

Residential Tenancies Tribunal

Decision 19-0003-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:45 pm on 12 February 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicants, [REDACTED], hereafter referred to as the tenant1, and, [REDACTED], hereafter referred to as tenant2, and did not participate in the hearing. The respondent, [REDACTED], referred to as the landlord, did not participate in the hearing.
3. The details of the claim as extracted from the evidence submitted and the application were a fixed term rental agreement which expired on May 31, 2018 and then converting to a month to month tenancy. Rent was set at \$750.00 and due on the 1st of each month. A security deposit in the amount of \$500.00 was collected on the tenancy on or about August 27, 2016 as indicated by the receipt (Exhibit T # 1). The tenants vacated the property as of December 31, 2018.
4. 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

5. 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 tenants show that the landlord was served with the notice of this hearing on the **24 January 2019** by serving the documents to [REDACTED] [REDACTED] electronically at the email address [REDACTED]. A copy of the email was attached to the affidavit for verification. As per section 42(7), service was attained on the day it was sent if sent prior to 4:00 pm that day. This document was sent at 8:48 am on January 24, 2018 and the landlord has had **18 days** to provide a response.

6. 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 applicants, I proceeded in the landlord's absence.
7. The tenant applicants were also not present.

Issues before the Tribunal

8. The tenants are seeking the following:
 - a) Refund of the balance of the Security Deposit **\$200.00**;

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. Also relevant and considered in this case are Sections 14, 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 - \$200.00

Relevant Submissions

Tenant Position

11. The tenants submitted an application seeking the refund of the balance of the security deposit in the amount of \$200.00. The tenants submitted the following exhibits as part of the information for the hearing:

- a. Security Deposit Receipt (Exhibit T # 1)
- b. Rental Agreement (Exhibit T # 2)
- c. Inspection Report (Exhibit T # 3)

The tenants are seeking a refund of \$200.00 as the balance of a security deposit paid.

Analysis

- 12. I have reviewed the evidence of the tenants 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.
- 13. The tenants have provided a copy of the rental agreement (Exhibit T # 2) which indicates a security deposit in the amount of \$500.00 was paid on or about August 27, 2016. In addition, the tenants have supplied a copy of the security deposit receipt for the payment (Exhibit T # 1).
- 14. The landlord has not filed a counterclaim within the 10 day time frame allowed for by Section 14 (10) & (11) of the *Residential Tenancies Act, 2018* in order for the landlord to have a claim against the security deposit.
- 15. Section 14(13) of the *Residential Tenancies Act, 2018* reads:

14(13) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to return the security deposit to the tenant.

- 16. As the landlord has not filed an application under Section 14 (10)(b) and has not returned the security deposit in accordance with subsection (12), an order for the return of the security deposit is being issued.
- 17. This failure of the landlord to file a counter 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 tenants.

Decision

- 18. The tenants' claim for refund of security deposit succeeds:
 - a) Refund of Security Deposit \$200.00

Summary of Decision

19. The tenants are entitled to the following:

- a) Refund of Security Deposit\$200.00

February 15, 2019

Date



Michael Greene
Residential Tenancies Tribunal