

## Residential Tenancies Tribunal

Decision 19-0152-05

Denise O'Brien  
Adjudicator

---

### Introduction

1. The hearing was called at 9:20 a.m. on April 2, 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 called the number on file for the landlord but I was unable to reach them.
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 a text message to the landlord on March 20, 2019 and the landlord has had 12 days to provide a response. The tenant provided a copy of the text message and documentation showing he communicated with the landlord through text message prior to sending the application. 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 their absence.

## Issues before the Tribunal

7. The tenant is seeking the following:
  - a. Return of the security deposit in the amount of \$350.00;
  - b. 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 is Section 14 and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF.*

## 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 he moved into the unit on December 13, 2018 for the period December 13 – 31, 2018. He paid \$300.00 for the rent, \$350.00 for the security deposit and \$200.00 for meals. He moved out on December 31, 2018 and the landlord has not returned the security deposit. The tenant presented a copy of the receipt for the money he paid to the landlord (T #1).

## Analysis

12. I have reviewed the testimony and evidence of the tenant and I find a security deposit was paid in December 2018 in the amount of \$350.00. I also find the tenant vacated the unit on December 31, 2018 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). Under section 14.(12)

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

**Decision**

13. The landlord shall return the \$350.00 security deposit to the tenant.

**Issue 2: Hearing Expenses - \$19.09**

14. Under the authority of Section 47.(q) the director may require the unsuccessful party to pay costs to the successful party to an application. Costs eligible to be awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF.*

Tenant Position

15. The tenant sent the application for dispute by Xpresspost on March 15, 2019 at a cost of \$19.09. Later he sent the application by a text message. The tenant is seeking the cost of the Xpresspost.

**Analysis**

16. The costs the tenant incurred to serve the application is considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF.* Therefore, I find the landlord is responsible to cover the cost of the hearing expenses in the amount of \$19.09.

**Decision**

17. The landlord shall pay the tenant's hearing costs in the amount of \$19.09.

**Summary of Decision**

18. The tenant is entitled to the following:

- a) Return of the security deposit..... \$350.00
- b) Hearing expenses ..... \$19.09
- c) **Total amount owed to the tenant.....\$369.09**

May 17, 2019  
Date

  
Residential Tenancies Section