

Residential Tenancies Tribunal

Decision 19-0006-04

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 09 October 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing (*Affirmed*).
4. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$1500.00 per month and was due on the 1st of each month. It was stated that a security deposit in the amount of \$800.00 was collected on or about February 2017 and the tenant terminated the tenancy by verbally notifying the landlord.
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The claim was originally filed on 06 May 2019 for the initial hearing date of 03 June 2019. The application was subsequently re-scheduled to the following dates:
 - a. 05 August 2019 - *Postponed*
 - b. 03 September 2019 - *Postponed*
 - c. 09 October 2019 - *Heard*

The landlord was served a copy of the Application for Dispute Resolution on 17 June 2019 by registered mail ([REDACTED]) to the address of [REDACTED].

7. There was no counterclaim filed by the landlord.

Issues before the Tribunal

8. The tenant is seeking the following:
 - a) Refund of Security Deposit **\$800.00**
 - b) Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. Also relevant and considered in this case are Sections 14, 34 and 35 of *the Act*; and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Refund of Security Deposit

Tenant Position

11. The tenant stated that he had entered into a verbal monthly rental agreement with the landlord which was scheduled to commence on February 2017. The agreed rent was set at \$1500.00 per month and due on the 1st day of each month. The tenant testified that a security deposit in the amount of \$800.00 was paid in February 2017 which was acknowledged as being held by the landlord. The tenant is seeking a refund of the security deposit.

Landlord Position

- 12. The landlord testified that he purchased the property in November 2018 and at that time the security deposit of the tenant was transferred through the lawyers. The landlord stated that there were damages to the property and that he notified the tenant of this fact. He stated that he advised that the damages will have to be paid for. The landlord stated that he had to pay someone to clean out the shed and paid \$300.00 for garbage removal and \$300.00 for cleaning when the tenant vacated.
- 13. The landlord testified that he did not file a claim counter to the tenant's application

Analysis

- 14. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) did the tenant pay a security deposit.
- 15. The landlord has acknowledged holding a security deposit of the tenant in the amount of \$800.00 which was transferred during the purchase of the property. Further, there was no counterclaim filed by the landlord within the 10 day time frame allowed for by Section 14 (10) & (11) of the *Residential Tenancies Act, 2018* in order for the landlord to have a claim against the security deposit. This failure of the landlord to file a counter claim does not prohibit the landlord from filing a future claim for a loss, however, the landlord no longer has a claim against the security deposit and shall return the deposit to the tenant. I accept that the tenant did pay the security deposit as claimed.

Decision

- 16. The tenant's claim for refund of security deposit succeeds:
 - a) Refund of Security Deposit \$800.00

Issue 2: Hearing Expenses

Tenant Position

- 17. The tenant paid a fee in the amount of \$13.11 as a receipt from Canada Post for the service of documents through registered mail (**Exhibit T # 1**). The tenant is seeking this cost.

Analysis

18. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The expenses incurred by the tenant are considered a reasonable expense and are provided for within Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As such, I find the landlord is responsible to cover these reasonable expenses.

Decision

19. The landlord shall pay the reasonable expenses of the tenant in the amount of \$13.11.

Summary of Decision

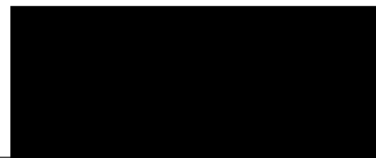
20. The tenant is entitled to the following:

- a) Refund of Security Deposit\$800.00
- b) Hearing Expenses 13.11

- c) **Total owing to Tenant.....\$813.11**

19 December 2019

Date



**Michael Greene
Residential Tenancies Tribunal**