the landlord was aware that the resident above their unit was smoking, or to show that the landlord was intentionally trying to deceive the tenant.
23. Additionally, and in any case, as the tenant presented no evidence to establish that she had incurred the costs she is claiming here, this portion of her claim does not succeed.

Decision

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

Issue 2: Other Expenses - \$820.00

Relevant Submissions

25. This portion of the tenant's application concerns the costs of moving in, and moving out, of the rental unit—for which the tenant is claim \$800.00—and the costs of filing this application: \$20.00. I address this latter amount in the next section.

26. The tenant argued that because of the landlord's fraudulence regarding the no-smoking policy, the landlord should have to pay the costs she had incurred to move in the unit, and the costs she had incurred to move out. She stated that she was charged \$400.00 for each of these moves. No receipt was submitted with her application.
27. The tenant also pointed to her photographs showing that the bathtub was dirty, and that in the kitchen the dishes were not washed and the stovetop needed cleaning. She claimed that this was another reason why she had to move out of the unit.

Analysis

28. As I've indicated in the previous section, I find that the landlord had not breached the no-smoking policy for their shared apartment, and I do not accept the tenant's claim that the landlord had acted fraudulently.
29. I agree with the tenant that her photographs show that the bathroom and kitchen were unkempt, and this may be evidence that the landlord had breached her statutory obligation to maintain the premises in a good state of repair. However, before a tenant can seek a remedy from this Board for such a breach, she is first required to issue a written notice to the landlord to come into compliance, as contemplated under section 20 of the *Residential Tenancies Act, 2018*. No evidence was presented at the hearing that such a notice was issued.
30. In any case, as the tenant presented no evidence to establish that she had incurred the costs she is claiming here, this portion of her claim does not succeed.

Decision

31. The tenant's claim for "other" expenses does not succeed.

Issue 3: Hearing Expenses

32. The tenant paid a fee of \$20.00 to file this application and she is claiming it as a hearing expense, and she testified that she had paid \$50.00 to have her affidavit of service notarized by a commissioner of oaths.
33. 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.
34. With respect to the costs of hiring the commissioner of oaths, as no receipt was submitted with her application, that expense will not be awarded either.

Summary of Decision

35. The tenant is entitled to a refund of the security deposit in the amount of \$250.00

06 February 2023

Date

[REDACTED]

John R. Cook
Residential Tenancies Tribunal