

## Residential Tenancies Tribunal

Decision 19-0612-05

John. R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:05 pm on 03 October 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. The respondent, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”.

### Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$562.00.
4. The landlord is seeking an order for compensation for damages in the amount of \$104.00, a payment of rent in the amount of \$512.31, a payment of late fees in the amount of \$75.00, a payment for hearing expenses in the amount of \$20.00 and authorization to retain the security deposit of \$562.00.

### Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 15 of the *Residential Tenancies Act, 2018* and Policy 9-3 Claims for Damage to Rental Premises.

## Preliminary Matters

7. The landlord called the following witness:

- [REDACTED] (“[REDACTED]”) – President of [REDACTED]

## Issue 1: Rent - \$512.31

### Relevant Submissions

#### The Landlord's Position

8. The landlord and tenant entered into a monthly rental agreement on 18 April 2019 and a copy of the executed agreement was submitted with the landlord's application ([REDACTED] #1). The monthly rent was set at \$750.00 and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$562.00.
9. The tenant was charged a pro-rated rent of \$150.00 for April 2019. That amount and the amount of the security deposit was paid to the landlord by INTERAC e-Transfer. The remainder of the rent payments were paid directly to the landlord on the tenant's behalf by the Department of Advanced Education, Skills and Labour (AESL).
10. The landlord stated that on 12 June 2019 she received an e-mail from the tenant informing her that he would be moving out of the rental unit. At that time, he indicated that he would vacate the premises on 01 August 2019. He vacated on 24 July 2019.
11. With her application the landlord had submitted records showing the rent payments she had received from the tenant during his tenancy ([REDACTED] #6). These records show that the landlord had received an overpayment of \$22.50 from AESL in May 2019 and that she had only received \$215.19 for July 2019.
12. The landlord calculates that the tenant is in arrears in the amount of \$512.31 and she is seeking an order for a payment of that amount.

#### The Tenant's Position

13. The tenant denied that he owed any rent money to the landlord.
14. He testified that on 18 July 2019, [REDACTED] visited the rental unit and he paid him \$500.00 in cash for the rent for July 2019. In support of that claim, he submitted into evidence a copy of his banking statement showing that he withdrew \$510.00 on 18 July 2019 ([REDACTED] #2). He also submitted into evidence a copy of the ATM banking receipt which also shows that he withdrew \$510.00 on that date.

15. The tenant stated that no rent receipt was issued to him by ■■■ as his receipt book was full. The tenant testified that ■■■ stated that he would later return to the unit with a receipt, but he failed to do so.

### **■■■'s Position**

16. ■■■ was called a witness, via teleconference. He acknowledged that he had visited the unit sometime in July 2019 as a result of a complaint about a leak. He denied, however, that he had received any rent payment from the tenant during that visit.
17. ■■■ stated that it is not his practice to visit his rental units to collect rent and that when a tenant does want to pay rent in cash, in most cases they would visit his office and he would issue a receipt there.

### **Analysis**

18. In disputes about whether rent had been paid to a landlord, the burden of proof lies with the tenant to establish payment. Besides a tenant's testimony about rent payments, evidence of proof of payment can be corroborated by rent receipts, or more common these days, e-mail receipts of e-Transfers.
19. No receipts were submitted by the tenant showing that he had paid any rent, and his statements from his bank only show that he had withdrawn \$510.00 on 18 July 2019. They do not show that he had turned that money over to the landlord or ■■■.
20. As ■■■ denied that he had received any rent payment from the tenant, I find that the tenant had not met his burden of proving that he had paid any cash to ■■■ on 18 July 2019.
21. I accept the landlord's evidence which shows that AESL had made an overpayment of \$22.50 for May 2019 and that she had only received \$215.19 for July 2019. As such, her claim succeeds.

### **Decision**

22. The landlord's claim for a payment of rent succeeds in the amount of \$512.31.

## Issue 2: Late fees - \$75.00

### Relevant Submissions

23. The landlord has assessed late fees in the amount of \$45.00.

### Analysis

24. Section 15 of the *Residential Tenancies Act, 2018* states:

#### ***Fee for failure to pay rent***

**15. (1)** *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

25. The minister has prescribed the following fees:

*Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:*

*(a) \$5.00 for the first day the rent is in arrears, and*

*(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

26. As the tenant has been in arrears since 02 July 2019, the landlord is entitled to an award for the maximum fee of \$75.00 set by the minister.

### Decision

27. The landlord's claim for late fees succeeds in the amount of \$75.00.

## Issue 3: Compensation for Damages - \$104.00

### Relevant Submissions

#### The Landlord's Position

##### Garbage Removal

28. The landlord stated that the tenant had left behind garbage and furniture at the unit after he had vacated. She submitted a receipt at the hearing (█ #2) showing that she was charged \$50.00 to have that garbage removed.

29. No photographs were submitted at the hearing and the landlord stated that she had not visited the unit after the tenant had moved out.

#### Doorbell Repair

30. The landlord stated that she had given the tenant permission to install a security camera doorbell at the unit. She stated that she had instructed the tenant to return the doorbell to its original condition when he moved out.
31. The landlord stated that the tenant had not followed those instructions and after he had moved out there was no longer a doorbell and there were just wires hanging out of the wall. No photographs were submitted at the hearing showing this damage.
32. The landlord's receipt shows that she was charged \$50.00 to have a new door bell installed.

#### Electrical Utilities

33. The landlord stated that the electricity account for the rental unit was disconnected at the unit on 26 July 2019 and the landlord incurred the costs for electricity at the unit from that date to the end of the month.
34. The landlord is seeking \$4.00 to cover those costs during that period. No bill was submitted at the hearing.

#### The Tenant's Position

##### Garbage Removal

35. The tenant stated that the only garbage that was left behind at the unit was placed in the curbside garbage bin. He also denied that he had left any furniture behind at the unit.
36. The tenant also stated that there was a significant amount of garbage in the back yard when he moved in.

##### Doorbell Repair

37. The tenant stated that the doorbell was broken when he moved in and that during his tenancy it fell apart. He stated that he had asked the landlord to have it replaced.

##### Electrical Utilities

38. The tenant acknowledged that he had the electricity account switched to his new apartment on 26 July 2019. He would not concede, however, that the landlord was charged \$4.00 for the period from 26 July to 31 July 2019.

## Analysis

39. This portion of the landlord's claim does not succeed. The tenant denied that he had left any garbage behind at the unit and claimed that the doorbell was already broken when he moved in. He also denied that he owed \$4.00 in electricity charges.
40. Besides her testimony, the landlord submitted no other credible evidence to corroborate her claims (e.g., photographs, a receipt from Newfoundland Power, etc.).

## Decision

41. The landlord's claim for compensation for damages does not succeed.

### Issue 4: Hearing Expenses

42. The landlord submitted a hearing expense claim for at the hearing and a receipt for \$20.00 for the costs of filing the application and a receipt for \$14.51 for the costs of attempting to serve the tenant by registered mail. As the landlord's claim has been successful, the tenant shall pay these expenses.

### Issue 5: Security Deposit

43. The tenant paid a security deposit of \$562.00 on 15 April 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

## Summary of Decision

44. The landlord is entitled to the following:

a) Rent.....	\$512.31
b) Late Fees .....	\$75.00
c) Hearing Expenses .....	\$34.51
d) LESS: Security Deposit .....	(\$562.00)
Total Owing to Landlord .....	<u>\$59.82</u>

26 March 2020

Date

  
John R. Cook  
Residential Tenancies Tribunal