

Residential Tenancies Tribunal

Application 2023-0453-NL

Decision 23-0453-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 11:12 a.m. on 11-July-2023.
2. The applicant, [REDACTED] hereinafter referred to as “the tennat” attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as “the landlord” did not attend.

Preliminary Matters

4. The landlord was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing. 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 the hearing 10 clear days prior to the hearing date and, where the respondent fails 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 tenant submitted an affidavit with his application stating that he had served the landlord with the notice of hearing, by pre-paid registered mail [REDACTED] on 25-May-2023 (TT#1). The registered mail tracking indicates that the tenant did not retrieve the mail. In accordance with the *Residential Tenancies Act, 2018* registered mail is considered served 5 days after it has been sent. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in his absence.
5. There was a verbal month to month rental agreement that was supposed to commence on 1-May-2023. Rent was agreed upon at \$650.00 per month. A security deposit in the amount of \$320.00 was paid on 15-April-2023 (TT#2).

Issues before the Tribunal

6. The tenant is seeking:
 - a. Refund of security deposit \$320.00
 - b. Hearing expenses \$50.40

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 14; Security Deposit.

Issue # 1: Refund of security deposit \$320.00

Relevant Submission

9. The tenant submitted a copy of a receipt received from the landlord stating that a damage deposit had been paid to him on 15-April-2023 by the applicant for the property located at 50 Ferryland Street East. The receipt was signed by the landlord (TT#2).

Tenant's Position

10. The tenant testified that he had entered into a rental agreement with the respondent to move into the unit on 1-May-2023 and to pay \$650.00 per month for rent. He testified that 2 days prior to taking possession, the landlord informed him that he had to increase the rental rate from \$650.00 to \$750.00 per month due to personal / financial reasons. The applicant stated that he was unable to afford the increase and informed the landlord that he would need to find a new place within his budget. The tenant feels that the landlord scammed him in an effort to retain the security deposit knowing that he would not be able to move in.

Analysis

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. I find that the landlord changed the terms of the rental agreement and as a result the tenant was unable to move into the premises. The landlord does not have a right to retain the security deposit as the security deposit is not an asset of the landlord.

Decision

13. The tenant's claim for refund of security deposit of \$320.00 succeeds.

Issue # 2: Hearing Expenses \$50.40

14. The tenant paid a fee of \$15.40 for postal costs to send service documents to the landlord (TT#3). The tenant stated that he also incurred a cost of \$35.00 to cover transportation associated with preparing for the hearing.

15. As the tenant's claim has been successful, the landlord shall pay the \$15.40 postal fee. The residential tenancies policy does not cover transportation costs associated with preparing for a hearing thus the tenant's claim for transportation costs is denied.

Decision

16. The landlords claim for hearing expenses succeeds in the amount of \$15.40.

Summary of Decision

17. The landlord shall Pay the tenant **\$335.40** as follows:

a) Security deposit Hearing expenses	\$320.00
b) Hearing Expenses	<u>15.40</u>
c) Total Owing	<u>\$335.40</u>

August 8, 2023
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office