

Residential Tenancies Tribunal

Application 2024-0094-NL

Decision 24-0094-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 5-March-2024 at 1:56 pm.
2. The applicant, [REDACTED] hereinafter referred to as the tenant, was represented at the hearing by her mother [REDACTED] who attended via teleconference.
3. The respondent, [REDACTED] hereinafter referred to as the landlord, also attended via teleconference.

Issues before the Tribunal

4. What is the proper disposition of the security deposit?

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
6. Also referenced and referred to in this decision is s. 14, reproduced below:

Security deposit

14. (1) A landlord shall not demand from a tenant a security deposit that is

- (a) more than the amount of rent payable for the first 2 weeks where the residential premises is rented from week to week;
- (b) more than 3/4 of the amount of rent payable for the first month where the residential premises is rented from month to month; or
- (c) more than 3/4 of the amount of rent that would be payable for the first month if rent was divided into a monthly payment where the residential premises is rented for a fixed term.

(2) Where a landlord receives from a tenant money or other value that is more than the amount of rent payable in respect of the residential premises, the money or value shall be considered to be a security deposit.

(3) Where a landlord receives a security deposit that is more than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or may recover the overpayment together with interest on the amount of the overpayment at the rate prescribed in the regulations.

(4) Upon receipt of a security deposit, the landlord shall give the tenant a written acknowledgement of receipt stating the amount of the security deposit, the date of receipt and the residential premises and residential complex to which it applies.

(5) Within 2 banking days of receipt of a security deposit, the landlord shall deposit it in an interest bearing account located in the province at a financial institution authorized to accept deposits.

(6) Where a landlord has 3 or more residential premises, the interest bearing account referred to in subsection (5) shall be a trust account used exclusively for security deposits.

(7) A landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord.

(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).

Issue 1: Security Deposit

Landlord's Position

7. The landlord submitted that the lease agreement at issue in this application was between himself and three tenants. He acknowledged receipt of a \$1350 security deposit which was provided by the three. He additionally acknowledged that two of the tenants had left in December and that the remaining tenant had found two new roommates to replace them. He also acknowledged that the tenant had sent messages asking him to do a final walkthrough at this time, but he had not responded, as he had been dealing with the aftermath of a tragedy in his family life. He submitted that his understanding was that the tenancy did not end until the last tenant moved out, which occurred at the end of February, less than a week before the hearing. He therefore did not have the opportunity to assess any damages and submit a claim if necessary.

Tenant's Position

8. The tenant's representative testified that she had provided notice in November that she intended to move out in December, and then did so. The tenant attempted to arrange a walkthrough with the landlord but received no response. The representative submitted that as the tenant had vacated the apartment, as she had filed an application under s. 14(10)(b) of the *Act* for the return of the security deposit, as she served notice of this application on the landlord, and as the landlord did not make his own application under s. 14(10)(b) within 10 days, that the security deposit must be returned in accordance with s. 14(12).

Analysis

9. The mere fact that a single tenancy agreement exists that multiple parties have signed does not make a joint tenancy. A joint tenancy is a particular legal arrangement with specific legal requirements and its existence or lack thereof is to be determined on a case-by-case basis.
10. The tenant provided T#2, a receipt for an e-transfer on behalf of the tenant for one third of the rent and one third of the damage deposit. Based on this and the absence of any evidence of intention to the contrary, I find that the tenancy is a tenancy in common, rather than a joint tenancy, notwithstanding the fact that there is a single tenancy agreement.
11. The only question now at issue is when the tenant vacated within the meaning of s. 14(9) of the *Act*, as reproduced above. If the tenant vacated in December, her application was timely, and as there has been no claim against her, she is entitled to the return of her third of the security deposit. If the tenant vacated at the end of February, her application is premature and must be dismissed.
12. Vacates is not an explicitly defined term of the *Act*. Proper statutory interpretation requires that the words of the legislation must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of

the *Act*, and the intention of the legislature. Vacate, as a verb, has two ordinary meanings: one, to deprive of an occupant or leave empty, and two, to make legally void.

13. If the tenant had assigned the lease, she might not be deemed to have vacated. However, I cannot find that was her intention here. New tenants were found not by the tenant who is the applicant, but by the tenant who remained. Further, the tenant issued a termination notice and requested a final walkthrough. Her intention was clearly to end the tenancy. Had the lease represented a joint tenancy rather than a tenancy in common, this would have then ended the lease for all parties. In the present circumstances, she ended only her own tenancy relationship with the landlord, and in doing so, vacated the premises.

Decision

14. As the tenant vacated the premises, applied under s. 14(10)(b), properly served the application on the landlord, and the landlord did not file a claim within ten days, s. 14(12) requires that the tenant's security deposit be returned.
15. S. 14(7) of the *Act* states that landlords shall return to tenants the full security deposit plus interest at a rate prescribed by the regulations. The *Security Deposit Interest Regulations* specify that the annual rate shall be obtained by subtracting 4% from the average Bank of Canada rate for the 12-month period ending November 30 in the immediately preceding year, rounded to the next higher whole number where the average rate includes a fraction. For the year of 2023, this resulted in an interest rate of 0%. For 2024, the interest rate is 1%. The security deposit was set at \$450. This hearing took place on 5-March-2024 and interest after that date cannot be considered.
16. 1% annual simple interest for the amount of \$450 from January 1st to March 5th is \$0.82.
17. The landlord shall pay to the tenant \$450.82 in refund of the security deposit.

21-March-2024

Date


Seren Cahill
Residential Tenancies Office