

Residential Tenancies Tribunal

Decision 19-041-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:15 pm on 12 February 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], hereinafter referred to as “the landlord”, did not participate.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$200.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 14 and 42 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The landlord was not present or represented at the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date 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 she has been properly served.

7. The tenant submitted an affidavit with his application stating that the landlord was electronically served, by e-mail, with notice of the hearing on 30 January 2019 and a copy of that e-mail was submitted at the hearing (BL #1). He also submitted copies of further e-mails (BL #2) showing that the address he had sent the claim and notice of the hearing to was as an address he had previously used to communicate with the landlord and he testified that this was the e-mail address the landlord had instructed him to send the security deposit to.
8. I telephoned the landlord from the hearing room. She informed me that she was unaware that a hearing was scheduled. When I informed her of the content of the tenant's affidavit, she replied that e-mail is not a permissible form of service and also testified that she has subsequently "blocked" the e-mails from the tenant. When I asked her if she wished to participate in the hearing, the landlord ended the telephone call.
9. Section 42 of the *Residential Tenancies Act, 2018* deals with the service of an application on a respondent and the relevant subsections state:

Application to director

42. (1) A landlord or tenant may, within one year after termination of the rental agreement, apply to the director to determine

(a) a question arising under this Act or the regulations;

(b) whether a provision of a rental agreement has been contravened; or

(c) whether a provision of this Act or the regulations has been contravened.

(2) An application under subsection (1) shall be submitted to the director in the form and with the fee set by the minister.

(3) The applicant shall serve the application submitted to the director under subsection (2) by

(a) giving it personally to the other party;

(b) sending it to the other party by prepaid registered mail or prepaid express post at an address provided by the other party;

(c) sending it electronically where

(i) it is provided in the same or substantially the same form as the written notice or document,

(ii) the other party has provided an electronic address for receipt of documents, and

(iii) it is sent to that electronic address; or

(d) sending it to the other party by courier service at an address provided by the other party.

...

(7) For the purpose of this section, where a copy of the application is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent before 4 p.m., or the next day that is not a Saturday or holiday, if the copy of the application is sent after 4 p.m.

10. I was satisfied by the evidence submitted at the hearing that the tenant was in compliance with this section of the *Act* when he sent the e-mail to the landlord. According to the copy of the e-mail that was submitted at the hearing, though, I note that it was sent at 8:41pm on 30 January 2019 and it is therefore considered to have been served on her the following day, Thursday, 31 January 2019.
11. As the notice was served on 31 January 2019, by e-mail, the landlord has been properly served and she has had 11 days to provide a response. As any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in the landlord's absence.

Issue 1: Refund of Security Deposit - \$200.00

Relevant Submissions

The Tenant Position

12. The tenant stated that he had entered into a monthly rental agreement with the landlord on 01 November 2018. The agreed rent was set at \$600.00 per month and the tenant had also agreed to pay an additional \$250.00 per month for meals. At the beginning of December 2018 the tenant informed the landlord that he was terminating their agreement and he vacated the unit on 11 December 2018.
13. According to the tenant's application, he had paid a security deposit of \$200.00 to the landlord on 20 October 2018. He stated that this payment was made by INTERAC e-Transfer and he submitted a copy of an e-mail at the hearing (BL #2) to corroborate that claim.

14. The tenant stated that the landlord had not returned the deposit to him after he vacated and he testified that he had not entered into any written agreement with the landlord on its disposition. The tenant is seeking an order for a refund of the full amount of that deposit.

Analysis

15. 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.

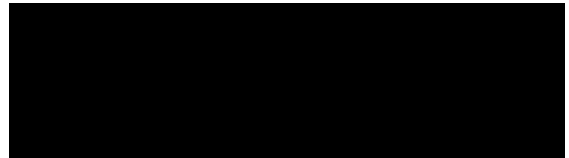
16. I accept the tenant's testimony and evidence in this matter and I find that he had paid a security deposit of \$200.00 to the landlord and that it has not been returned to the tenant. I also accept the tenant's claim that he had not entered into any written agreement with the landlord on the disposition of the deposit. As the landlord has not made an application to the Director of Residential Tenancies to determine its disposition she is required, as per subsection 14.(12), to refund the full amount of the security deposit to the tenant.

Decision

17. The tenant's claim for refund of the security deposit succeeds in the amount of \$200.00.

01 March 2019

Date



John R. Cook
Residential Tenancies Tribunal