

Residential Tenancies Tribunal

Decision 19-0321-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:30 p.m. on November 27, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the landlord, did not attend the hearing.

Preliminary Matter

4. The landlord was 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 tenant shows that the notice of this hearing was sent by registered mail on November 7, 2019. The registered mail was returned to the tenant on November 13, 2019. Under section 42.(6) where an application is sent by registered mail it shall be considered to have been served on the fifth day after mailing. As the application was sent on November 7, 2019 it has been considered to be served on November 13, 2019. As the landlord was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in his absence.

Issues before the Tribunal

6. The tenant is seeking the following:
 - a. Return of the security deposit in the amount of \$372.00;
 - 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.

Issue 1: Return of the security deposit - \$375.00

Tenant Position

9. The tenant testified that he moved into the unit on August 1, 2018 with rent set at \$500.00 per month due on the 1st of each month. A security deposit in the amount of \$372.00 was paid to the landlord by Advanced Education Skills and Labour (AESL) on behalf of the tenant. On February 28, 2019 a Closure Order and Order to Vacate from the City of St. John's was posted on the door of the unit for the occupants to vacate immediately. He vacated on March 31, 2019.
10. The tenant submitted into evidence a copy of the Closure Order and Order to Vacate (T #1) and a copy of a letter from the landlord to Advanced Education and Skills (T #3). This letter states that the rent would be \$500.00 per month and the security deposit would be \$372.00. Also submitted into evidence was a letter (T #2) to the tenant from the landlord dated April 14, 2019. The letter was to inform the tenant that the landlord would not be returning the security deposit.

Analysis

11. I have reviewed the testimony and evidence of the tenant. I have determined that there is one issue that needs to be addressed; did the tenant pay a security deposit in the amount of \$372.00. Based on the 2 letters presented, I find a security deposit in the amount of \$372.00 was paid by AESL on behalf of the tenant. Further, the landlord has not filed an application to keep 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.

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12. The landlord shall return the \$372.00 security deposit to the tenant.

Issue 2: Hearing Expenses

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 tenant paid \$12.39 to send the application for dispute resolution by registered mail. The tenant is seeking this cost.

Analysis

15. The cost the tenant incurred to send the application by registered mail is considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF.* As the tenant's claim has been successful, the landlord shall pay the tenant's hearing expenses in the amount of \$12.39.

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16. The landlord shall pay the tenant's hearing expenses in the amount of \$12.39.

Summary of Decision

17. The tenant is entitled to the following:

- a) Return of the security deposit.....\$372.00
- b) Hearing expenses \$12.39
- c) Total owing to the tenant.....\$384.39

December 10, 2019
Date


Residential Tenancies Section