

Residential Tenancies Tribunal

Application [REDACTED]

Decision 23-0182-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 26-April-2023.
2. The applicants, [REDACTED], hereinafter referred to as "tenant1 and tenant2" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the landlord" attended by teleconference.
4. The respondent's spouse, [REDACTED] also attended the teleconference.

Preliminary Matters

5. Tenant1 confirmed the affidavit (TT#01) stating that they had served the landlord electronically with notification of today's hearing on 30-March-2023. The landlord confirmed receipt of notification as stated.

Issues before the Tribunal

6. The tenants are seeking
 - Security deposit refunded \$350.00
 - Other/Shed \$500.00

6Legislation 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 are the following sections of the *Residential Tenancies Act, 2018*: Section 14: Security deposit, and Section 32: Abandoned Personal Property.

Issue 1: Security deposit refunded \$350.00

Tenants' Position

9. Tenant1 reviewed the details of the rental agreement. She said that they had a written term agreement from 01-July-2012 until 30-June-2013. They then had a monthly agreement until they moved on 31-May-2022. Their rent was \$700.00 a month, this did not include utilities. They paid a security deposit of \$350.00 on 29-July-2012, receipt provided (TT#02) and she said that the landlord is still in possession of the deposit.
10. The tenants are seeking reimbursement of the \$350.00 security deposit. She explained that they did miss a rent payment, but paid it immediately when they realized it had been missed.

Landlord's Position

11. The landlord confirmed the details of the rental agreement as stated by tenant1.
12. The landlord said he retained the security deposit as payment of rent for a missing payment for August 2020. He said he did not file a counter claim.

Analysis

13. 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).

14. 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 5, the tenants gave the landlord notice on 30-March-2023 of today's hearing and the landlord stated in paragraph 12, that he did not file an application. Should the landlord have damages or loss he must file his own application for the matter to be considered.
15. 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 \$350.00 to the tenant

Decision

16. The tenant's claim for return of the security deposit succeeds in the amount of \$350.00.

Issue 2: Other/Shed \$500.00

Tenants' Position

17. Tenant1 said that they purchased a baby barn in 2016 and placed it in the backyard, with the landlord's permission, receipt provided (TT#03). She said that since that time the landlord built a fence in the yard and that the baby barn is part of the perimeter. When they moved they offered the landlord the opportunity to purchase the baby barn for \$500.00. He never responded.

Landlord's Position

18. The landlord acknowledges that the tenants purchased the baby barn. He said that he didn't respond to the offer to purchase it because he doesn't want it. He said that they can come pick it up and he would ask for two weeks' notice so that he could make arrangements on his end.

Analysis

19. Section 32 of the *Residential Tenancies Act, 2018*, states:

Abandoned personal property

32. (1) Where a tenant abandons or vacates a residential premises and leaves personal property on the residential premises, the landlord shall either

- (a) remove the personal property and immediately place it in safe storage; or*
- (b) store the personal property on the residential premises in a safe manner.*

(2) The personal property stored under subsection (1) shall be stored for not less than 30 days unless the tenant takes possession of the personal property before the 30 days have elapsed.

20. The landlord has stored the tenants' property in excess of the required 30 days. It is the tenants' responsibility to remove their property and once the landlord did not offer to purchase the baby barn, they should have made arrangements to have the property removed. They cannot bill the landlord for the sale of property he has not agreed to purchase.
21. That being said there is no dispute, the landlord agrees that the baby barn is the property of the tenants. The tenants shall make arrangements for the removal of the baby barn. The tenants shall abide by the landlord's request for two weeks' notice before they collect their property.

Decision

22. I determine that the tenants shall remove the baby barn from the landlord's property.

Issue 4: Hearing expenses reimbursed \$20.00

23. The tenants submitted the receipt for \$20.00 for the cost of the hearing (TT#04) and pursuant to policy 12.01, as the award does not exceed the amount of the security deposit, they are not entitled to reimbursement of that cost from the landlord.

Summary of Decision

24. The landlord shall reimburse the tenants \$350.00 for their security deposit.

The tenants shall remove their baby barn from the landlord's property.

April 28, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office