

Residential Tenancies Tribunal

Application 2023-0359-NL

Decision 23-0359-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:59 p.m. on 11-July-2023.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as “the tenants” attended by teleconference. [REDACTED] represented by [REDACTED] also attended as support for the tenant’s.
3. The respondents and counter applicants, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as “the landlords” did not attend. Their authorized representative, [REDACTED] did not attend.
4. Counter application 2023-0515-NL was dismissed as applicants did not attend the hearing. Hearing proceeded for initial application 2023-0359-NL
5. Part 3: respondent Name (1) from the tenant’s application has been changed from [REDACTED] to [REDACTED] as that is how she identified herself in the counter claim that was received on 31-May-2023.

Preliminary Matters

6. The landlord’s were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. Their counter claim for damages was not addressed at this hearing due to their absence and the absence of their representative. 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 they have been properly served. The tenant’s submitted 2 affidavits with their application stating that they had served respondent 1 with the notice of hearing personally at [REDACTED] and they had served respondent 2 electronically by sending it to; [REDACTED] on 15-May-2023 (TT#1). The email address was provided on the rental agreement (TT#2) and the tenant’s provided a copy of the sent email (TT#3). In accordance with the *Residential Tenancies Act, 2018*, this is good service. As the landlords

were properly served, and as any further delay in these proceedings would unfairly disadvantage the tenants, I proceeded with the hearing in their absence.

7. There was a written term agreement that commenced on 1-November-2016 (TT#2). The tenant's vacated the premises on 31-January-2023. Rent was \$1000.00 per month due on the 1st of the month. A security deposit of \$500.00 was paid on 16-September-2016.

Issues before the Tribunal

8. The tenant's are seeking:
 - a. Refund of security deposit \$500.00

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
10. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 14; Security Deposit

Issue # 1: Refund of Security Deposit \$500.00

Relevant Submission

11. The tenant's testified that they paid a damage deposit of \$500.00 to the landlord's on 1-November-2016 and submitted a copy of the signed rental agreement to support their claim (TT#2).

Analysis

12. Section 14 of the Residential Tenancies Act, 2018 deals with security deposits, and the relevant subsections state:

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. I find that although the landlord's made a claim against the tenant's for damages, the dismissal of their application as per paragraph 4 allows the tenant's the right to receive a full refund of the security deposit as it relates to section 14(12) of *the Act*. The tenants were able to show that they paid the security deposit in full on 16-September-2023 when the rental agreement was signed. I find that the landlord's refund the security deposit as the security deposit is not an asset of the landlord's.

Decision

14. The tenant's claim for refund of security deposit of \$500.00 succeeds.

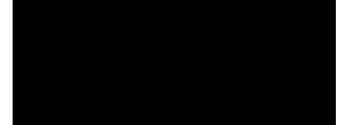
Summary of Decision

15. The landlord's shall:

- a) Pay the tenant's \$500.00 for refund of security deposit.

August 10, 2023

Date


Pamela Pennell, Adjudicator
Residential Tenancies Office