

## **Residential Tenancies Tribunal**

Application 2023-0339-NL

Decision 23-0339-00

Seren Cahill  
Adjudicator

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### **Introduction**

1. Hearing was called at 11:18 a.m. on 19-October-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the applicant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the respondent” did not attend.

### **Preliminary Matters**

4. 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 hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as he has been properly served. The applicant submitted an affidavit with her application stating that she had served the respondent with the notice of hearing electronically by email; [REDACTED] on 06-Oct-2023 and attached screenshots showing the email containing the service document as well as several other emails between the two which identify the respondent as the person at this address. As the respondent was properly served, and any further delay in these proceedings would unfairly disadvantage the applicant, I proceeded with the hearing in the respondent’s absence.
5. During the presentation of the claim an issue of jurisdiction arose, this requires a decision, prior to deciding the issue in the Application for Dispute Resolution.

### **Issues before the Tribunal**

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

7. If this tribunal is found to have jurisdiction on this claim, it must be decided whether the application for the return of the deposit ought to be granted.

## **Legislation and Policy**

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018 (RTA 2018)*.
9. Also relevant and considered in this decision is section 9 of the *RTA (2018)*: Landlord and tenant relationship as well as Residential Tenancies Policy 10-001: Claim against a security deposit.

### **Issue 1: Jurisdiction**

#### Applicant's Position

10. The applicant provided a copy of the e-transfer (A#1 page 1) showing the transfer of \$350.00 to the respondent on Sept. 28, 2022 as well as hand-written receipt (AA#1 page 2) from the respondent acknowledging he had received this transfer.
11. The applicant stated that the \$350.00 was given as a "holding deposit" which would become a security deposit if she agreed to move in.
12. The applicant also testified that she found the location would not be suitable, so she did not choose to stay at this apartment.

#### **Analysis**

13. Section 9 of the *RTA 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.***

(Emphasis mine)

14. The applicant and respondent 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**.

(Emphasis mine)

15. The applicant identified the money paid as a “holding deposit.” As the money was not a security deposit and there is no landlord/tenant relationship, I determine that this application is not under our jurisdiction.

**Issue 2: Disposition of the deposit**

16. Given the finding above on the issue of jurisdiction, this tribunal has no authority to decide this issue.

**Decision**

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

October 24, 2023

Date

Seren Cahill  
Residential Tenancies Office