

## Residential Tenancies Tribunal

Decision 19-210-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:05 pm on 16 April 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing.
3. The owner of the property, [REDACTED], hereinafter referred to as “[REDACTED]”, was not served with notice of the hearing and did not participate. [REDACTED]’s property manager, [REDACTED], hereinafter referred to as “[REDACTED]”, was served with notice of the hearing and also participated.

### Issues before the Tribunal

4. The tenant is seeking an order for a refund of the security deposit in the amount of \$450.00 and an order for a payment of other expenses totalling \$80.00.
5. [REDACTED] objects to the tenant’s application and is seeking to have his name removed as a respondent to her application.

### Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case is section 2, 3 and 15 of the *Residential Tenancies Act, 2018*.

## Issue 1: Is the [REDACTED] the Landlord?

### Relevant Submissions

#### The Tenant's Position

8. The tenant submitted a rental agreement at the hearing ([REDACTED] #3) showing that she had entered into a 1-year, fixed-term lease with [REDACTED] on 01 May 2017. When that lease expired a new agreement was drafted ([REDACTED] #4) and the tenancy was to continue on a month-to-month basis.
9. On 01 November 2018 the tenant received 2 notices: one from [REDACTED] ([REDACTED] #1) and one from [REDACTED] ([REDACTED] #2).
10. In the notice she received from [REDACTED], he writes that he has taken over as property manager for the rented premises and he states that as property manager he is allowed to “deal with all aspects of tenancy” [*sic.*] and he informs the tenant that “any further discussion or problems are to be directed to me.”
11. In the notice she received from [REDACTED], he writes that he has authorized [REDACTED] to act on his behalf as “landlord/property manager” and he also instructs the tenant to “direct any and all inquiries or concerns” to [REDACTED].
12. On her application, the tenant lists [REDACTED] as both the respondent to her application and as her landlord. [REDACTED] is not listed as a respondent.

#### [REDACTED]'s Position

13. [REDACTED] argued that as he is merely the property manager, and not the owner of the rental unit, he should not be listed as a respondent on this application.
14. [REDACTED] testified that he did not collect the security deposit when the tenancy began and he is currently not in possession of that deposit. He pointed out that if he is listed as a respondent in this dispute then, if the tenant succeeds in her claim, any forthcoming order issued against him would make him financially liable.
15. According to [REDACTED], [REDACTED] ought to have been listed as the respondent in the tenant's application.

### Analysis

16. Section 3 of the *Residential Tenancies Act, 2018* states:

### **Application of Act**

3. (1) *Notwithstanding another Act or agreement, declaration, waiver or statement to the contrary, this Act applies where the relationship of landlord and tenant exists in respect of residential premises.*

17. And section 2 of this Act defines “landlord” as follows:

#### **Definitions**

##### **2. In this Act**

...

(c) *"landlord" includes*

(i) *an owner of a residential premises,*

(ii) *an agent or another person who, on behalf of an owner,*

*(A) permits the use or occupation of a residential premises under a rental agreement, or*

*(B) exercises powers and performs duties under this Act or the rental agreement,*

(iii) *the heirs, assigns and personal representatives of a person referred to in subparagraph (i), and*

(iv) *a person, other than a tenant using or occupying a residential premises, who*

*(A) is entitled to use or occupy the residential premises, and*

*(B) exercises any of the rights of a person referred to in subparagraph (i) or (ii) under this Act or a rental agreement*

18. I pointed out to ■■■ at the hearing that according to s. 2.(c)(ii) of the Act, quoted above, he meets the definition of “landlord” insofar as he is an agent acting on behalf of an owner. ■■■ is the owner of the property and according to the 2 letters sent to the tenant on 01 November 2018, ■■■ is authorized to act on his behalf in all matters concerning this tenancy.

19. As this Tribunal is responsible for the general administration of the *Residential Tenancies Act, 2018* and as that Act is applicable where the relationship of landlord and tenant exists, I find that the tenant’s application was properly filed insofar as she had named ■■■ as a landlord and respondent.

