

## Residential Tenancies Tribunal

[REDACTED] Decision 19-0019-01

Michael Greene  
Adjudicator

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### Introduction

1. The originating application was filed on 21 March 2019 and therefore will be adjudicated based on the *Residential Tenancies Act, 2018*.
2. The hearing was called at **1:30 pm on 23 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.
3. The applicant, [REDACTED], hereafter referred to as tenant1, participated in the hearing. The applicant, [REDACTED], hereafter referred to as tenant2, participated in the hearing. The applicant, [REDACTED], hereafter referred to as tenant3, participated in the hearing. The applicant, [REDACTED], hereafter referred to as tenant4, participated in the hearing.
4. The respondent, [REDACTED], hereafter referred to as landlord1, participated in the hearing. The respondent, [REDACTED], hereafter referred to as landlord2 participated in the hearing.
5. The details of the claim were presented as a written 6 month fixed term rental agreement set to expire on 28 February 2019 and rent set at \$1000.00 per month with utilities not included and due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$750.00 was collected on the tenancy on or about 15 August 2018. Tenant1 indicated that a termination notice was not issued on this tenancy and the tenants vacated on 28 February 2019.
6. 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

7. The Tribunal's policies concerning notice service 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 and landlord2 were served with the notice of this hearing on the **21 March 2019** by serving the documents electronically to the email address: [REDACTED] which was the email address provided to transfer the monthly rent. Separate emails were sent to this email address at 9:14 and 9:15 am on 21 March 2019 and the respondents had **32 days** to provide a response.

8. There was no counter claim filed by the landlords in the required time frames set out in section 14 (11) of the *Residential Tenancies Act, 2018*.

## Issues before the Tribunal

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

## Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. Also relevant and considered in this case are Sections 14, 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

12. Tenant1 stated that they had entered into a written 6 month fixed term rental agreement with the landlords which commenced on 28 August 2018 for the

property address of [REDACTED]. The agreed rent was set at \$1000.00 per month and due on the 1<sup>st</sup> day of each month. Tenant1 testified that a security deposit in the amount of \$750.00 was paid on 15 August 2018 which was confirmed by the e-transfer receipt (Exhibit T # 1).

### Landlord Position

13. Landlord1 acknowledged receiving the security deposit from the tenants via e-transfer as indicated by tenant1. Landlord1 testified that they are holding the security deposit because of damages. Landlord1 testified that they were not aware that a counterclaim was required to be filed within 10 days of service and that a claim has now been filed with the Gander office of Residential Tenancies. Landlord1 acknowledges that the submission of the claim was not in time to be considered a counter claim under section 14 of the *Residential Tenancies Act, 2018*.

### **Analysis**

14. I have reviewed the testimony and evidence of the tenants and landlords 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.
15. Interest rates for security deposits being held in the years 2018 and 2019 is set at 0 % and as such zero interest has accrued on this deposit.
16. Tenant1 has provided a copy of the e-transfer receipt (Exhibit T # 1) which indicates a payment in the amount of \$750.00 was sent to the landlords (15 August 2018) prior to the tenancy beginning. Further, landlord1 has acknowledged receiving the payment as a security deposit against the tenancy. Landlord1 stated that they were not aware they were required to file a counterclaim for damages during the tenancy and as such, 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 have a claim against the security deposit and shall return the deposit to the tenants.

### **Decision**

17. The tenants' claim for refund of security deposit succeeds:
  - a) Refund of Security Deposit ..... \$750.00

## **Summary of Decision**

18. The tenants are entitled to the following:

a) Refund of Security Deposit ..... \$750.00

May 3, 2019

**Date**

**Michael Greene**  
**Residential Tenancies Tribunal**