

Residential Tenancies Tribunal

Application 2023 No. 420NL

Decision 23-0420-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:02 AM on 30 August 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, were also attendance.

Issues before the Tribunal

3. The tenant is seeking the following:
 - An order for a refund of a \$550.00 security deposit;
 - An order for a payment of \$1146.00 in compensation for inconvenience; and
 - An order for a payment of \$2912.88 in compensation for missing possessions.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 14 and 32 of the *Residential Tenancies Act, 2018*.

Preliminary Matters

6. This is the second application this Section has received concerning this tenancy. A previous application was filed by the landlords on 15 May 2022 (2022 No.

309NL) and it was heard on 12 July 2022. As a result of that hearing, the director ordered that the tenant pay \$3141.40 to the landlords in compensation for damages and for “other” expenses.

Issue 1: Refund of Security Deposit - \$550.00

Relevant Submissions

The Tenant's Position

7. As a result of the hearing that was held on 12 July 2022, it was found that this tenancy ran for 4 years, and was terminated on 30 April 2022, when the tenant vacated. The rent during this tenancy was set at \$750.00 per month.
8. The tenant writes on his application that he had paid a \$550.00 security deposit and he is seeking to have that deposit returned to him.

The Landlord's Position

9. Landlord1 stated that they had only collected a \$200.00 security deposit from the tenant. He acknowledged that he had not returned that deposit to the tenant, but he also pointed out that the tenant had not paid them the \$3141.40 that was awarded to them from the first hearing.

Analysis

10. As a result of the hearing that was held on 12 July 2022, it was determined that the tenant had paid a security deposit of \$200.00. I pointed out to the tenant at the hearing that I do not have the authority to disturb that finding.
11. 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.

12. It was acknowledged by the parties at the hearing that they had not entered into any written agreement on the disposition of the security deposit. Furthermore, the landlords had not applied to the Director seeking a determination of the disposition of that deposit, either through their previous application, or as a result of the present application filed by the tenant. As such, the landlords are required, as per subsection 14.(12), to return that deposit to the tenant.

Decision

13. The tenant's claim for a refund of the security deposit succeeds in the amount of \$200.00.

Issue 2: Missing Possessions - \$2912.88

Relevant Submissions

The Tenant's Position

14. The tenant stated that about a month after he had moved out of the rental unit, the landlords had sent him a photograph of the bed of their pickup truck containing items that they had removed from the rental unit and subsequently disposed of.
15. In that photograph, the tenant stated that there are 2 scientific instruments which belonged to him: an oscilloscope and a function generator. He stated that he used these items for research he was conducting as a university student.
16. The tenant claimed that he mistakenly forgotten about these items when he was moving, and he only realized his mistake when the landlords sent him this photograph. Besides those 2 items, the tenant also claimed that the landlords had disposed of other items he had left behind, and with his application he submitted the following list of the costs of replacing these items:

- Oscilloscope..... \$1155.00
- Function generator..... \$500.00
- 20 kg Labradorite \$300.00

- 200 lbs weight plates..... \$250.00
- Elastic resistance bands \$120.00
- Total..... \$2325.00

17. With respect to the costs the tenant is seeking here, no receipts or estimates were submitted with his application. The Labradorite, the weights and the resistance bands are also not visible in the submitted photograph.

The Landlords' Position

18. Landlord1 stated that the tenant had not left behind any of his personal possessions in the rental unit. He did claim, though, that the tenant left behind numerous bags of garbage outside the unit, which were exposed to the weather, and he testified that these are the items that are seen in the submitted photograph.

19. Landlord1 pointed out that the tenant was visiting the unit every other day for weeks after he had moved out so that he could collect mail. He argued that if the tenant had left behind anything of value, he had ample time and opportunity to go to the unit and collect those items. The fact that these items were left outside, and the fact that the tenant had not reached out to the landlord concerning these items, after he had moved out, confirms that he was justified in believing that these items were unwanted garbage.

20. Landlord2 acknowledged that they had not sought the permission of the Director of Residential Tenancies to dispose of these items.

Analysis

21. Section 32 of the *Residential Tenancies Act, 2018* requires landlords to safely store any abandoned property belonging to a tenant for a period of at least 30 days, and where the landlord believes that the property has no monetary value, or is unsanitary, the landlord first has to receive permission from the Director before disposing of that property.

22. With respect to the Labradorite and the exercise equipment, I find that not enough evidence was presented at the hearing to establish that the tenant ever owned such items, that he had abandoned those items at the rental property, or that they were disposed of by the landlord.

23. With respect to the oscillator and function generator, though, I find that those items had been improperly disposed of, in contravention of section 32, referenced above. However, the tenant presented no evidence at the hearing to establish the condition of these instruments, and no evidence to establish the costs of replacing those items (e.g., receipts or quotes). Hence, this portion of his claim does not succeed.

Decision

24. The tenant's claim for the costs of replacing his missing possessions does not succeed.

Issue 3: Compensation for Inconvenience - \$1146.00

Relevant Submissions

The Tenant's Position

25. The tenant stated that in 2022 he was an earth sciences student working towards a master's degree and he was enrolled in the spring semester, which ran from early May to late August. He testified that he had paid \$1146.00 in tuition for that semester.
26. The tenant testified that in order to re-evaluate the work he was doing, he needed to use his oscilloscope and function generator. He complained that because the landlord had disposed of those instruments, he was unable to complete his work during the spring semester, and he was required to enroll again in the fall. He testified that he was able to complete his work by October 2022.
27. The tenant argued that because he could not complete his work in the spring semester, the landlord should compensate him for the tuition he had paid.

The Landlord's Position

28. Landlord1 stated that he never disposed of the garbage that the tenant had left behind until July 2022. He argued that if the tenant needed this equipment for his schoolwork, he could have returned to the unit at any point to collect it. He testified that the tenant never did contact him about this equipment and he only raised it as an issue when he was presented with the submitted photograph in July 2022.

Analysis

29. No evidence was presented at the hearing showing that the tenant was a university student or that he had paid any tuition for the spring or fall semester. Furthermore, no evidence was presented showing that the tenant needed these instruments to carry out his research, and no evidence was presented showing that his work was incomplete because he did not have those instruments. For these reasons, the tenant's claim does not succeed.
30. I also agree with the landlords, though, that even if the tenant's account is true, he is largely to blame because he had left these instruments behind when he vacated the property and because he took no action to retrieve them.

Decision

31. The tenant's claim for compensation for inconvenience does not succeed.

18 October 2023

Date


John R. Cook
Residential Tenancies Tribunal