

Residential Tenancies Tribunal

Decision 20-0070-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 18 January 2021 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconference System.
2. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing. (*Affirmed*)
3. The landlord, [REDACTED] hereafter referred to as the landlord was not present or represented at the hearing. (*Absent and Not Represented*).
4. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$650.00 per month and due on the 1st of each month. A security deposit in the amount of \$300.00 was collected on the tenancy on or about 16 September 2020. The tenant indicated that a termination notice was issued to the landlord on 01 October 2020 for the intended termination date of October 31, 2020.
5. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The landlord, [REDACTED], was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.

- a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date* and, 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.*

The affidavit submitted by the tenant shows that the landlord was served with the notice of this hearing on the **08 November 2020** by serving the documents personally to the landlord via email: [REDACTED] and have attached a copy of the sent email to the affidavit.

A phone call was made to the landlord in advance of the commencement of the hearing to the numbers:

- [REDACTED] – No answer, message left
- [REDACTED] – No answer, message left

7. 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 applicant, I proceeded with the hearing in the landlord's absence.
8. There was a counterclaim filed by the landlord who failed to show for the scheduled hearing. Claim [REDACTED] was dismissed.

Issues before the Tribunal

9. The tenant is seeking the following:
 - a) Refund of Security Deposit **\$300.00**;

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. Also relevant and considered in this case are Sections 19, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF.*

Issue 1: Refund of Security Deposit - \$300.00

Relevant Submissions

Tenant Position

- 12. The tenant stated that he had entered into a written monthly rental agreement with the landlord (**Exhibit T # 2**) which commenced on 16 September 2019. The agreed rent was set at \$650.00 per month and is due on the 1st day of each month. The tenant testified that a security deposit in the amount of \$300.00 was paid on 16 September 2019 which was confirmed by the rental agreement and the payment by the bank statement (**Exhibit T# 1**).

Analysis

- 13. I have reviewed the testimony and evidence of the tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) did the tenant pay a security deposit.
- 14. The tenant has provided a copy of the rental agreement (**Exhibit T # 1**) which indicates a security deposit in the amount of \$300.00 was paid on or about 16 September 2019. Further, the landlord failed to show for their scheduled hearing and the filed counterclaim was dismissed. The dismissal of the landlord’s counterclaim claim does not prohibit the landlord from filing a future claim for a loss, however, the landlord no longer has a claim against the security deposit and shall return the deposit to the tenant.

Decision

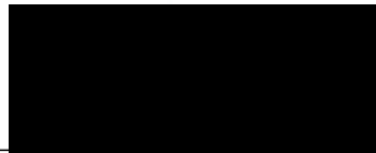
- 15. The tenant’s claim for refund of security deposit succeeds:
 - a) Refund of Security Deposit \$300.00

Summary of Decision

- 16. The tenant is entitled to the following:
 - a) Refund of Security Deposit\$300.00

19 January 2021

Date



Michael Greene
Residential Tenancies Tribunal