

## Residential Tenancies Tribunal

Decision 19-0040-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 1:15 p.m. on February 13, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2 respectively, participated in the hearing.
3. The landlord, [REDACTED], hereafter referred to as landlord, participated in the hearing.

### Issues before the Tribunal

4. The tenants are seeking the following:
  - a. Return of the security deposit.
5. The landlord is seeking the following:
  - a. Application of the security deposit;
  - b. Compensation for damages;
  - c. Payment of utilities.

### Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), section 47.

7. Also relevant and considered in this case are sections 3, 10, 14 and 35 of the Act.

### **Issue 1: Return of security deposit**

#### Tenant Position

8. Tenant1 testified that a security deposit in the amount of \$500.00 was paid on April 22, 2018. They moved into the unit on May 1, 2018 and the rent was set at \$1000.00 per month. In September 2018 the rent was reduced to \$850.00 per month including utilities. Tenant1 further testified that they received an e-mail (T #5) on October 23, 2018 from [REDACTED], solicitor for BMO. The e-mail stated that they will have to pay the future rent to BMO through his law office.

#### Landlord Position

9. The landlord testified the tenants moved into the unit on May 1, 2018 with rent set at \$1000.00 plus pay the electrical cost. In September the rent was reduced to \$850.00 including utilities. The landlord further testified she signed the unit over to the bank in October 2018. But she was advised to keep the security deposit and to figure out the return of the security deposit themselves.

### **Analysis**

10. I have reviewed the testimony and the evidence of the tenant1 and the landlord in this matter. Based on the testimony and evidence presented I find the landlord signed the unit over to the bank in October 2018 and the tenants paid the rent to BMO for the months of November and December 2018. Section 3.(4) (k) of the *Residential Tenancies Act* states:

*3.(4). The Act does not apply to  
(k) An attornment clause in a mortgage or other instrument  
creating a security interest in residential premises:*

11. The foreclosure action of the bank creates a security interest in the residential premises. Therefore, the disposition of the security deposit falls outside the jurisdiction of the *Residential Tenancies Act*.


### **Decision**

12. The disposition of the security deposit falls outside the jurisdiction of the *Residential Tenancies Act*.

## Summary of Decision

13. The disposition of the security deposit falls outside the jurisdiction of the *Residential Tenancies Act*.

March 14, 2019  
Date

  
Residential Tenancies Section