

## Residential Tenancies Tribunal

Decision 19-0088-03

Michael Greene  
Adjudicator

---

### Introduction

1. The hearing was called at 1:15 pm on 16 September 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 the tenant, participated in the hearing (*Sworn*).
3. The respondent, [REDACTED], hereafter referred to as the landlord did not participate in the hearing.
4. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$400.00 per month for the rental of a room within an apartment and rent was due on the 1<sup>st</sup> of each month. It was stated that a security deposit in the amount of \$100.00 was collected on or about 28 August 2019 and the tenant terminated the tenancy by sending an email dated 30 August 2019 (Exhibit T #3).
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 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 tenant shows that the landlord was served with the notice of this hearing on the **03 September 2019** by serving the documents to the landlord electronically to the email address [REDACTED] and providing:

- 1) A copy of the email showing the attached documents
- 2) A copy of email correspondence between the landlord and tenant with service as a response to the landlord email.

The landlord has had **13 days** to provide a response.

Prior to commencing the hearing a phone call was placed to the contact number for the landlord on file [REDACTED] with no answer being received and a message left for the respondent.

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 in the tenant's absence.

## Issues before the Tribunal

7. The tenant is seeking the following:
  - a) Rebate of rent owing **\$400.00**;
  - b) Refund of Security Deposit **\$100.00**
  - c) Hearing expenses.

## Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. Also relevant and considered in this case are Sections 14, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

## Issue 1: Rent rebate - \$400.00

### Relevant Submissions

#### Tenant Position

10. The tenant stated that he had entered into a verbal rental agreement with the landlord, commencing 01 September 2019 but did not move into the property. The agreed rent was set at \$400.00 per month and due on the 1<sup>st</sup> day of each month with a security deposit in the amount of \$100.00 collected on this tenancy on or about 28 August 2019. The tenant terminated the tenancy by sending an email (**Exhibit T #3**) stating that he would not be moving into the property because of the condition and that it was not ready to rent.
11. The tenant testified that he also paid for the first month's rent on or about 25 August 2019 and submitted an email receipt from the landlord (**Exhibit T # 5**) to this effect.
12. There was no evidence submitted to indicate that there was any sort of an attempt by the landlord to mitigate any potential loss as a result of the tenant failing to occupy the rented premises.

### Analysis

13. I have reviewed the testimony and evidence of the tenant in this matter. As far as I can see, there are two issues here that needs to be addressed: (i) was the rent that is being claimed by the tenant actually paid and (2) was any potential loss adequately mitigated in a reasonable fashion.
14. With respect to the rent being claimed, the evidence is clear that the tenant transferred the required rent of \$400.00 to the landlord on 25 August 2019 and an email conformation was sent to the tenant from the landlord on the same date. This establishes that rent was indeed paid.
15. The question of mitigation requires some supposition regarding the evidence.

The landlord did not appear to make any particular argument regarding the rebate of the rent as claimed. This lack of argument could mean that the landlord reasonably mitigated any loss and didn't see the need to appear and make any argument. It is also clear that the tenants notice to terminate is not within the required standard of the *Residential Tenancies Act, 2018* and would not be considered valid if tested. However, it has not been tested in this venue and therefore may very well have been accepted by the landlord and as indicated above, the property re-rented.

- 16. I find that the tenant, based on the evidence before this tribunal, is entitled to the refund of the rent paid on the rented premises in the amount of \$400.00 as claimed.

**Decision**

- 17. The tenant's total claim for a rebate of rent succeeds as follows:

- a) Rebate of rent ..... \$400.00
- b) Total owing to tenant..... \$400.00

**Issue 3: Hearing Expenses**

Tenant Position

- 18. 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 # 4**). The landlord is seeking this cost.

**Analysis**

- 19. I have reviewed the testimony and evidence of the tenant in this matter. The expenses incurred by the landlord are 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.

**Decision**

- 20. The landlord shall pay the reasonable expenses of the tenant in the amount of \$20.00.

## Issue 4: Refund of Security Deposit

### Tenant Position

The tenant stated that he had entered into a verbal monthly rental agreement with the landlord which was scheduled to commence on 1 September 2019. The agreed rent was set at \$400.00 per month and due on the 1<sup>st</sup> day of each month. The tenant testified that a security deposit in the amount of \$100.00 was paid on 28 August 2019 which was confirmed by the presentation of a copy of the e-transfer (**Exhibit T # 1**). The tenant testified that he was instructed to send the deposit to an email belonging to a friend of the landlord [REDACTED] (**Exhibit T #1**) in the amount of \$100.00 which he did.

### Analysis

21. 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.
22. The tenant has 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 28 August 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. I accept that the tenant did pay the security deposit as claimed.

### Decision

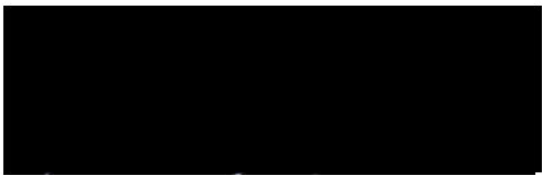
23. The tenants' claim for refund of security deposit succeeds:
  - c) Refund of Security Deposit ..... \$100.00

**Summary of Decision**

24. The tenant is entitled to the following:

- a) Rebate of rent .....\$400.00
- b) Refund of Security Deposit ..... 100.00
- b) Hearing Expenses ..... \$20.00
- c) **Sub-total** .....**\$520.00**
  
- e) **Total owing to Tenant**.....**\$520.00**

October 30, 2019  
 \_\_\_\_\_  
**Date**



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