

Residential Tenancies Tribunal

Decision 19-0456-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 2:20 pm on 24 July 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the landlord", did not participate.

Issues before the Tribunal

3. The tenant is seeking an order for refund of the security deposit in the amount of \$675.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018* and rule 29 of *The Rules of the Supreme Court, 1986*.

Preliminary Matters

6. The landlord was not present or represented at the hearing and I was unable to reach the landlord by telephone from the hearing room. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 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 she has been properly served. The tenant testified that he served the landlord with notice of this hearing, by email, on 24 June 2019 and a copy of that e-mail was submitted at the hearing. The tenant testified that the landlord provided him with that e-mail address and that this was the address he used to pay his rent. As the notice was served on 24 June 2019 the landlord has had 29 days to provide a response. As any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in the landlord's absence.

Issue 1: Refund of Security Deposit - \$675.00

Relevant Submissions

7. The tenant stated that he moved into the rental unit as a sublessee in July or August 2016. His sublessor moved out of the unit in September 2016 and the tenant took over the lease with his roommate, [REDACTED] (■), on 15 September 2016. A copy of the executed rental agreement was submitted at the hearing (■ #1).
8. According to that rental agreement, the monthly rent is set at \$1350.00 and it is acknowledged that the tenant and ■ had paid a security deposit of \$675.00.
9. The tenant stated that ■ moved out a few months after the rental agreement was signed and the tenant began subleasing ■'s room at that time. When ■ moved out, the tenant stated that he paid him his share of the security deposit.
10. In January 2019, the tenant informed the landlord that he would be vacating the unit in 5 months and he moved out on 31 May 2019.
11. The tenant stated that the landlord had not returned the security deposit to him after he vacated and he testified that he had not entered into any written agreement with the landlord on its disposition.
12. The tenant is seeking an order for a return of the security deposit.

Analysis

13. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

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

14. I accept the tenant's evidence which shows that he had paid a security deposit of \$675.00 when he took over the lease in September 2016.
15. I also accept his claim that the landlord had not returned that deposit to him after he had moved out and that he had not entered into any written agreement with the landlord on its disposition.
16. As the landlord has not made an application to the Director of Residential Tenancies to determine its disposition of the security deposit, he is required, as per subsection 14.(12), to refund the full amount of the security deposit to the tenant.

Decision

17. The tenant's claim for refund of the security deposit succeeds in the amount of \$675.00.

Issues 3: Hearing Expenses

18. The tenant submitted photographs of the rental unit at the hearing, along with a receipt showing that he had paid \$83.54 to have those photographs developed. As the tenant's claim has been successful, the landlord shall pay these hearing expenses.

Summary of Decision

19. The tenant is entitled to the following:

a) Refund of security deposit.....	\$675.00
b) Hearing expenses.....	\$83.54

Total Owing to Tenant..... **\$758.54**

29 November 2019

Date


John R. Cook
Residential Tenancies Tribunal