

Residential Tenancies Tribunal

Decision 20-0383-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 am on 28 October 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], (■) hereafter referred to as the tenant1 participated in the hearing. (*Affirmed*)
3. The applicant, [REDACTED], (■) hereafter referred to as the tenant2 participated in the hearing. (*Affirmed*)
4. The applicant, [REDACTED], (■) hereafter referred to as the tenant3 participated in the hearing. (*Affirmed*)
5. The applicant, [REDACTED], (■) hereafter referred to as the tenant4 participated in the hearing. (*Affirmed*)
6. The respondent, [REDACTED], (■) hereafter referred to as the landlord did not participate in the hearing. (*Absent and Not Represented*)
7. The details of the claim were presented as a written fixed term rental agreement with rent set at \$1275.00 per month and due on the 1st of each month and a security deposit in the amount of \$956.25 was collected on or about 27 July 2018.
8. 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

9. 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 tenants' shows that the landlord [REDACTED] was served with the notice of this hearing on the **07 October 2020** by serving the application for dispute resolution document to the email: [REDACTED] and providing the required proof of the sent email. The document would be considered served as of **08 October 2020** under section 42(7) of the *Residential Tenancies Act*.

10. The landlord has had **20 days** to provide a response.
11. The landlord did not file a counter claim to the tenants' application.

Issues before the Tribunal

12. The tenants are seeking the following:
 - a) Compensation for Inconvenience **\$200.00**;
 - b) Hearing Expenses;
 - c) Return of Security Deposit

Legislation and Policy

13. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
14. Also relevant and considered in this case are:
 - a. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
 - b. Policy 10-1: *Claims against a Security Deposit*.

Issue 1: Compensation for Inconvenience - \$200.00

Relevant Submissions

Tenant Position

15. The tenants testified that there was an issue with the ceiling during the tenancy. There was a leak in the roof and they notified that landlord (**Exhibit T # 3**). They indicated that the landlord applied tar to the roof but the problem was never fixed. The tenants testified that the ceiling on the interior collapsed as a result of the leak. The tenants submitted photos of the ceiling (**Exhibit T #1**).
16. The tenants state that it is their contention that the collapsed ceiling and the resulting hole to the attic, is a direct loss of heat which increased their electrical bills on a monthly basis. The tenants submitted a copy of the NL Power Invoices (**Exhibit T # 2**).
17. The tenants are claiming \$50.00 per person for a total of \$200.00 as compensation for the loss of heat as a result of the unrepairs ceiling/roof.

Analysis

18. I have reviewed the testimony and evidence of the tenants in this portion of the claim. The tenants are seeking compensation for the loss of heat due to the negligence of the landlord to make repairs which could have reasonably prevented the loss.
19. The photos presented by the tenants clearly show that the ceiling on the interior of the property had collapsed and was exposed to the attic. Basic laws of thermal dynamics are such that "heat rises". It is reasonable to infer in this situation that heat would rise from the interior of the property and escape through the attic.
20. There is no conclusive to quantify the amount of heat loss, however, I find that it is reasonable to conclude that heat is being lost in this situation. The tenants have supplied the NL Power history for the tenancy to demonstrate the amounts paid and that the power account was in their names. I find that the \$200.00 being claimed is reasonable and find in favor of the tenants.

Decision

21. The tenants' claim for compensation for inconvenience succeeds in the amount of \$200.00.

Issue 4: Application/Refund of Security Deposit

Tenant Position

22. The tenants are seeking a refund of the security deposit paid in the total amount of \$956.25.
23. The tenants submitted a copy of the rental agreement indicating a security deposit was paid in addition to the e-transfers for the payment (**Exhibit T # 4**).

Analysis

24. Established by undisputed fact above, the tenants did pay a security deposit to the landlord in the amount of \$956.25.
25. The landlord has failed to file a counter claim to the tenants' claim for the refund of security deposit and in failing to do so, no longer has a claim against the security deposit as outlined in section 14(12) of the *Residential Tenancies Act, 2018*.
26. The security deposit is an asset of the tenant to be held against any loss incurred by the landlord attributed to the tenancy. In this matter the landlord has failed to file a counter claim in response to the tenants claim and as such, the tenants are entitled to a refund of the security deposit as outlined in the attached order.

Decision

27. The landlord shall refund the security deposit being held to the tenants as outlined in the attached order.

Issue 5: Hearing Expenses

Landlord Position

28. The tenants paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit T # 5**). The tenants are seeking this cost.

Analysis

29. I have reviewed the testimony and evidence of the tenants in this matter. The expenses incurred by the tenants are 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*. The tenants' claim has been successful and as such, I find the landlord is responsible to cover the reasonable expenses of the tenants for hearing costs.

Decision

30. The landlord shall pay the reasonable expenses of the tenants in the amount of \$20.00.

Summary of Decision

31. The tenants are entitled to the following:

a)	Refund of Security Deposit	\$956.25
b)	Compensation for Inconvenience	200.00
c)	Hearing Expenses	<u>20.00</u>
d)	Total owing to Tenants	<u>\$1176.25</u>

21 December 2020

Date


Michael Greene
Residential Tenancies Tribunal