

Residential Tenancies Tribunal

Application 2023-0086-NL
2023-0144-NL

Decision 23-0086-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:07 p.m. on 23-March-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent and counter applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit showing that he served the landlord on 31-January-2023 electronically, with notification for the hearing scheduled for 24-February-2023. The landlord confirmed this service.
5. The landlord confirmed that she filed a counter claim on 16-February-2023 and served the tenant with notification of today’s hearing on 09-March-2023. The tenant confirms this service. The landlord requested to withdraw her application for damages and have her file discontinued; her file 2023-0144-NL is discontinued.

Issues before the Tribunal

6. The tenant is seeking
 - Security deposit returned \$275.00

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*.

8. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 14: Security deposit.

Issue 1: Security deposit returned \$275.00

Tenant's Position

9. The tenant said that he entered a verbal rental agreement with the landlord and rented a room in her home with access to the common areas. He moved in on 30-August-2022, he was given a termination notice on 15-November-2022 and ended his tenancy 15-January-2023. He paid \$550.00 rent with utilities included on the first day of each month. He paid a security deposit of \$275.00 on 26-August-2022; the landlord is still in possession of the deposit.

10. The tenant is seeking full return of his security deposit.

Landlord's Position

11. The landlord confirms the details of the rental agreement and states she is still in possession of the security deposit. She explained that when she terminated the tenant's agreement she miscounted the months and offered 3 full months; however, they both agreed that he would move on 15-January-2023.

Analysis

12. As per Section 14 of the *Residential Tenancies Act, 2018*:

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) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to 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.

(15) For the purpose of subsections (8) to (14), "security deposit" includes the interest credited under subsection (7).

13. Section 14 states that once a tenant makes an application for the return of the security deposit, the landlord has 10 days to file a claim, from the date they are notified of the application. If they don't file the claim in the 10 days, then the security deposit is to be returned to the tenant. As shown in paragraph 4, the tenant gave the landlord notice on 31-January-2023, the landlord stated in paragraph 5, that she filed her application on 16-February-2023. The landlord did not file her application within the 10 day time limit.
14. The security deposit is the property of the tenant and held in trust by the landlord. I find the landlord shall therefore return the security deposit totaling \$275.00 to the tenant

Decision

15. The tenant's claim for return of the security deposit succeeds in the amount of \$275.00.

Summary of Decision

16. The landlord shall return the security deposit of \$275.00 to the tenant.

March 27, 2023

Date

— [Redacted]
Jacqueline Williams, Adjudicator
Residential Tenancies Office