

## **Residential Tenancies Tribunal**

Application 2023-0186-NL

Decision 23-0186-00

Jacqueline Williams  
Adjudicator

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### **Introduction**

1. Hearing was called at 2:08 p.m. on 05-September-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], are represented by [REDACTED] [REDACTED], she is hereinafter referred to as “the landlord” and she attended by teleconference.

### **Preliminary Matters**

4. Both parties attended the hearing and confirmed that they received notice electronically on 28-July-2023 from our office.

### **Issues before the Tribunal**

5. The tenant is seeking
  - Security deposit refunded \$525.00
  - Compensation for inconvenience \$1,248.88
  - Hearing Expenses \$104.73

### **Legislation and Policy**

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions; and Section 14: Security deposit.

## Issue 1: Security deposit refunded \$525.00

### Tenant's Position

8. The tenant submitted his rental agreement (TT#02). The tenant said that the agreement was from 01-September-2022 until 01-January-2023. He paid \$700.00 each month for rent for a room in the house with shared living space. He said on 25-August-2022 he paid a security deposit and he believes that the landlords are still in possession of the deposit.
9. The tenant said that he gave verbal notice and moved out on 24-December-2022.
10. The tenant provided an affidavit for a previous hearing date (TT#01) which confirms that he served the landlord notice of this claim on 13-March-2023. He is seeking reimbursement of his security deposit.

### Landlord's Position

11. The landlord confirms the details of the tenant's rental agreement. She also confirms that they are still in possession of the tenant's security deposit.
12. The landlord stated that they currently have their own application seeking the security deposit be applied against damages.

### **Analysis**

13. 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).

14. Section 14 states that when a tenant makes an application for the return of the security deposit, once he serves the landlord with notice of the claim, she has 10 days to file a counter 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. The landlord did file a claim, however our records indicate that the claim was filed on 29-August-2023, which exceeds the accepted time limit of 10 days. The landlord may still file a claim for a loss under Section 42.
15. The landlord shall return the security deposit, totaling \$525.00, to the tenant.

## Decision

The tenant's claim for security deposit returned succeeds in the amount of \$525.00.

## Issue 2: Compensation for Inconvenience \$1,248.88

### Tenant's Position

16. The tenant explained that there was an issue with bed bugs in his room. Initially when he saw the bites he assumed that they were from mosquitos. However, he developed Covid-19 and was not leaving his bedroom, yet the spots were still appearing. He brought this to the attention of the landlords and he sought medical attention. Pictures of bites provided (TT#09 & TT#10).
17. Once he received medical attention and it was determined that the bites were from bed bugs, he informed the landlords immediately and sought their advice on how to proceed, text included (TT#04). In the text he determines that he is booking an exterminator and at that time the landlord tells him that this cost is at his own expense. He also sends an email (TT#05) explaining that Health Canada recommends the most effective way to treat bed bugs is a professional pest control service. He includes the options for different companies.
18. The landlords respond to the email (TT#05) and state again that the cost is his responsibility. They say that there was no issue when he moved in and that bites usually occur within the first few days, he has been living there for a while and they believe that the issue is his fault.
19. The tenant provided a copy of the breakdown of the cost (TT#03) as follows:

Description	Cost
Pest control company	\$1,207.50
2 sealed mattress protectors	41.38
Total	\$1,248.88

20. The tenant also provided receipts for the exact amount of the compensation sought (TT#06 & TT#07).
21. The tenant stated that he took this issue very seriously and that he didn't believe that the landlords were responding quickly, so he determined for his own health, he would have the matter resolved and then seek to work out the cost afterwards.
22. The tenant believes that this cost is the responsibility of the landlords and he cited Section 10, of the *Residential Tenancies Act, 2018*, as follows:

***Statutory conditions***

***10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:***

1. ***Obligation of the Landlord*** -
  - (a) ***The Landlord shall maintain the residential premises in a **good state of repair** and fit for habitation during the tenancy and shall **comply with a law respecting health, safety or housing**.***
23. The tenant is seeking reimbursement for the cost of the exterminator and the cost of sealing the mattress and box spring as advised by the extermination company (TT#08).

**Landlord's Position**

24. The landlord does not agree that this cost is their responsibility. She states that the bed bugs were only located in the tenant's room. She believes that the issue was caused by the tenant and that it is therefore his expense. She points to his evidence to determine that they were clear from the beginning that this cost was his.

**Analysis**

25. The tenant is correct in stating that it is the responsibility of the landlord to ensure that the premises are in a state of good repair and complying with health and safety laws. That being said, the landlord may be responsible to ensure the work is completed, but that does not determine that the expense is that of the landlord. Section 10 of the *Residential Tenancies Act, 2018* also goes on to cite the responsibilities of the tenant, as follows:

***Statutory conditions***

***10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:***

1. ***Obligation of the Landlord*** -

(a) *The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.*

(b) *Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.*

2. **Obligation of the Tenant** - *The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.*

26. Should damages occur to the property that are caused by the tenant, the onus is on the tenant to make the repair. In this case, the damages are caused by an infestation. Based on the testimony of both parties, it is apparent that this infestation is occurring in the tenant's room only. It is reasonable to determine that this issue is therefore caused by the tenant or a person he permitted into his room.
27. If the tenant did not hire a pest control service, then the landlord would have to hire the service, however, the cost of the service, as it is apparent that the issue is caused by the tenant, is the expense of the tenant.
28. I therefore find that the tenant's claim for compensation fails.

#### **Decision**

29. The tenant's claim for compensation fails.

#### **Issue 3: Hearing expenses reimbursed \$104.73**

30. The tenant submitted the receipt for \$20.00 for the cost of the hearing and pursuant to policy 12.01, as the award does not exceed the security deposit, the tenant is not entitled to reimbursement of the filing cost from the landlord. He also submitted the cost of having his affidavits (TT#01) sworn by a Notary: \$84.73 (TT#12). In accordance with policy 12.01, as the tenant's claim has been successful, the landlords shall reimburse him this hearing expense.
31. The claim for hearing expenses succeeds in the amount of \$84.73.

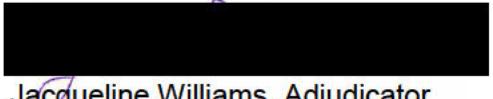
#### **Summary of Decision**

32. The landlord shall pay to the tenant \$609.73, as follows:

- security deposit .....\$525.00
- hearing expenses .....84.73
- total .....\$609.73

September 08, 2023

Date

  
Jacqueline Williams, Adjudicator  
Residential Tenancies Office