

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0348-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:25 p.m. on July 11, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED] hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.
3. The respondent, [REDACTED] hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matter

4. Landlord1 amended the application to include [REDACTED] as a landlord and the claim for damages was amended from \$3084.74 to \$2748.41.
5. The \$350.00 security deposit paid in May 2018 was applied to Order 2018 No. [REDACTED]. Also dealt with in Order 2018 No. [REDACTED] was the claim for repairs to the holes in the bedroom, replacement of one pane of glass in the kitchen/living room and repairs to the kitchen cabinets.
6. The tenant was not present or represented at the hearing. Prior to the hearing I called the number on file for the tenant but I was unable to reach the tenant.

7. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) a respondent to an application must be served with the application for dispute resolution 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 he/she has been properly served.
8. The affidavit of service submitted by the landlords show that the notice of this hearing was sent electronically to the tenant on June 14, 2019. The tenant has had 26 days to provide a response. The landlord submitted a copy of the e-mail along with a copy of an interac e-transfer dated August 23, 2018 containing the tenant's e-mail address. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

Issues before the Tribunal

9. The landlord is seeking the following:
 - a. Compensation for cleaning/garbage removal in the amount of \$366.49;
 - b. Compensation for damages in the amount of \$2381.92;
 - c. Hearing expenses.

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 is Section 10 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Compensation for cleaning/garbage removal - \$366.49

Landlord Position

12. The landlords testified that the tenant moved into the unit on May 16, 2018 on a month to month tenancy with rent set at \$700.00 per month. On October 24, 2018 they took back possession of the unit after they posted a notice of abandonment. When they went into the unit all of the tenant's belongings were left behind and the unit needed to be cleaned. They were granted permission from our office (Residential Tenancies Section) to dispose of the tenant's belongings. The landlords spent 20 hours between packing up the tenant's

belongings and cleaning the unit. They had to dispose of clothes, clothing racks, toiletries, miscellaneous items, wall hangings, a futon, a chesterfield and loveseat, a chesterfield and chair, a bed, a chair, a book case, a TV and tables. They further testified that they had to clean the floors, windows, fridge, stove, cupboards, countertops and the bathroom. They are claiming 12 hours @ \$15.00 per hour for the cleaning and 8 hours @ \$16.00 per hour for the garbage removal.

13. The landlords further testified that they bought cleaning supplies at a cost of \$58.49. The landlords submitted a USB (LL #8) containing photographs of the unit and a receipt from [REDACTED] dated September 6, 2019 (LL#5) for the cleaning supplies.

Analysis

14. I have reviewed the testimony and the evidence of the landlords in this matter. I have determined that there are 3 issues that need to be addressed; (i) did the tenant leave her belongings; (ii) did the unit need to be cleaned when the tenancy ended; and (iii) is the tenant responsible for the cleaning. Based on the photographs presented I find the unit was left in a mess and the tenant left behind all of her belongings; her clothing, miscellaneous items, toiletries, wall hangings and furniture. I also find the unit needed to be cleaned. The amount of time the landlord is claiming to gather and dispose of the tenant's belongings and clean the unit is reasonable. With respect to the cleaning supplies, the receipt the landlords submitted was prior to the tenant moving out. The claim for cleaning supplies fails. The landlords are claiming cleaning at a rate of \$15.00 per hour and the garbage removal at \$16.00 per hour. I will award at the rate of \$15.50 per hour. Therefore, the claim succeeds in the amount of \$310.00 (\$15.50 per hour x 20 hours = \$310.00).

Decision

15. The claim for cleaning and garbage removal succeeds in the amount of \$310.00.

Issue 2: Compensation for damages – \$2381.92

Landlord Position

16. The landlords testified that when the tenancy ended there was a hole in 3 walls in the bedroom, one hole in the wall in the living room and the part wall that divides the kitchen and living room was splattered with white paint. Also the entire unit had to be painted because the tenant smoked in the unit. Landlord1 testified that in order to repair the holes he had to replace some gyproc and he had to purchase plaster. He spent 18 hours repairing/plastering the 4 holes

and 21 hours painting the unit for a total of \$858.00 (39 hours x \$22.00 = \$858.00). They purchased 4 gallons of paint to paint the walls, 2 gallons of paint to paint the ceilings and 1 gallon to paint the trim. The cost of the paint was \$442.65. The walls were given 2 coats of paint as they changed the colour of the bedroom from a green to the neutral colour that was in the kitchen/living room. They had to paint a wall in the kitchen/living room back to its original colour as they gave permission to the tenant to paint the wall a blue colour. The unit was painted just prior to the start of the tenancy.

17. Landlord1 testified that the exterior door had to be replaced because the door was damaged. It took him 2½ hours (2½ hours @ \$25.00 per hour = \$62.50) to replace the door. The door is at least 10 years old. He purchased the door at [REDACTED] at a cost of \$274.85. He also purchased a new door knob for the door from [REDACTED] at a cost of \$67.54. The door knob was about 1 year old when the tenancy started.
18. Landlord1 testified that he had to replace 2 interior doors, the porch door and the bedroom door because they were damaged beyond repair. The doors were at least 20 years old. He purchased the doors at [REDACTED] at a cost of \$123.01. This includes the 2 doors, 2 door knobs and a hinge for the door. He spent 4 hours (4 hours @ \$25.00 per hour = \$100.00) replacing the doors.
19. Landlord1 testified that the glass was broken in 1 component in two windows in the kitchen/living room. He paid [REDACTED] \$145.38 to replace the glass in both windows.
20. Landlord1 testified that he spent 1½ hours replacing the medicine cabinet in the bathroom because the mirror on the door was cracked and there was a piece missing. The new cabinet cost \$32.00 but he does not have the receipt for the purchase. He also testified that he spent 3 hours (@ a rate of \$25.00 per hour) re-installing the kitchen cabinet door and securing the shelving in the cupboards. Further, the landlords testified that there are a number of dents in both doors of the fridge. They did not get a quote. They estimate \$130.00 to have it repaired. The fridge is 2 years old.
21. The landlords submitted into evidence 2 receipts from the [REDACTED] (LL #1) totaling \$392.07 for the purchase of 5 gallons of paint and paint brushes; a receipt from [REDACTED] (LL #2) in the amount of \$50.58 for 2 gallons of ceiling paint; a receipt from [REDACTED] (LL #3) in the amount of \$33.49 for the purchase of the plaster; a receipt from [REDACTED] (LL #6) for the purchase of the exterior door; a receipt from [REDACTED] (LL #7) for the purchase of a door knob for the exterior door; a receipt from [REDACTED] (LL #9) for the purchase of the interior doors and door knobs; a receipt from [REDACTED] (LL #10) for the replacement of the glass for the windows and a USB containing photographs of the unit (LL #8). The

