

## Residential Tenancies Tribunal

Decision 19-0079-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 1:15 pm on 28 February 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, participated in the hearing.
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 \$995.00 per month and due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$745.00 was collected on the tenancy on or about April 4, 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 the security deposit receipt is issued only to one tenant, [REDACTED] and any order returning would only be in this 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 **14 February 2019** by serving the Application for Dispute Resolution to the corporate office of [REDACTED] [REDACTED] by registered mail [REDACTED] at the address [REDACTED] [REDACTED] and they have had **14 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.

9. There was no counterclaim filed by the landlord.

### **Issues before the Tribunal**

10. The tenants are seeking the following:
- a) Refund of Security Deposit **\$745.00**;

### **Legislation and Policy**

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. 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 - \$745.00

### Relevant Submissions

#### Tenant Position

13. 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 \$995.00 per month and due on the 1<sup>st</sup> day of each month. The tenants testified that a security deposit in the amount of \$745.00 was paid on April 4, 2018 which was confirmed by the presentation of a security deposit receipt (Exhibit T # 2).

### Analysis

14. I have reviewed the testimony and evidence of the tenants in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) did the tenants pay a security deposit.
15. The tenants have provided a copy of the Security deposit receipt (Exhibit T # 2) which indicates a security deposit in the amount of \$745.00 was paid on or about April 4, 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 tenants.

### Decision

16. The tenants' claim for refund of security deposit succeeds:
  - a) Refund of Security Deposit ..... \$745.00

## Issue 2: Hearing Expenses

#### Tenant Position

17. The tenants paid a fee in the amount of \$29.66 as an expense for the service of documents through registered mail in the amount of \$29.66 (Exhibit T # 3). The tenants are seeking this cost.

18. I have reviewed the testimony and evidence of the tenants in this matter. The expense incurred by the tenants is considered a reasonable expense and are provided for with in Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As such, I find the landlord is responsible to cover these reasonable expenses.

a)	Refund of Security Deposit .....	\$745.00
b)	Hearing Expenses .....	<u>29.66</u>
c)	<b>Total owing to Tenants.....</b>	<b><u>\$774.66</u></b>

**Michael Greene**  
**Residential Tenancies Tribunal**