

Residential Tenancies Tribunal

Applications: 2022 No. 0891 NL

Decision 22-0891-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 2:17 PM on 13 February 2023 via teleconference.
2. The applicant, [REDACTED] attended the hearing. He is the executor of the estate of his brother, [REDACTED] the tenant, who is now deceased. The applicant, [REDACTED] is hereinafter referred to as "the tenant's representative". The respondent, [REDACTED], hereinafter referred to as "the landlord" also participated. She testified that her legal last name is not '[REDACTED]' as was identified in the application form.
3. An affidavit of service was provided by the tenant confirming that the landlord was served notice of the claim by registered mail on 31 October 2022 (L#1). A review of the tracking number provided, confirms that the package addressed to the landlord at the rental premise location of [REDACTED] [REDACTED], was picked up on that date. Notice of a rescheduled hearing was then sent by the Landlord's Tenant's office to both parties on 16 January 2023 (A#1).
4. The details of the claim were presented as an originally fixed term tenancy that started July 2020 for which the landlord provided a copy of the written rental agreement (L#1). Monthly rent was set at \$1,050.00 and a security deposit in the amount of \$787.50 was collected.
5. In a proceeding under the *Residential Tenancies Act, 2018*, 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. The standard of proof, in these proceedings, 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

6. The tenant's representative is seeking an order for refund of the security deposit in the amount of \$875.00.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
8. Also relevant and considered in this case is section 14 of the *Act*.

Preliminary Matters

9. The rental premises located at [REDACTED] is a condominium unit that had been previously owned by the landlord. The landlord accepts that the tenant's representative is a legal representative for the tenant. I reviewed the Will and Testament (T#2) and Statement of Death (T#3) provided by the tenant's representative to confirm the same.
10. The tenant's representative amended his application and reduced the amount sought with return of the security deposit to the amount identified in the rental agreement (e.g., \$787.50).

Issue 1: Refund Security Deposit (\$787.50)

Tenants' Position

11. The tenant's representative testified that he returned the keys to the rental premises on 30 September 2022 and that the landlord has yet to return the security deposit paid by his brother.

Landlord's Position

12. The landlord testified that she has claims against the security deposit and that she submitted evidence to this tribunal in support of her claim. The landlord testified that she has not started her own application for dispute resolution with this tribunal because she thought she only needed to respond to claim started by the tenant's representative.

Analysis

13. 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.*

14. Specific to this dispute, both parties agree that a security deposit in the amount of \$787.50 was collected. Where the landlord testified that she has claims against this amount, she also testified that she has not yet initiated her own claim for compensation with this office as is required by 14(11) of the Act. Consequently, I find that the tenant's estate, as represented by the tenant's representative is entitled to the full return of the security deposit paid.

Decision

1. The applicant's claim for return of the \$787.50 security deposit succeeds in the full amount.
2. The landlord shall pay to the estate of [REDACTED] an amount of \$787.50.

17 February 2022

Date

Jaclyn Casler
Residential Tenancies Tribunal