

Residential Tenancies Tribunal

Decision 19-0686-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:20 pm on 18 November 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 a refund of the security deposit in the amount of \$900.00.

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. 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 she had served the landlord, by e-mail, on 04 November 2019 and a copy of that e-mail was submitted at the hearing. The tenant also submitted copies of other e-mail exchanges she had had with the landlord at that e-mail address. As the notice was served on 04 November 2019 the landlord has had 13 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 - \$900.00

Relevant Submissions

7. The tenant stated that she had entered into a monthly rental agreement with the landlord, commencing 28 July 2017. The agreed rent was set at \$1200.00 per month and the tenant submitted a copy of a receipt at the hearing (█ #1) showing that she had paid a security deposit of \$900.00 on 15 July 2017.
8. The tenant stated that she informed the landlord on 15 June 2019 that she was terminating their rental agreement and she vacated on 27 July 2019.
9. The tenant stated that the landlord had not returned the deposit to her after she vacated and she testified that she had not entered into any written agreement with the landlord on its disposition. The tenant is seeking an order for a refund of the full amount of that deposit.

Analysis

10. 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.

11. I accept the tenant's testimony and evidence in this matter and I find that she had paid a security deposit of \$900.00 to the landlord and that it has not been returned to her. I also accept the tenant's claim that she had not entered into any written agreement with the landlord on the disposition of the deposit.
12. As the landlord has not made an application to the Director of Residential Tenancies to determine its disposition she is required, as per subsection 14.(12), to refund the full amount of the security deposit to the tenant.

Decision

13. The tenant's claim for refund of the security deposit succeeds in the amount of \$900.00.

15 April 2020

Date

John R. Cook
Residential Tenancies Tribunal