

Residential Tenancies Tribunal

Application 2023-0227-NL

Decision 23-0227-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:05 a.m. on 17-April-2023.
2. The applicant, [REDACTED], represented by [REDACTED] of the New Canadians Association (TT#01), hereinafter referred to as “the applicant” attended by teleconference.
3. The respondent, [REDACTED], represented by [REDACTED], hereinafter referred to as “the respondent” attended by teleconference.

Preliminary Matters

4. The applicant submitted an affidavit (TT#02) stating that she served the respondent with notification of today’s hearing by prepaid registered mail and the tracking number ([REDACTED]), indicates that the mail was delivered on 04-April-2023. The respondent confirms receipt of notification.
5. During the presentation of the claim an issue of jurisdiction arose, this requires a decision, prior to deciding issues in the Application for Dispute Resolution. The following is this tribunal’s decision regarding Jurisdiction.

Issues before the Tribunal

6. This tribunal is required to adjudicate on its jurisdiction to hear this claim.

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 9: Landlord and tenant relationship, as well as, Residential Tenancies Policy 10-001 Claim against a security deposit.

Issue 1: Jurisdiction

Applicant's Position

9. The applicant provided a copy of the e-transfer (TT#03) showing the transfer of \$1,400.00 to the respondent on 10-February-2023. The authorized representative explained that the tenant believed that this transfer was for \$1,200.00 security deposit and \$200.00 rent.
10. The authorized representative said that there was a verbal agreement for a 3 bedroom apartment in the house. She was unsure when the tenant was going to take possession and she didn't know the cost of the monthly rent.
11. The authorized representative stated that her supervisor had worked with the respondent to secure housing before and she believed that this money was to be applied as a show of good faith. She said that the applicant had requested a four burner stove and that the respondent had provided 4 burners on hot plates. The applicant decided that she did not wish to move into the rental after the landlord didn't provide a working stove as requested. She did not move in.

Respondent's Position

12. The respondent provided a receipt (LL#01) for a non-refundable holding deposit for \$1,400.00. He said that the applicant paid this holding deposit and that he stopped the advertisement for the unit in early February. He believed she would take possession mid-February. He said that she chose not to move into the unit and that he advertised and someone else took possession in April.
13. The respondent said that he was working with another person from the Association of New Canadians and that he had travel outside of the country. He said that the details of the rental agreement were never put in place and that had the applicant entered a rental agreement, there would have been a written copy because the government agency would require a written copy.
14. The respondent states that this money is not a security deposit it is a holding deposit as shown on the receipt (LL#01) and that they are not landlord and tenant; therefore this is not under our jurisdiction.

Analysis

15. Section 9 of the *Residential Tenancies Act, 2018* states:

Landlord and tenant relationship

9. (1) A relationship of landlord and tenant takes effect when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.

16. The landlord and tenant had not entered into a rental agreement and are not in a landlord/tenant relationship. Additionally, Section 10-001 of the Residential Tenancies policy defines a Holding deposit as:

Holding Deposit: an amount of money received by a landlord from a prospective tenant until review of a tenancy application is completed and the application is approved or denied. If the application is approved, the holding deposit may be returned to the tenant or applied towards the security deposit.

A tenant may also pay a holding deposit while deciding whether to accept the rental premises. (Non-jurisdictional).

The Policy states: The Residential Tenancies Division **has no authority** to deal with a **holding deposit, as at that time there is no landlord and tenant relationship.**

17. The receipt (LL#01) provided by the respondent clearly identifies the monies paid as a "holding deposit." As the monies are identified as a holding deposit and as the parties are not in a landlord/tenant relationship, I determine that this application is not under our jurisdiction.

Decision

18. This claim is not under the jurisdiction of the Residential Tenancies Act.

April 19, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office