

## Residential Tenancies Tribunal

Decision 19-0626-05

John. R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:10 pm on 04 November 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 \$300.00.
4. The landlord is seeking an order for compensation for damages in the amount of \$300.00 and authorization to keep the security deposit.

### 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 14 of the *Residential Tenancies Act, 2018* and Policy 9-3 Claims for Damage to Rental Premises.

## Issue 1: Compensation for Damages - \$300.00

### Relevant Submissions

#### The Landlord's Position

7. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenant on 15 October 2018 and a copy of the executed lease was submitted at the hearing (█ #1). The agreed rent was set at \$675.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$300.00.
8. Shortly after the tenant moved in, her husband moved in with her as well. Some time after that, he moved into unit █, and then over to unit █. In June 2019, the tenant informed the landlord that she was moving in with her husband in unit █, and she vacated her unit on 26 June 2019.
9. The landlord claimed that the tenant had entered into a verbal agreement with their superintendent, █, that the security deposit would be transferred to the tenant's husband's unit, █, as he had not paid a security deposit when he moved in. A resident who was residing on another floor in the complex moved into the tenant's old unit, █, as soon as she vacated.
10. With his application, the landlord submitted the following breakdown of the costs he is seeking through this portion of his claim (█ #2):
  - Unit is vacant for September, loss of rent
  - Trip to dump ..... \$100.00
  - Cleaning up loose articles, etc..... \$50.00
  - Clean for preparation to rent..... \$50.00Total..... \$200.00
11. The landlord stated that after the tenant moved in with her husband, in unit █, he had to have them evicted. He stated that he issued the tenant's husband a termination notice on 16 August, with an effective termination date of 30 August 2019. The tenant and her husband moved on that date.
12. The landlord stated that his claim for rent and his claim for taking items to the dump and cleaning concern unit 209.
13. The landlord submitted no receipts or photographs concerning the damages he is claiming here.
14. The landlord also complained that the keys to unit 209 were not returned after the tenant and her husband vacated.

### The Tenant's Position

15. The tenant denied that she had entered into any verbal agreement with ■ that the security deposit would be transferred to unit ■.
16. The tenant stated that on 30 August 2019 the landlord locked the door to unit ■ and he took all of their possessions and disposed of them. This included her furniture, the ashes her deceased sister, jewelry and all of her possessions' which she had been working for her whole life.

### **Analysis**

17. I find that the landlord's claim for rent and damages does not succeed, and for 2 reasons.
18. First, the tenant's application concerns her tenancy at unit ■, which ran from 15 October 2018 to 26 June 2019. The landlord made no claim that there was any rent owing to him by the tenant from that tenancy or that there were any damages at the rental unit.
19. And although the tenant did move into unit ■ on 26 June 2019, I am of the view that she was a mere occupant in that unit and that the rental contract for unit ■ was made between the landlord and the tenant's husband.
20. Second, the landlord presented no evidence at the hearing to establish the costs he is seeking here for unit ■ (e.g., receipts or invoices) and no evidence to corroborate his claim that the unit required cleaning (e.g., photographs or videos).
21. For these reasons, the landlord's claim does not succeed.

### **Decision**

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

### **Issue 2: Security Deposit – \$300.00**

#### **Relevant Submissions**

### The Tenant's Position

23. The tenant stated that she had paid a security deposit of \$300.00 on 15 October 2019 and receipt of that deposit is acknowledged in the submitted lease.

24. The tenant stated that she had not entered into any verbal agreement with ■■■ that that deposit could be transferred to her husband unit and she claimed that he paid his own security deposit when he moved into unit ■■■.
25. The tenant also stated that she had not entered into any written agreement with the landlord on the disposition of the deposit.

### The Landlord's Position

26. The landlord also acknowledged that he had not entered into a written agreement with the tenant on the disposition of the security deposit. He reiterated, however, that there was a verbal agreement that it would be transferred to unit ■■■.

### **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. There is no dispute that the tenant had paid a security deposit of \$300.00 and there was also no dispute between the landlord and the tenant that they had not entered into any written agreement on its disposition.

29. No corroborating evidence was presented by the landlord to establish that there was a verbal agreement with ■ that the deposit would be transferred to unit ■. But even if there were such a verbal agreement, s. 14.(10)(a) of the *Act* requires that the deposit be disposed of in a written agreement.
30. As there is no written agreement on the disposition of the deposit and as the landlord's claim for compensation for damages has not succeeded, he is required to refund the full amount of the deposit to the tenant.

### **Decision**

31. The tenant's claim for refund of the security deposit succeeds in the amount of \$300.00.

08 April 2020

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Date

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John R. Cook  
Residential Tenancies Tribunal