

Residential Tenancies Tribunal

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 04 February 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", and the respondent, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing by teleconference.

Issues before the Tribunal

3. The tenant is seeking an order for a refund of the security deposit in the amount of \$425.00.

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*.

Issue 1: Refund of Security Deposit - \$425.00

Relevant Submissions

The Tenants' Position

6. The tenant stated that she had entered into a monthly rental agreement with the landlord in February 2018. The agreed rent was set at \$850.00 per month and

the tenant testified that she had paid a security deposit of \$425.00 in January 2018, before she moved into the rental unit.

7. The tenant stated that on 17 November 2018 she was speaking with the landlord and the tenant testified that she was informed that the landlord would be increasing the rent by \$150.00 per month, commencing 01 December 2018, as the tenant had been letting her boyfriend reside at the unit.
8. The tenant stated that she could not afford that increase and she also felt that it was unfair. Accordingly, she informed the landlord on that date that she was terminating her rental agreement and she vacated on 29 November 2018.
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.

The Landlord's position

10. The landlord stated that she kept the deposit because of damage caused to the exterior door.
11. She acknowledged that she had not entered into any written agreement with the tenant on the disposition of the deposit and she stated that she also had not filed an application with Residential Tenancies seeking authorization to retain it.

Analysis

12. 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.

(13) Where a landlord does not make an application under paragraph (10)(b) or return the security deposit in accordance with subsection (12), the director may, without conducting a hearing, make an order requiring the landlord to return the security deposit to the tenant.

(14) Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.

13. It is not disputed that the tenant had paid a security deposit of \$425.00 and that it has not been returned to the tenant. It is also not disputed that the landlord and tenant had not entered into any written agreement on the disposition of that deposit and the landlord has not made an application to the Director of Residential Tenancies to determine its disposition. As such, the landlord is required, as per subsection 14.(12), to refund the full amount of the security deposit to the tenant.

Decision

14. The tenant's claim for refund of the security deposit succeeds in the amount of \$425.00.

15 February 2019

Date

John R. Cook
Residential Tenancies Tribunal