

## **Residential Tenancies Tribunal**

[REDACTED] Decision 19-0256-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 11:40 a.m. on May 7, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing.

### **Preliminary Matters**

4. Even though there was no affidavit of service on file, the landlord acknowledged that she had received the Application for Dispute Resolution at least 10 days before the hearing.

### **Issues before the Tribunal**

5. The tenant is seeking the following:
  - a. Return of the security deposit in the amount of \$250.00;
  - b. Return of rent in the amount of \$500.00;
  - c. Hearing expenses.

## **Legislation and Policy**

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
7. Also relevant and considered in this case are Sections 10 and 14, of the Act.

### **Issue 1: Return of the security deposit - \$250.00**

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

#### Tenant Position

9. The tenant testified that he moved into a room at the unit on January 15, 2019 on a month to month tenancy with rent set at \$500.00 per month due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$250.00 was paid on January 15, 2019. He moved out on March 28, 2019 and the landlord has not returned the security deposit.

#### Landlord Position

10. The landlord testified that the tenant paid a \$250.00 on January 15, 2019 and she has not filed a claim to keep the security deposit.

#### **Analysis**

11. I have reviewed the testimony and evidence of the tenant and I find a security deposit was paid in January 2019. I also find the tenant moved out of the unit on March 28, 2019. 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**

12. The landlord shall return the security deposit in the amount of \$250.00.

## **Item 2: Return of rent - \$500.00**

### **Tenant Position**

13. The tenant testified that he is seeking return of rent for the month of April 2019 in the amount of \$500.00 because he did not live in the unit for that month. The rent was paid by Advanced Education Skills and Labour (AESL). He testified that on March 28, 2019 around 9:15 p.m. an incident took place between himself and the landlord's son. The landlord told him to get his things and move out. She did not want him in the house. She took his key from him. She said she was going to call the police. He left the unit.

### **Landlord Position**

14. The landlord testified that an incident took place on March 28, 2019 and she asked the tenant to move out and he moved out. The tenant returned the key to her.
15. The landlord testified that nobody lived in that room for the month of April and she has not tried to re-rent the room. She testified that she received a phone call from the tenant's social worker on/or about April 1, 2019. The social worker asked could the tenant stay in the unit for 30 days. She did not know the social worker's name.

### **Analysis**

16. I have reviewed the testimony of the tenant and the landlord and I have determined that there is 1 issue that needs to be addressed; is the tenant entitled to the return of the rent. I find an incident took place at the unit on March 28, 2019 and the landlord asked the tenant to leave the unit. The tenant left the unit and the landlord took back the key from him. I also find the tenant did not give a month's notice to terminate the tenancy as required under section 18.(1)(b) of the Act. Further, when a tenant leaves a unit without notice, it is considered that the tenant has abandoned the unit as per section 31.(2)(b). When a tenant abandons an unit, the landlord is required to try and mitigate their losses as required under section 10.(1).4. The landlord did not try to re-rent the unit. As the landlord did not try to re-rent the unit, the landlord shall return the rent in the amount of \$500.00.

### **Decision**

17. The tenant is entitled to the return of rent in the amount of \$500.00 for the month of April 2019.

**Item 3: Hearing expenses - \$20.00**

18. 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*.

**Landlord Position**

19. The tenant paid an application filing fee in the amount of \$20.00. The tenant is seeking this cost.

**Analysis**

20. The cost the tenant incurred to make 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 \$20.00 as the tenant was successful in his claim.

**Decision**

21. The landlord shall pay the tenant's hearing costs in the amount of \$20.00.

**Summary of Decision**

22. The tenant is entitled to the following:

- a) Return of the security deposit..... \$250.00
- b) Refund of rent ..... \$500.00
- c) Hearing expenses ..... \$20.00
- d) **Total Owing to Tenant**..... **\$770.00**

August 19, 2019

Date

Residential Tenancies Section