

Residential Tenancies Tribunal

Decision 19-032-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:20 am on 05 June 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 \$295.00.

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 is section 14 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 and I was unable to reach a representative by telephone from the hearing room. 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 they have been properly served. The tenant submitted an affidavit at the hearing stating that the landlord was personally served with notice of this hearing on 24 May 2019 and they have had 11 days to provide a response. As the notice was properly served and 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 - \$295.00

Relevant Submissions

7. The tenant moved into the rental unit with her roommates, JM and JH, on 05 July 2018. She stated that they each paid a security deposit to the landlord and the tenant's share was \$295.00. She submitted a copy of an INTERAC e-Transfer receipt showing that the deposit was paid on 21 June 2018.
8. The tenant stated that because of a medical issue, she had to terminate her agreement with the landlord and she vacated the rental unit on 14 November 2018.
9. The tenant stated that the landlord has not returned her security deposit to her and she had not entered into any written agreement with the landlord on its disposition.
10. She is seeking an order for a return of the security deposit: \$295.00.

Analysis

11. 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.

- 12. I accept the tenant's testimony in this matter and I find that she had paid \$295.00 of the security deposit.
- 13. The landlord has not made an application to the Director of Residential Tenancies to determine the disposition of the security deposit and I find that he had not entered into any written agreement with her on its disposition.
- 14. Accordingly, the landlord is required, as per subsection 14.(12), to refund the full amount of the security deposit to the tenant.


Decision

- 15. The tenant's claim for refund of the security deposit succeeds in the amount of \$295.00.

Summary of Decision

- 16. The tenant is entitled to the following:
 - a) Refund of security deposit..... \$295.00

12 September 2019
Date


John R. Cook
Residential Tenancies Tribunal