20. I agree with ■■■, though, that as he is an agent or property manager for ■■■, he, personally, is not financially liable for the costs the tenant is seeking through this application and any award associated with this decision will be against ■■■.

## Decision

21. ■■■ is a landlord, as contemplated under s. 2 of the *Residential Tenancies Act, 2018*.

## Issue 2: Refund of Security Deposit – \$450.00

### Relevant Submissions

#### The Tenant's Position

22. According to the terms of the most recent rental agreement the monthly rent was set at \$900.00 per month and it is acknowledged in that agreement that the tenant had paid a security deposit of \$450.00.
23. The tenant stated that she had sent a termination notice to ■■■ and ■■■, by e-mail, on 29 January 2019 and a copy of that notice, as well as a copy of the email, was submitted at the hearing (■■■ #5). That notice was issued under section 18 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 28 February 2019. The tenant stated that she vacated on that date.
24. The tenant stated that after she vacated the rented premises the security deposit was not returned to her by either ■■■ or ■■■. She also stated that she had not entered into any written agreement with either ■■■ or ■■■ on its disposition.

#### The Landlord's Position

25. ■■■ acknowledged that the deposit had not been returned to the tenant and he also acknowledged that he had not entered into any written agreement with her on its disposition.
26. ■■■ also stated that neither he nor ■■■ had filed an application with the Director seeking to retain the deposit.

### Analysis

27. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

## **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.*

28. It was not disputed that the security deposit had not been returned to the tenant after she had vacated the rented premises and that the tenant had not entered into any written agreement with either ■■■ or ■■■ on its disposition. No application has been filed with the Director by either ■■■ or ■■■ to determine the disposition of the security deposit.
29. Accordingly, ■■■ is required, as per subsection 14.(12), to refund the full amount of the security deposit to the tenant.

## **Decision**

30. The tenant's claim for refund of the security deposit succeeds in the amount of \$450.00.

## **Issue 3: Other expenses - \$80.00**

### **Relevant Submissions**

#### The Tenant's Position

31. The tenant stated that the rental complex contained 1 water heater that was shared between her upstairs' apartment and the apartment below hers. She stated that the electricity that this heater consumed was charged to her electricity bill.
32. The tenant stated that she did not realize that she was paying for the hot water consumed by the downstairs tenants until they moved into the unit in January 2019 and she noticed an increase in her electricity bills. The apartment was vacant up until that point.
33. At the hearing the tenant submitted her electricity bills for the months of December 2018, January 2019 and February 2019 (█ ##8-11). She pointed out that in December 2018 she was charged \$140.07, in January 2019 she was charged \$157.87 and in February 2019 she was charged \$184.92. She argued that this increase from December 2018 to February 2019 was due to use of hot water by the new tenants in the downstairs apartment.
34. The tenant is seeking an order for a payment of \$80.00 in compensation for the extra electricity she was charged for as a result of the downstairs' occupants using water from the hot water tank.

#### █'s Position

35. █ acknowledged that the tenant was paying for the electricity used for the shared hot water tank.
36. He argued, however, that the tenant has failed to establish by how much her electricity bills had increased because the occupants downstairs had been using the hot water. He pointed out that January and February 2019 were very cold months in St. John's and he also stated that one of the tenant's roommates had been using a space heater which could also explain the increase in her electricity bills.

#### **Analysis**

37. I accept the tenant's claim that her electricity bills increased from December 2018 through to February 2019.
38. However, I find that the tenant has not presented enough evidence to establish how much extra electricity she had been charged for during that period. The bills presented at the hearing do not show what the tenant's electricity consumption had been like in the previous year and no other evidence was presented to establish the amount of electricity consumed by the downstairs' tenants.

#### **Decision**

39. The tenant's claim for "other expenses" does not succeed.


**Summary of Decision**

40. The tenant is entitled to the following:

a) Refund of Security Deposit.....\$450.00

05 July 2019

Date



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John R. Cook  
Residential Tenancies Tribunal