

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0005-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:50 pm on 05 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 tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing. The landlord, [REDACTED], was not present or represented at the hearing.
3. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$685.00 per month and due on the 1st of each month. A security deposit in the amount of \$490.00 was collected on the tenancy on or about November 1, 2016. The tenant indicated that a termination notice was issued to the landlord for the intended termination date 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 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 **20 January 2019** by serving the documents to [REDACTED], owner of [REDACTED] personally at [REDACTED] and has had **15 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 applicant, I proceeded with the hearing in the landlord's absence.
7. There was no counterclaim filed by the landlord.

Issues before the Tribunal

8. The tenants are seeking the following:
 - a) Refund of Security Deposit **\$490.00**;

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 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 - \$490.00

Relevant Submissions

Tenant Position

11. The tenant stated that they had entered into a written fixed term rental agreement with the landlord which commenced on November 1, 2016 for 1 year and reverted to a month to month tenancy at the end of the first year. The agreed rent was set at \$685.00 per month which is comprised of \$650.00 rent and \$35.00 for snow clearing and ground maintenance. Rent is due on the 1st day of each month. The tenant testified that a security deposit in the amount of \$490.00 was paid on November 1, 2016 which was confirmed by the rental agreement (Exhibit T # 1).

Analysis

- 12. 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.
- 13. The tenant has provided a copy of the rental agreement (Exhibit T # 1) which indicates a security deposit in the amount of \$490.00 was paid on or about November 1, 2016. Further, there was no counterclaim filed by the landlord 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. 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 tenant.

Decision

- 14. The tenants' claim for refund of security deposit succeeds:
 - a) Refund of Security Deposit \$490.00

Summary of Decision

- 15. The tenants are entitled to the following:
 - a) Refund of Security Deposit\$490.00

February 7, 2019

Date



Michael Greene
Residential Tenancies Tribunal