

Residential Tenancies Tribunal

Decision 19-0054-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 11:20 am on 06 March 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as tenant 1, did not participate in the hearing but was represented by [REDACTED] through a letter of authorization held on file.
3. The applicant, [REDACTED], hereafter referred to as tenant 2, participated in the hearing.
4. The respondent, [REDACTED], was not present or represented at the hearing.
5. The details of the claim were presented as a written fixed term rental agreement commencing on May 1, 2018 and set to expire on April 30, 2019 with rent set at \$725.00 per month and due on the 1st of each month. A security deposit in the amount of \$362.50 was collected on the tenancy on or about May 1, 2018.
6. 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

7. It should be noted that only one tenant's name is on the security deposit receipt and as such any order for refund would only reflect one tenant's name.

8. The landlord, [REDACTED], was not present or represented at the hearing. 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 tenants show that the landlord was served with the notice of this hearing on the **01 February 2019** by serving the Application for Dispute Resolution to the corporate office of [REDACTED] at the address [REDACTED] and giving the document personally to [REDACTED]. The landlord has had **33 days** to provide a response.

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 applicants, I proceeded with the hearing in the landlord's absence.

There was no counterclaim filed by the landlord.

Issues before the Tribunal

9. The tenants are seeking the following:
- a) Refund of Security Deposit **\$362.50**;

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 - \$362.50

Relevant Submissions

Tenant Position

12. The tenants stated that they had entered into a written fixed term rental agreement with the landlord which commenced on 1 May 2018 for 1 year with the expiration set for April 30, 2019. The agreed rent was set at \$725.00 per month and due on the 1st day of each month. The tenants testified that a security deposit in the amount of \$362.50 was paid on April 23, 2018 which was confirmed by the presentation of a copy of the e-transfer (Exhibit T # 1) which was sent and accepted by "██████".

Analysis

13. 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.
14. The tenants have provided a copy of the e-transfer acceptance (Exhibit T # 1) which indicates an amount equivalent to the security deposit required, was paid on or about April 23, 2018. 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. I accept that the tenants did pay the security deposit as claimed.

Decision

15. The tenants' claim for refund of security deposit succeeds:
 - a) Refund of Security Deposit \$362.50

Summary of Decision

16. The tenants are entitled to the following:

- a) Refund of Security Deposit\$362.50
- c) **Total owing to Tenants.....\$362.50**

March 14, 2019

Date



Michael Greene
Residential Tenancies Tribunal