

Residential Tenancies Tribunal

Application 2024-0164-NL

Decision 24-0164-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 26-March-2024 at 2:01 pm.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, appeared via teleconference.
3. The respondent, [REDACTED] a.k.a. [REDACTED], 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 them by telephone 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 they have been properly served. The tenants testified under solemn affirmation that they had served the landlord with notice of the hearing personally on 15-March-2024. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenants, I proceeded with the hearing in their absence.

Issues before the Tribunal

5. Should the tenants' application for a refund of rent be granted?
6. What is the proper disposition of the security deposit?

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* (the *Act*).

Background

8. What follows is a summary of the tenants' testimony, which I accept as true in the absence of any evidence to the contrary.
9. The tenants were looking for a new residence when they came into contact with the landlord on 8-February-2024. He identified himself as [REDACTED] and told them he had a property available for rent. They viewed the apartment that night and came to an accord. He later sent them a rental agreement electronically, which he had signed, for the rental of the property. It required a security deposit of \$730.00. They sent \$100.00 at this time towards that deposit.
10. On 16-February-2024, the tenants sent the remainder of the deposit, in the amount of \$630.00. E-transfer receipts for these payments can be seen in T#3.
11. The tenants planned to move in on 1-March-2024. The landlord was agreeable. On 20-February-2024, they asked if they could pay \$100.00 towards rent in advance, and the landlord agreed. They sent the payment. They agreed to pick up the keys on 22-February-2024.
12. The landlord did not respond to any communications from the tenants from this point onward. In an attempt to speak with him, they attended the residence the landlord had provided on the rental agreement. The resident of that home was not the landlord. He understood their confusion immediately and informed them that they were not the first people to come to his door looking for the landlord. He showed them a news article which included a picture of the landlord and gave his name as [REDACTED]. They recognized him as the same person they had met with.

Issue 1: Refund of Rent

13. The landlord's acceptance of a partial rent payment for the purposes of securing a residence established a landlord-tenant relationship between the parties. As the tenants were never allowed to reside at the premises, the tenants are entitled to the return of the rental payment.

Issue 2: Security Deposit

14. As the tenants applied for the return of the security deposit and the landlord did not make a claim against it within ten days of receiving notice, it must be returned to the tenants.

Decision

15. The landlord shall pay to the tenants \$830.00 as follows:

Security Deposit.....	\$730.00
Rent.....	\$100.00
Total.....	\$830.00

24-May-2024
Date


Seren Cahill
Residential Tenancies Office