

Residential Tenancies Tribunal

Application 2023-0829-NL

Decision 23-0829-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:01 a.m. on 12-October-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The tenant submitted an authorized representative form (TT#02) naming [REDACTED], of [REDACTED], as his representative. [REDACTED] attended and will hereinafter be referred to as “the authorized representative.”
4. The respondent, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as “landlord1 and landlord2” attended by teleconference.

Preliminary Matters

5. The tenant submitted an affidavit (TT#01) declaring that the authorized representative served the landlord with notification of the hearing on 18-September-2023 electronically. Landlord1 confirmed receipt of notification as stated.

Issues before the Tribunal

6. The tenant is seeking:
 - Security deposit refunded \$372.00

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 \$372.00

Tenant's Position

9. The tenant submitted his copy of the rental agreement (TT#03). The authorized representative reviewed the details of the agreement as follows: the tenant's agreement is monthly, he moved in on 01-July-2023 and pays \$975.00 rent on the first day of the month. The tenant paid a security deposit of \$731.59 on 22-June-2023 and the landlord is still in possession of the deposit.
10. The authorized representative said that the tenant was given termination notice for cause and was required to move after 5 days. The tenancy ended on 08-August-2023.
11. The authorized representative confirmed that after the tenancy was terminated they did a walk through with the landlords. The tenant was told when moving in he could put pictures or puzzles on the walls. The tenant had placed a lot of pictures and puzzles up and the landlord pointed out the damages to the walls.
12. At that time the landlord had said that it was going to cost around \$1,000.00 to complete the repairs to the walls. The authorized representative said that he did not know when they were told this, however, after the meeting he and the tenant discussed the cost of the damages further.
13. The authorized representative explained that the tenant is receiving income support and only had 5 days to move, he required \$372.00 for the new apartment's security deposit. They are seeking \$372.00 returned and are in agreement that the landlord may retain the remaining balance of \$359.59 to repair the damage to the walls.

Landlord's Position

14. Landlord1 confirms the details of the rental agreement. She points out that the tenant did not sign the copy that she has on file, and the one that is submitted into evidence by the tenant (TT#03) is signed.
15. Landlord1 declares that they do not require a security deposit from tenants and that the monies paid are for a damage deposit.
16. Landlord1 said that the tenant had completely covered his walls with pictures and puzzles and that although she said he could put this on the wall, she meant within reason. She stated that you could not see any of the wall. When the tenant was told to take the pictures/puzzles down, as it is a fire hazard, there were thousands of pin holes in the walls.
17. She said that when the tenant was moving she walked through with the tenant and the authorized representative and at that time, she told him he wasn't going to be getting his damage deposit back because the apartment would require painting and plastering before it could be rented again. She said she had to pay two people for this repair. She

confirmed that the agreement to retain the damage deposit was verbal; nothing was signed by the parties. She also confirmed that in light of that conversation she did not file for damages against the security deposit.

Analysis

18. The landlord stated that the security deposit is a damage deposit, the rental agreement (TT#03) part 9 clearly identifies the deposit paid as a security deposit. Additionally, the “Guide for Landlord and Tenants” states:

“A security deposit is often called a “damage deposit”. It refers to the money paid by a tenant to a landlord who have entered into a rental agreement. This money is held by the landlord as a type of insurance in the event the tenant causes the landlord to suffer some type of financial loss.

.....

When a landlord and tenant enter into a rental agreement, the landlord may require the tenant to pay an amount of money (security deposit) which the landlord is to hold in “safe keeping” to ensure the tenant meets their responsibilities identified in the rental agreement such as pay rent, pay utilities, repair any damages caused by the tenant. This money is not considered revenue for the landlord and must be held in an interest earning trust account, separate from the landlord’s other bank account if the landlord has more than 3 rental units. “

19. I therefore determine that the deposit paid by the tenant is, as named in the rental agreement, a security deposit.
20. A security deposit belongs to the tenant and is held in trust by the landlord against possible financial loss. As this deposit belongs to the tenant the landlord is to return the deposit 10 days after the tenant vacates the property (Section 14.(9)). The landlord can only retain the security deposit if they have an agreement in writing or if the landlord has applied to the director and awarded the security deposit (Section 14.(10)). Once a tenant makes application for the security deposit, the landlord has 10 days to file a counter application (Section 14.(11)). As the landlord did not file a claim for loss, they must return the deposit to the tenant (Section 14.(12)). As per Section 14 of the *Residential Tenancies Act, 2018*, below:

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) 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.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

(15) For the purpose of subsections (8) to (14), "security deposit" includes the interest credited under subsection (7).

21. As the landlord did not file a counter claim within 10 days of notification of the tenant's claim, I accept that the tenant has agreed for the landlord to retain \$359.59 of his security deposit and find that the landlord shall return \$372.00 of the tenant's security deposit to the tenant.

Decision


22. The tenant's claim for security deposit returned totaling \$372.00 succeeds.

Summary of Decision

23. The landlord shall return \$372.00 of the tenant's security deposit to the tenant.

October 13, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office