

Residential Tenancies Tribunal

Application 2023-1012-NL

Decision 23-1012-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:00 p.m. on 07-December-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], homeowner of the property, 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 her by telephone ([REDACTED]) 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 she has been properly served. The tenant submitted an affidavit (TT#01) with his application stating that he had served the landlord with notice of the hearing, by prepaid registered mail ([REDACTED]). The tenant stated that he sent the mail on 14-November-2023 and the tracking shows it was delivered on 15-November-2023. 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 her absence.
5. The tenant stated when he moved in, the property management company was Newground, this property management company was replaced by [REDACTED]. He also included with his affidavit service to [REDACTED]; he served them on 14-November-2023 by email and text.

Issues before the Tribunal

6. The tenant is seeking:
 - Rent refunded \$550.00
 - Security deposit returned \$412.50
 - Hearing expenses \$37.50.

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: Rent refunded \$550.00

Relevant Submissions

9. The tenant submitted the copy of his written monthly rental agreement (TT#02). The agreement is signed with the landlord who is the homeowner. He explained that he moved in the end of January 2023 and the agreement began 01-February-2023. He declared that he paid \$550.00 each month that was due on the 1st day of the month. He confirms that he paid a security deposit of \$412.50 on 23-January-2023, as shown in his rental agreement. The landlord has not refunded this deposit and he believes she is still in possession of this deposit.
10. The landlord used a property management company to manage her rentals. He said that the property management company changed in May as stated in paragraph 5.
11. The tenant said that the landlord gave him a notice of termination (TT#03). The notice was for 3 months, and the termination date was 30-September-2023.
12. The tenant moved out on 02-September-2023. He reached out to the property management company by email (TT#05) and he inquired if they rented his room, would they reimburse him the rent he paid for September; receipt submitted (TT#06). They responded on 14-September-2023 that they have a renter who will take occupancy the next day 15-September-2023.
13. The tenant is seeking his rent returned for the period of 15 – 30 September-2023.

Analysis

14. Rent is paid for the use and enjoyment of a residential premises. The tenant moved out on 02-September-2023, in advance of his termination date 30-September-2023. The tenant provided receipt (TT#06) of his full September rent payment on 29-August-2023. The tenant's evidence supports that another individual had rented his room on 15-September-2023. The landlord therefore did not suffer loss of rent from the 15-September-2023 onward.
15. I agree with the tenant that once the landlord rented the room; he should no longer be required to pay rent and he should be refunded rent already paid for that time. The daily

rate for 15 – 30 September is as follows: $\$550 \times 12 \text{ months} = \$6,600$ a year divided by 365 days = $\$18.08$ a day $\times 16 \text{ days} = \289.28 .

16. I find that the landlord shall reimburse the tenant \$289.28 for rent paid.

Decision

17. The tenant's claim for rent returned succeeds in the amount of \$289.28.

Issue 2: Security deposit returned \$412.50

Relevant Submissions

18. The tenant provided a copy of his rental agreement (TT#02) which shows that he paid his security deposit on 23-January-2023. He sent the landlord's property management company an email (TT#04) requesting return of his security deposit. The email shows (TT#04) the landlord responded on 02-October-2023 and said that they would process his deposit.
19. The tenant confirms that he has not received the deposit from the landlord or her property management company. He is seeking his deposit of \$412.50 returned.

Analysis

20. As per Section 14 of the *Residential Tenancies Act, 2018*:

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. Section 14 states that once a tenant makes an application for the return of the security deposit, the landlord has 10 days to file a claim from the date they are notified of the application. If they don't file the claim in the 10 days, then the security deposit is to be returned to the tenant. As shown in paragraph 4, the tenant gave the landlord notice on 14-November-2023. The landlord did not file an application within the 10 day time limit and are required to return the security deposit to the tenant.
22. The security deposit is the property of the tenant and held in trust by the landlord. I find the landlord shall therefore return the security deposit totaling \$412.50 to the tenant

Decision

23. The tenant's claim for return of the security deposit succeeds in the amount of \$412.50.

Issue 3: Hearing expenses reimbursed \$37.50

24. The tenant submitted the receipts for \$20.00 for the cost of the application fee (TT#08) and the receipt for \$17.50 for prepaid registered mail (TT#07) and pursuant to policy 12.01, is entitled to reimbursement of those costs totaling \$37.50 from the landlord.

Summary of Decision

25. The landlord shall pay to the tenant \$739.28, as follows:

• Rent refunded	\$289.28
• Security deposit	412.50
• Hearing expenses	<u>37.50</u>
• Total.....	<u>\$739.28</u>

December 21, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office