

Residential Tenancies Tribunal

Decision 19-0089-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:20 p.m. on March 14, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The landlord, [REDACTED], hereafter referred to as the landlord, did not attend the hearing.

Preliminary Matters

4. The landlord was not present or represented at the hearing. Prior to the hearing I was speaking with the landlord. He said he wasn't available as he had a meeting to attend. He acknowledges a security deposit was paid and he said he wasn't served with the claim. He provided his e-mail address. The address is [REDACTED].
5. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) a respondent to an application must be served with the application for dispute resolution 10 clear days prior to the hearing date, 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.

6. The affidavit of service submitted by the tenant shows that the notice of this hearing was sent by e-mail to the landlord on February 13, 2019 and the landlord has had 28 days to provide a response. The tenant provided a copy of the e-mail and a response from the landlord dated February 13, 2019. 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, I proceeded with the hearing in his absence.

Issues before the Tribunal

7. The tenant is seeking the following:
 - a. Return of the security deposit.

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 is Section 14.

Issue 1: Return of the security deposit - \$350.00

10. In determining an application for the return of the security deposit, the tenant is required to establish a security deposit was paid.

Tenant Position

11. The tenant testified she moved into the unit on October 1, 2017 on a month to month tenancy. On September 21, 2017 she paid a security deposit to the property manager in the amount of \$535.00. The tenant presented a copy of the rental agreement (T #1). She said she paid the rent in cash to the property manager from the start of the tenancy until February 2018. In March 2018 she started to pay the rent directly to the landlord through interac e-transfer.
12. The tenant further testified that on October 27, 2018 there was a fire in the other unit of the house. She had to move out right away and the unit was not livable after the fire. She said since she paid the rent to the landlord in October 2018 she had not heard from him until the day she sent the application for dispute resolution. He responded to her e-mail (T #2) right away. The landlord has not returned the security deposit as of the date of the hearing.

Analysis

- 13. I have reviewed the testimony and evidence of the tenant and I find a security deposit was paid in September 2017. I also find the tenant had to move out on October 27, 2018 due to a fire and the landlord has not returned the security deposit. Further, the landlord has not filed an application to keep the security deposit as per Section 14.(11). Section 14.(12) states:

14.(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

Decision

- 14. The landlord shall return the \$535.00 security deposit to the tenant.

Summary of Decision

- 15. The tenant is entitled to the following:
 - a) Return of the security deposit..... \$535.00

May 17, 2019
Date


Residential Tenancies Section