

Residential Tenancies Tribunal

Application 2023-0567-NL

Decision 23-0567-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 31 October 2023 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, was contacted at 9:07 AM and suggested she would be attending the hearing. The tenant did not attend the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord”, did attend the hearing.
4. The details of the claims were presented as a verbal agreement with rent set at \$900.00 and due on the 1st of each month. The tenant moved in the residential property at [REDACTED] on 1 September 2020 until 25 January 2023. There was a security deposit collected on this tenancy of \$450.00 (**Exhibit L # 1**). The tenant issued an Application for Dispute Resolution (**Exhibit L # 2**). At the time of the hearing, there has been no counter-claim made by the respondent.
5. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The tenant was not present at the start of the hearing. At 9:07 AM, telephone contact was made with the tenant at which time the tenant suggested she would call in to the teleconference. Upon starting the hearing, the tenant was not present. The landlord was present at the hearing. As the landlord was properly served electronically, effective on September 6, 2023 and as any further delay in these proceedings could unfairly disadvantage the tenant, I proceeded in the tenant’s absence.

8. There were no amendments to the application. There were no representatives for the tenant and the landlord did not call any witnesses.

Issues before the Tribunal

9. The tenant is seeking the following:
 - An order for return of security deposit.

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act*, 2018
11. Also relevant and considered in this case is S. 14, 34 and 35 of the *Residential Tenancies Act*, 2018.

Issue 1: Return of Security Deposit- \$450.00

Tenant Position

12. Prior to the hearing, the applicant submitted evidence consisting of a letter from the landlord which identifies the security deposit collected on the [REDACTED] rental property (**Exhibit T # 1**). In addition, the tenant provided evidence of banking transactions offering banking transactions from her account on 7 August 2020 (**Exhibit T # 3**).

Landlord's Position

13. The landlord offered testimony that the tenant rented the 3-bedroom apartment at [REDACTED] between 1 September 2020 and 25 January 2023. Furthermore, the landlord testified that that on 7 August 2020, prior to the tenant taking occupancy of the rental, the tenant paid the \$450.00 security deposit. The landlord stated he remains in possession of this deposit.
14. The landlord claimed he has not, up until the date of the hearing (31 October 2023), returned this deposit to the tenant and alleged there had been damages to the rental property.

Analysis

15. I have reviewed the testimony and evidence of the tenant and landlord in this matter. The issues to be determined are whether or not: (i) the tenant paid a security deposit of \$450; and (ii) the tenant is entitled to return of the security deposit in the amount of \$450.
16. I find the tenant did pay a security deposit of \$450 based on the evidence presented by the tenant and the testimony from the landlord that the tenant did pay \$450 as a security deposit.
17. Pursuant to Section 14 of the Residential Tenancies Act,
 - (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) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to return the security deposit to the tenant.
18. In accordance with the legislation, I find that the tenant has made application seeking return of security deposit and has properly served the landlord with notice of this application, effective on September 6, 2023.
19. Pursuant to section 14 (11), the landlord has 10 days from the date the landlord is served to file an application to retain the security deposit. The landlord has not complied with this requirement.
20. As prescribed by the legislation under section 14 (12) where the landlord does not make an application to retain the security deposit within 10 days of being served notice of the tenant's application for return of the security deposit, the landlord must return the security deposit to the tenant.
21. The legislation provides the director with the authority to order the return of security in these circumstances, and the authority to do so without conducting a hearing.
22. Accordingly, I find the tenant is entitled to return of the security deposit in the amount of \$450.

Decision

18. The tenants' claim for return of security deposit succeeds:

a) Return of Security Deposit \$450.00

Summary of Decision

20. The tenant is entitled to the following:

- Return of the security deposit in the amount of \$450.00

7 November 2023

Date



Michael J. Reddy
Residential Tenancies Office