photographs show the holes in the walls, cigarette butts in the unit, the condition of the exterior door, the 2 interior doors, the windows, the cabinet in the bathroom and the cupboards.

Analysis

22. I have reviewed the testimony and evidence of the landlords and I find that there was a hole in 3 walls in the bedroom and 1 wall in the kitchen/living room. In Order 2018 No. [REDACTED] the landlord was awarded costs for the repairs for the holes in the bedroom. The burden of proof lies with the landlord to establish, that the damage exists, and that the tenant is responsible for the cost of repairs. With regard to the hole in the wall in the kitchen/living room it should take no more than 2 hours to repair the hole. Residential Tenancies has set an amount of \$19.40 per hour that a landlord can claim when they do the work themselves. The landlords are awarded \$38.40 (2 hours @ \$19.40 per hour = \$38.40) for the repair.
23. Based on the photographs presented it looks like the tenant smoked in the unit. As the tenant smoked in the unit the landlord would be entitled for the painting of the unit to get rid of the smell. However, the landlords are claiming for 2 coats of paint for the unit. I find 1 coat of paint would be enough to eliminate the smell of smoke. Paint is a depreciable item with a life expectancy of 3 – 5 years. As the unit was painted just prior to the start of the tenancy, the amount the landlords are entitled to is \$382.55. \$407.40 for labour (21 hours x \$19.40 = \$407.40) + \$442.65 for materials (\$392.07 + \$50.58 = \$442.65) for a total of \$850.05 (\$407.40 + \$442.65 = \$850.05) for 2 coats of paint ÷ 2 = \$425.03. The depreciated value would be \$382.55 (\$425.03 ÷ 5 years = \$85.01 per year x 4.5 years remaining = \$382.55).
24. With respect to the replacement of the exterior door and the door knob, I find that the door was damaged and needed to be replaced. The amount of time the landlord is claiming to replace the door is reasonable. The landlords did not provide any evidence as to why the door knob should be replaced. An exterior door is a depreciable item with a life expectancy of 15 years. As the door is 10 years old the claim for replacement of the door is \$107.80 (\$274.85 for the door + \$48.50 for labour { \$19.40 x 2.5 hours = \$48.50 } = \$323.35 x 15 years = \$21.56 per year x 5 years remaining = \$107.80).
25. I also find that the two interior doors needed to be replaced when the tenancy ended. The amount of time the landlords are claiming to replace the doors is reasonable. The landlords did not support the claim with corroborating evidence that the door knobs needed to be replaced. Interior doors are a depreciable item with a life expectancy of 20 years. The doors are at least 20 years old, they have outlived their life expectancy. Since the doors were

destroyed during the tenancy I award an amount of \$50.00 towards the replacement of the doors.

26. With respect to the replacement of the glass in 1 component in 2 windows in the kitchen/living room and the installation of the cabinet door. The landlords were awarded in Order 2018 no. [REDACTED], the cost for replacement of the glass in one window and the installation of the cabinet door. I find that the glass was broken in 1 component in another window. The landlord paid \$145.38 to replace the glass in two windows. As the landlord was awarded cost for the replacement of glass for 1 window, the claim succeeds in the amount of \$72.69 ($\$145.38 \div 2 = \72.69) for replacement of glass for the second window.
27. I find that the medicine cabinet was damaged at the end of the tenancy. The landlords did not present any evidence on the cost of the medicine cabinet or the age, I award \$19.40, 1 hour's labour, to replace the cabinet. Further, with regard to repairs to the fridge door, the landlords did not present an estimate on the cost. Therefore, the claim fails.

Decision

28. The landlords' claim for compensation for damages succeeds as per the following:
 - a) Repairs to the wall in the kitchen/living room \$38.40
 - b) Painting \$382.55
 - c) Replacement of exterior door \$107.80
 - d) Replacement of interior doors \$50.00
 - e) Replacement of glass for the window \$72.69
 - f) Replacement of the medicine cabinet \$19.40
 - g) Total \$670.84**

Issue 4: Hearing Expenses

29. Under the authority of Section 47.(q) the director may require the unsuccessful party to pay costs to the successful party to an application. Costs eligible to be awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Landlord Position

30. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Analysis

31. The cost the landlords incurred to make the application is considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the landlords' claim has been partially successful, the tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

Decision

32. The tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

Summary of Decision

33. The landlords are entitled to the following:

a) Compensation for cleaning/garbage disposal	\$310.00
b) Compensation for damages	\$670.84
c) Hearing expenses	<u>\$20.00</u>
d) Total owing to the landlords	<u>\$1000.84</u>

November 29, 2019

Date

Residential Tenancies Section