

Residential Tenancies Tribunal

Decision 19-0574-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 10 September 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, did not participate.

Issues before the Tribunal

3. The tenants are seeking an order for a refund of the security deposit in the amount of \$575.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The landlord was not present or represented at the hearing and I was unable to reach her by telephone from the hearing room. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the

hearing 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 she has been properly served. The tenants submitted an affidavit with their application stating that the landlord had been served with notice of the hearing, by e-mail, on 30 July 2019 and a copy of that e-mail was attached. The landlord has had 41 days to provide a response. As any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in the landlord's absence.

Issue 1: Refund of Security Deposit - \$575.00

Relevant Submissions

7. Tenant1 stated that they had entered into a monthly rental agreement with the landlord on 01 October 2017 and a copy of that executed agreement was submitted with their application. It is acknowledged in that agreement that the landlord had received a payment of a security deposit in the amount of \$575.00 and according to the tenants' application, that deposit was paid on 25 September 2017.
8. Tenant1 stated that they had issued the landlord a 1-month termination notice and they vacated the unit on 30 June 2019.
9. After the tenants vacated, the landlord had returned to the tenants \$125.73 of the security deposit and had retained the remaining \$449.27.
10. Tenant1 stated that they had not entered into any written agreement with the landlord concerning the disposition of the security deposit and the tenants are seeking an order for a refund of the remaining \$449.27.

Analysis

11. 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.


12. I accept the tenants' testimony and evidence in this matter and I find that they had paid a security deposit of \$575.00 to the landlord and that only \$125.73 has been returned to them.
13. I also accept tenant1's claim that they had not entered into any written agreement with the landlord on the disposition of the deposit. As the landlord has not made an application to the Director of Residential Tenancies to determine its disposition she is required, as per subsection 14.(12), to refund the remaining amount of the security deposit to the tenants.

Decision

14. The tenants' claim for refund of the security deposit succeeds in the amount of \$449.27.

10 February 2020

Date


John R. Cook
Residential Tenancies Tribunal