

Residential Tenancies Tribunal

Decision 19-0059-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 26 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 (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the landlord, did not participate in the hearing (*Absent and Not Represented*).
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$650.00 per month (utilities included) and due on the 1st of each month. It was stated that there was a security deposit in the amount of \$372.00 was collected on the tenancy on or about 18 June 2018. There was no termination notice issued under the *Residential Tenancies Act, 2018* from either party.
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 **02 August 2019** by serving the application for dispute resolution documents personally to the landlord at his place of residence.

The landlord has had **53 days** to provide a response for the scheduled hearing on 24 September 2019.

Telephone contact was made with the landlord who indicated that he wouldn't be attending. He was advised that he could attend at any point during the hearing by calling into the conferencing line as indicated on his claim documents..

As the landlord was properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing.

Issues before the Tribunal

7. The tenant is seeking the following:
 - a) Return of Possessions **\$500.00**
 - b) Compensation for damages **\$275.00**
 - c) Refund Rent **\$799.58**
 - d) Hearing expenses
 - e) Refund of Security Deposit **\$500.00**

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 34, 35 and 42 of *the Act*, and Policy 9-3: *Claims for Damages to Rented Premises*, Policy 9-5: *Life Expectancy of Property Policy 12-1: Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Return of Possessions - \$500.00

Relevant Submissions

Tenant Position

10. The tenant testified that she is seeking the return of possessions she feels entitled too. The tenant is seeking to have a queen bed (headboard, mattress and box spring), a blue tooth speaker and a TV stand returned. The tenant estimates the value to be at \$500.00. The tenant testified that the landlord purchased the items during the tenancy as gifts for her because he had a crush on her. There was no evidence presented to establish ownership of the items in question. The tenant acknowledged she could not show that the landlord purchased the items as gifts for her.

Analysis

11. I have reviewed the testimony and evidence of the tenant in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) did the landlord remove possessions belonging to the tenant from the premises.
12. In analyzing the evidence and statements presented at the hearing, it is clear that the tenant cannot establish ownership of the items being requested to be returned. There is no physical evidence of ownership whatsoever. As such, the tenant has not supported her claim for the return of possessions and therefore fails.

Decision

13. The tenant's claim for return of possessions fails.

Issue 2: Compensation for Damages - \$275.00

Relevant Submissions

Tenant Position

14. The tenant testified that the landlord destroyed he belongings (book case, TV stand, etc). The tenant presented pictures of the damaged items (**Exhibit T # 5**) along with online pricing of similar items.
15. The tenant stated above that the landlord had purchased the items in question. The tenant did not have proof of ownership of the items.

Analysis

16. It is evident from the tenant that this was not a traditional landlord and tenant relationship. The tenant is seeking compensation for damages to personal property. The tenant has indicated above that the landlord actually purchased the items in question and there was no evidence to suggest or support that the tenant actually owned the items.
17. The tenant testified that she burnt the book shelf as it was destroyed but still has the TV stand. She stated that the landlord damaged it and gave it to her.
18. The tenant has not shown in any regard other than stating that she owned the items in question, even though she indicated the landlord purchased the items. The applicant has the burden to support and substantiate the claim presented. The tenant has failed in this regard and as such the claim for damages to property fails.

Decision

19. The tenant's claim for damages fails.

Issue 4: Rent Rebate - \$799.59

Relevant Submissions

Tenant Position

20. The tenant stated that she was locked out of her rented premises on 24 May 2019 and the landlord has retained rent that was paid to him. The tenant submitted rental records from AES (**Exhibit T # 1**) to indicate that rent was paid to the landlord for the months of May and June 2019 in the amount of \$650.00 per month. The tenant further submitted into evidence a note left on the rented premises by the landlord (**Exhibit T # 2**) "LANDLORD LOCK IN PLACE".
21. The tenant is seeking rent for the period of 24 May 2019 to 30 June 2019 for the calculated amount of **\$799.59**, ($\$650.00 \times 12 \text{ months} = \$7800.00 \div 365 \text{ days} = \$21.37 \text{ per day} \times 7 \text{ days} = \$149.59 + \$650.00 = \799.59).

Analysis

22. I have reviewed the testimony and evidence of the tenant in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) was the rent that is being claimed by the tenant actually paid to the landlord for a period on non-entitlement.
23. With respect to the rent being claimed, the evidence is clear that the tenants rent was paid to the landlord directly from AES for May and June 2019. The evidence is also clear that the landlord locked the tenant from the property in contravention of the *Residential Tenancies Act, 2018*. The landlord has taken the law into his own hands and contravened the legislation governing landlord and tenant relationships. I find that the tenant is entitled to the rent being claim and as calculated above in the amount of **\$799.59** for the period covering 25 May 2019 to 30 June 2019.

Decision

24. The tenant's total claim for a rebate of rent succeeds as follows:
 - a) Rebate of rent **\$799.59**

Issue 3: Hearing Expenses

Tenant Position

25. The tenant paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit T # 4**). The tenant is seeking this cost.

Analysis

26. I have reviewed the testimony and evidence of the tenant in this matter. The expenses incurred by the tenant 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.

Decision

27. The landlord shall pay the reasonable expenses of the tenant in the amount of **\$20.00**.

Issue 4: Refund of Security Deposit

Tenant Position

28. The tenant testified that a security deposit in the amount of \$372.00 was collected on the tenancy on or about 18 June 2018. The tenant is seeking that this deposit be refunded. The tenant submitted verification from Advanced Education and Skills (AES) (**Exhibit T # 3**) for the issuance of the security deposit.

Analysis

29. I have reviewed the testimony and evidence of the tenant in this matter. The tenant stated that a security deposit in the amount of \$372.00 was paid and is seeking a refund of the deposit. The document presented from AES indicates that the security deposit was paid to the tenant from AES. The tenant testified that she provided it to the landlord who failed to provide any receipts to the tenant for the deposit or rent. I accept that the tenant paid the security deposit to the landlord. The landlord has failed to file an application seeking to retain the security deposit under section 14 of the *Residential Tenancies Act, 2018* and as such shall refund to the tenant the security deposit in the amount of **\$372.00** as the interest rate on security deposits for the period of 2018-2019 is at 0%.

Decision

30. The tenant's claim to refund the security deposit succeeds.

Summary of Decision

31. The tenant is entitled to the following:

a)	Rent Owing	\$799.59
b)	Refund of Security Deposit	372.00
c)	Refund of Possessions	0.00
d)	Compensation for Damages	0.00
e)	Hearing Expenses	<u>\$20.00</u>
f)	Total Owing Tenant.....	<u>\$1191.59</u>

30 March 2020

Date

Michael Greene
Residential Tenancies Tribunal