

Residential Tenancies Tribunal

Decision 20-0316-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 pm** on **04 December 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing. (*Affirmed*).
4. The details of the tenancy is a written fixed term tenancy set to expire on 01 July 2020. Rent was set at \$750.00 per month exclusive of utilities with a security deposit taken on 18 June 2020 in the amount of \$325.00. The tenant indicated that a termination notice was issued via text message on 29 May 2020 for the intended termination date of July or August 2020. The tenant vacated on 06 July 2020.
5. In a proceeding under the *Residential Tenancies Act*, 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 affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **15 October 2020** by serving the original documents to the tenant by email at: [REDACTED] and providing a copy of the sent email.
7. The affidavit submitted by the tenant shows that the landlord was served with the notice of this hearing on the **02 October 2020** by serving the original documents to the landlord by email at: [REDACTED] and providing a copy of the sent email.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$375.00**;
 - b) Validity of the Termination Notice
 - c) Application of the Security Deposit
 - d) Hearing expenses.
9. The tenant is seeking the following:
 - e) Refund of the Security Deposit **\$325.00**;

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: Rent Owing - \$375.00 & Refund of Security Deposit

Relevant Submissions

Landlord Position

12. The landlord stated that the tenant has only paid ½ of the required rent for the month of July 2020 in the amount of \$375.00. The landlord submitted into evidence a copy of the rental records (**Exhibit L # 1**) along with a copy of the rental agreement (**Exhibit L # 2**) and a copy of the e-transfer for the payment (**Exhibit L # 3**) and a copy of a text message from 29 May 2020 (**Exhibit L # 4**).

13. The landlord is seeking to apply the security deposit against the Order.

Tenant Position

14. The tenant testified that he disagrees with the landlord's claim for rent owing.
15. The tenant argues that there was an agreement between the landlord and tenant for him to only pay \$375.00 for the month of July 2020. The tenant entered a copy of a text message between the two parties (**Exhibit T #1 & #2**) to support his argument.
16. The tenant is seeking to have the security deposit refunded.

Analysis

17. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
18. With respect to the arrears being claimed, I disagree with the landlord that rent is owed. The text messages presented by the tenant clearly indicates that both parties agreed that only \$375.00 would be owed for July 2020. Whether an agreement is written or verbal, they both are valid agreements or contractual obligations in the Province of NL. The intent of both parties was clear and both agreed. As such, I find that the landlord is not entitled to any further rent over the amount of \$375.00.
19. Regarding the return of the security deposit. The text messages are also the crucial piece of evidence at play here. Section 14(10)(a) of the Residential Tenancies Act, 2018 allows for a landlord and tenant to agree in writing on the disposition of a security deposit.
20. The parties in this matter seemingly conversed via text message and the documents presented by the tenant also show there was an agreement that the landlord would use the security deposit to repair damages described as "doors and other things" in the property. There is no claim for damages in these applications, but there is an agreement to dispose of the deposit and this tribunal will not overturn a valid contractual obligation of two willing parties. The tenant's request for a refund of a security deposit fails.

Decision

21. The landlord's claim for rent owing fails.
The tenant's claim for refund of security deposit fails.

Issue 3: Hearing Expenses

Landlord Position

22. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL ([REDACTED]) (**Exhibit L # 5**). The landlord is seeking this cost.

Tenant Position

23. The tenant did not seek any expenses.

Analysis

24. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The expenses incurred by the landlord are considered an allowable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. The claims of both parties in these matters have failed. As such, I find that both parties shall cover their own hearing expenses.

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25. The landlord shall cover her own hearing expenses.

Summary of Decision

26. The landlord's claim for rent owing fails.
The tenant's claim for refund of security deposit fails

21 December 2020

Date

[REDACTED]

Michael Greene
Residential Tenancies Tribunal