

Residential Tenancies Tribunal

Application [REDACTED] Decision 19-0416-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:20 p.m. on June 20, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenants, [REDACTED] and [REDACTED] hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing by conference call.
3. The landlords, [REDACTED] and [REDACTED] hereafter referred to as the landlords, did not attend the hearing.

Preliminary Matter

4. The landlords were not present or represented at the hearing. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) a respondent to an application must be served with the application for dispute resolution 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 he/she has been properly served.

5. The affidavit of service submitted by the tenants show that the notice of this hearing was sent electronically to the landlords on June 7, 2019 and the landlords have had 12 days to provide a response. The tenants provided a copy of the e-mails sent to the landlords on June 7, 2019 along with copies of e-mails sent to the landlords during the tenancy. As the landlords were properly served with the application for dispute resolution, 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

6. The tenants are seeking the following:
 - a. Return of the balance of the security deposit in the amount of \$100.00;
 - b. Hearing expenses.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
8. Also relevant and considered in this case is Section 14 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF.*

Issue 1: Return of the balance of the security deposit - \$100.00

Tenant Position

9. Tenant1 testified that three tenants moved into the unit in early August 2017 for a one year term with rent set at \$1095.00 per month due on the 1st of each month. A security deposit of \$821.25 was paid by the three tenants. They each paid 1/3 of the security deposit. The third tenant moved out and sublet the room. The tenants presented a copy of the lease agreement (T #1). The lease agreement states a security deposit in the amount of \$821.25 was paid and the agreement was signed by three tenants.

10. Tenant1 further testified that on February 1, 2019 he and tenant2 received a letter from the landlords (LL #2) giving them their three month notice to vacate the unit on April 30, 2019. They vacated the unit on that date. Since they moved out the landlords have returned their portion of the security deposit less \$100.00. They received \$447.50 but they should have received \$547.50 ($\$821.25 \div 3 \text{ people} = \$273.75 \text{ per person} \times 2 \text{ people} = \547.50).

Analysis

11. I have reviewed the testimony and evidence of the tenants. I have determined that there is one issue that needs to be addressed; did the tenants pay a security deposit. The lease the tenants presented stated that there was a security deposit in the amount of \$821.25 paid in August 2017 and the lease was signed by three tenants. I find that the two tenants received their portion of the security deposit back except for \$100.00: \$50.00 each. Further, the landlords have not filed an application to keep the portion of the security deposit as per section 14.(11). Under section 14.(12)

A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

Decision

12. The landlords shall return the balance of the security deposit in the amount of \$100.00; \$50.00 for each tenant.

Issue 2: Hearing expenses - \$37.08

13. Under the authority of Section 47.(q) the director may require the unsuccessful party to pay costs to the successful party to an application. Costs eligible to be awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Tenant Position

14. The tenants paid \$17.08 to have documents pertaining to the application sent to our office through Express Post and \$20.00 to have the Affidavit of Service witnessed at ECMB & NL Oaths for a total of \$37.08. The tenants presented the receipts from Canada Post and ECMB & NL Oaths (LL #3). The tenants are seeking these costs.

Analysis

- 15. The cost the tenants incurred to send documents to our office and to have the Affidavit of Service witnessed are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the tenants' claim was successful, the landlords are responsible to cover the cost of the hearing expenses in the amount of \$37.08.

Decision

- 16. The landlords shall pay the tenants' hearing costs in the amount of \$37.08.

Summary of Decision

- 17. The tenants are entitled to the following:
 - a) Return of the balance of the security deposit..... \$100.00
 - b) Hearing expenses\$37.08
 - c) **Total owing to the landlords****\$137.08**

September 16, 2019
Date


Residential Tenancies Section