

Residential Tenancies Tribunal

Decision 19-0001-04

Michael Greene
Adjudicator

Introduction

1. The originating application was filed on January 4, 2019 and therefore will be adjudicated based on the *Residential Tenancies Act, 2018*.
2. The hearing was called at **9:30 am on 18 February 2019** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador. It was conducted by teleconference through the Bell Alliant Conferencing system. At this sitting, the landlords failed to complete their claim as required and requested at the application stage and the hearing was postponed for the landlords to provide this office and the tenants with an adequate breakdown of the claim against the tenants. As of March 7, 2019, nothing was received by the landlords and a new hearing date was set to April 1, 2019 at 10:00 am ([REDACTED]).
3. The hearing was re-called at **10:00 am on 01 April 2019** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador. It was conducted by teleconference through the Bell Alliant Conferencing system. At this sitting the requested breakdown of the landlords claim ([REDACTED]) was not received and the two files ([REDACTED]) were severed at this hearing to be heard separately. This application will be adjudicated as if there were no counter claim application filed by the landlord respondents. The landlords were further advised that should the claim breakdown requested, not be received at the Residential Tenancies Office by close of business on April 30, 2019, their application of dispute resolution ([REDACTED]) would be dismissed.
4. The applicant, [REDACTED], hereafter referred to as tenant1, participated in the hearing. The applicant, [REDACTED], hereafter referred to as tenant2, participated in the hearing.
5. The respondent, [REDACTED], hereafter referred to as landlord1, participated in the hearing. The respondent, [REDACTED], hereafter referred to as landlord2 was not present or represented at the hearing.

6. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$1500.00 per month with utilities extra and due on the 1st of each month. A security deposit in the amount of \$750.00 was collected on the tenancy on or about May 22, 2017. Tenant1 indicated that a termination notice was issued to the landlord via text message on November 12, 2018 for the intended termination date of November 30, 2018 with no apparent section of the legislation indicated in the notice.
7. 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

8. Landlord2, [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 show that landlord1 was served with the notice of this hearing on the **07 February 2019** by serving the documents electronically to the email address: [REDACTED] which was the email address provided on the written rental agreement for the [REDACTED] address and he had **11 days** to provide a response for the February 18, 2019 hearing.

The affidavit submitted by the tenants show that landlord2 was served with the notice of this hearing on the **15 January 2019** by serving the documents personally to the address: [REDACTED] and she has had **33 days** to provide a response for the February 18, 2019 hearing.

File records of this application shows that both landlords were served a Notice of Re-scheduled Hearing by registered mail [REDACTED] [REDACTED] and signed for on March 13, 2019. The Notice of Re-scheduled Hearing was served by the Residential Tenancies Office on March 7, 2019 and the landlords have had **18 days** to provide a response.

9. As landlord2 was properly served with the application for dispute resolution and the Notice of Re-scheduled hearing, and as any further delay in these proceedings would unfairly disadvantage the tenant applicants, I proceeded with the hearing in landlord2's absence.
10. The landlords' initial refusal at the application stage to provide an adequate breakdown of the claim and the subsequent refusal to supply the breakdown after the initial postponement on February 18, 2019 is judicially unfair to the respondents. The right to notice is a basic right of a respondent in a tribunal. The landlords' actions amounts to the initial counterclaim actually not being filed and hence the severing of the two above noted files. As such, this claim will be treated as if the landlords did not file a counterclaim.
11. This claim ([REDACTED]) was amended to reflect the legal name of landlord1 to be [REDACTED].

Issues before the Tribunal

12. The tenants are seeking the following:
 - a) Refund of Security Deposit **\$750.00**;

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 Sections 19, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Refund of Security Deposit - \$750.00

Relevant Submissions

Tenant Position

15. Tenant1 stated that they had entered into a written fixed term rental agreement with the landlords which commenced on 22 May 2017 for 1 year at a property address of [REDACTED]. Tenant1 testified that they moved from this unit to another unit belonging to the landlords and the security deposit and rent stayed the same. The agreed rent was set at \$1500.00 per month and due on the 1st day of each month. Tenant1 testified that a security deposit in the amount of \$750.00 was paid on May 22, 2017 which was

confirmed by the rental agreement (Exhibit T # 1).

Landlord Position

16. Landlord1 acknowledged receiving the security deposit from the tenants while they resided at [REDACTED]. Landlord1 testified that he was notified by the tenants on November 12, 2018 that they had vacated the property. As such, landlord1 testified that he is holding the security deposit because proper notice was not provided in accordance with their rental agreement. Landlord1 testified that a 2 month notice was required in the rental agreement. Additionally, landlord1 stated there was a minor cleaning issue in that the cabinets were not cleaned.

Analysis

17. I have reviewed the testimony and evidence of the tenants and landlord in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) did the tenants pay a security deposit.

18. Tenant1 has provided a copy of the rental agreement (Exhibit T # 1) which indicates a security deposit in the amount of \$750.00 was paid on or about May 22, 2017. For the reasons indicated above in this decision, there was no counterclaim filed by the landlords within the 10 day time frame allowed for by Section 14 (10) & (11) of the *Residential Tenancies Act, 2018* in order for the landlords to have a claim against the security deposit. This failure of the landlords to file a counter claim does not prohibit the landlords from filing a future claim for a loss, however, the landlords no longer has a claim against the security deposit and shall return the deposit to the tenants.

Decision

19. The tenants' claim for refund of security deposit succeeds:

a) Refund of Security Deposit \$750.00

Summary of Decision

20. The tenants are entitled to the following:

a) Refund of Security Deposit \$750.00

April 9, 2019

Date

Michael Greene
Residential Tenancies Tribunal