

## **Residential Tenancies Tribunal**

[REDACTED] Decision 19-0241-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 9:20 a.m. on April 23, 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 start of the hearing I called the telephone number on file but the call went through to the message manager. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*.
5. 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 electronically on April 10, 2019 and the landlord has had 12 days to provide a response. The tenant submitted a copy of the e-mail sent to the landlord on April 10, 2019 along with a copy of the text message the landlord sent to the tenant on May 3, 2018 providing his e-mail address. 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 in the amount of \$400.00.

### **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 is Section 14, of the Act.

### **Issue 1: Return of the security deposit - \$525.00**

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 that he moved into the unit on April 6, 2018 on a month to month tenancy with rent set at \$800.00 per month due on the 1<sup>st</sup> of each month. He paid \$400.00 in cash to the landlord for a security deposit. The tenant said he moved out of the unit on December 31, 2018.
12. The tenant further testified that after he sent the application for dispute resolution to the landlord the landlord responded through a text message (T #1) on April 22, 2019. The message stated the landlord was out of town and he would not be attending the meeting. He asked the tenant for his e-mail address so that he could send him \$300.00. The message also stated that the tenant did not give a 30 day notice and he had to hire cleaners to do the floors.

## **Analysis**

13. I have reviewed the testimony and evidence of the tenant and I find a security deposit was paid in April 2018. I also find the tenant moved out of the unit on December 31, 2018. 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 security deposit in the amount of \$400.00.

## **Summary of Decision**

15. The tenant is entitled to the following:

Refund of the security deposit.....\$400.00

July 3, 2019

Date

Residential Tenancies Section