

Residential Tenancies Tribunal

Decision 19-0052-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 15 October 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 through her representative [REDACTED] - **Affirmed.**
3. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing and was represented by [REDACTED] - **Affirmed.**
4. The details of the claim were presented as a written fixed term rental agreement set to expire on 31 May 2020 with rent set at \$840.00 per month and due on the 1st of each month. A security deposit in the amount of \$600.00 was collected on the tenancy on or about 15 May 2019. The tenant indicated that a termination notice was issued to the landlord on 13 June 2019 for the intended termination date of 13 June 2019.
5. 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

6. 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 **09 August 2019** by serving the documents to [REDACTED] and has had **66 days** to provide a response.

7. 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.
8. There was no counterclaim filed by the landlord.

Issues before the Tribunal

9. The tenant is seeking the following:
 - a) Refund of Security Deposit **\$600.00**;
 - b) Refund of Rent **\$476.00**

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. 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 - \$600.00

Relevant Submissions

Tenant Position

12. The tenant stated that they had entered into a written fixed term rental agreement with the landlord which commenced on 01 June 2019 and set to expire on 31 May 2020. The agreed rent was set at \$840.00 per month and due on the 1st day of each month. The tenant testified that a security deposit in the amount of \$600.00 was paid on 03 May 2019 which was confirmed by the rental agreement **(Exhibit L # 1)** and acknowledged by the landlord. The tenant further submitted a copy of the money order **(Exhibit T # 1)** for the payment of the security deposit.
13. The tenant testified that she left the property due to medical reasons **(Exhibit T 3#)** and is seeking the refund of her security deposit **(Exhibit T #1)**.

Landlord Position

14. The landlord acknowledged that a security deposit was paid by the tenant as indicated by the tenant. The landlord concedes that no counter application against the security deposit was filed by the landlord and as such acknowledges that they have no legal claim against the security deposit.

Analysis

15. 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.
16. The tenant has provided a copy of the offer to lease **(Exhibit T # 4)** and the landlord acknowledges that a security deposit in the amount of \$600.00 was paid on or about 13 June 2019. 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

17. The tenant's claim for refund of security deposit succeeds:
 - a) Refund of Security Deposit \$600.00

Issue 2: Refund of Rent - \$476.00

Relevant Submissions

Tenant Position

18. The tenant stated that she left the property due to medical reasons (**Exhibit T #3**) and is seeking the refund of her rent (\$476.00) for the period of June 13 to 30, 2019 as she did not live in the unit.
19. The tenant testified that she did not provide proper notice in accordance with the legislation.

Landlord Position

20. The landlord testified that in this tenancy, there was a fixed term rental agreement (**Exhibit L # 1**) which was set to expire on 31 May 2020. The landlord testified that they did not receive any notice from the tenant and do not concede to the claim for rent by the tenant. The landlord testified that they immediately attempted to re-rent the property through their normal means of renting and was successful in securing a tenant for 01 August 2019.

Analysis

21. I have reviewed the testimony and evidence of the tenant and landlord in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the tenant entitled to a rebate of rent paid.
22. To confirm the factual statements for this portion of the claim both parties accept the following:
 - a. Rent in the amount of \$840.00 was paid to the landlord for the month of June 2019;
 - b. The tenant did not provide proper notice as required by the Residential Tenancies Act, 2018;
 - c. The landlord has retained rent that was paid for the month of June 2019.

23. The tenant has acknowledged not providing a proper notice to the landlord that she would be terminating the fixed term rental agreement.
24. The notice period required under section 18 of the *Residential Tenancies Act, 2018* is the last three (3) months of the fixed term agreement and to be served in writing in a form prescribed by the minister. The tenant has failed in this regard. The lack of notice from the tenant means that the tenant abandoned the property and the landlord could have sought rent for the month of July against the tenant in lieu of proper notice. This is not the case and this tribunal only has to determine if the tenant is entitled to a rebate of rent paid for June 2019. I find that based on the totality of the evidence presented and on the balance of probabilities, the tenant has failed to provide the required notice to terminate the tenancy and as such is not entitled to any rebate of rent paid for the month of June 2019. As such, the tenant's claim for a rebate of rent fails.

Decision

25. The tenant's claim for rebate of rent fails.

Issue 3: Hearing Expenses

Tenant Position

26. The tenant paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit T # 2**). The tenant is seeking this cost.

Analysis

27. I have reviewed the testimony and evidence of the tenant in this matter. The expenses incurred by the tenant are not considered as a reasonable expense. The tenant's claim for a rebate of rent failed and thus there would be no requirement for a fee to be paid if it was only the security deposit in question. As such, I find the tenant is responsible to cover their own hearing expenses.

Decision

28. The tenant shall cover their own hearing expenses

Summary of Decision

29. The tenant is entitled to the following:

- a) Refund of Security Deposit\$600.00

06 Dec 2019

Date



Michael Greene
Residential Tenancies Tribunal
