

Residential Tenancies Tribunal

Application 2023 No. 521NL

Decision 23-0521-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:16 AM on 17 July 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, was not in attendance.

Issues before the Tribunal

3. The tenant is seeking the following:
 - An order for a refund of rent in the amount of \$600.00, and
 - An order for a refund of a \$320.00 security deposit.

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 is section 14 of the *Residential Tenancies Act, 2018*, and rule 29 of the *Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The landlord was not present or represented at the hearing and I was unable to reach him by telephone. 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. With his application, the tenant submitted an affidavit stating that he had sent the application to the landlord, by e-mail, on 10 June 2023, and a copy of that e-mail was also submitted with his application. 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.

Issue 1: Refund of Rent - \$600.00

Relevant Submissions

7. The tenant stated that he had entered into a verbal rental agreement with the landlord on 03 April 2023 to rent a room at the residential complex, commencing 30 April 2023.
8. The tenant stated that the agreed rent was set at \$600.00 per month, and he testified that he paid the landlord the first month's rent, in cash, on 03 April 2023. He also stated that he paid the landlord a security deposit of \$320.00. \$100.00 of that amount was also paid in cash, and the remaining \$220.00 was paid by INTERAC e-Transfer. A copy of the e-mail receipt for that e-Transfer was submitted with the tenant's application.
9. The tenant testified that when he went to move into the property on 30 April 2023, the landlord refused him entry, and he had never resided at the unit.
10. The tenant is seeking a refund of the \$600.00 rent he had paid to the landlord.

Analysis

11. I accept the tenant's testimony in this matter, and I find that, based on that testimony, he had paid the landlord \$600.00 in rent for the first month of this tenancy. I also find that he has never resided at the unit, and that the landlord had breached their agreement by not allowing him to move into the property.
12. As the tenant never did have use and enjoyment of the rented premises, I agree with him that he is entitled to a refund of the rent that he had paid to the landlord.

Decision

13. The tenant's claim for a refund of rent succeeds in the amount of \$600.00.

Issue 2: Refund of Security Deposit

Relevant Submissions

14. The tenant also reported that the landlord had not returned the security deposit to him when he requested it. He testified that he had not entered into any written agreement with the landlord on the disposition of that deposit. He is seeking an order for a refund of that deposit as well.

Analysis

15. 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.

16. I accept the tenant's claim that he had paid a security deposit of \$320.00 and that it had not been returned to him after he was denied access to the apartment. I also accept the tenant's claim that he had not entered into any written agreement with the landlord on the disposition of that deposit.
17. As the landlord has not made application to the Director of Residential Tenancies to determine the disposition of the security deposit, he is required, as per

subsection 14.(12) of the *Act*, to refund the full amount of the security deposit to the tenant.

Decision

18. The tenant's claim for refund of the security deposit succeeds in the amount of \$320.00.

Summary of Decision

19. The tenant is entitled to a payment of \$920.00, determined as follows:

a) Refund of Rent.....	\$600.00
b) Refund of Security Deposit	\$320.00
c) Total Owing to Tenant.....	<u>\$920.00</u>

15 September 2023

Date


John R. Cook
Residential Tenancies Tribunal