

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0406-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:15 p.m. on June 18, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED] hereafter referred to as the landlord, participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED] hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.

Preliminary Matter:

4. The landlord's claim for cleaning should have read \$1216.00 not \$300.00. The landlord amended the claim for damages from \$190.10 to \$67.56.

Issues before the Tribunal

5. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$800.00;
 - b. Late fees in the amount of \$75.00;
 - c. Compensation for damages/cleaning in the amount of \$1283.56;
 - c. Hearing expenses.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.

7. Also relevant and considered in this case are Sections 10, 14, 15 and 19 of the Act and *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Payment of rent - \$800.00

8. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

9. The landlord testified that the tenants moved into the unit on September 2, 2018 for a 6 month term with rent set at \$800.00 per month due on the 1st of the month. The term expired and the tenancy converted to a month to month tenancy. On March 7, 2019 the tenants told her that they were moving out. She informed them that they are required to give a month's written notice and the notice has to begin on the 1st of the month. The tenants posted a termination notice on her door on April 1, 2019 that they were vacating on April 30, 2019. They vacated on March 29, 2019.
10. The landlord further testified that on March 10, 2019 she started to advertise the unit for rent on Kijiji and facebook marketplace. The unit was re-rented for May 1, 2019.

Tenant Position

11. The tenants testified that they moved out of the unit on March 29, 2019 and they are not disputing that the rent for the month of April 2019 is owed.

Analysis

12. I have reviewed the testimony and the evidence presented of the landlord and the tenants. I have determined that there is one issue that needs to be addressed; is the rent owing for the month of April 2019. The tenants signed a lease agreement for 6 months. The term ended and the tenancy converted to a month to month tenancy. The tenants moved out on March 29, 2019 and they posted a termination notice on the door of the unit on April 1, 2019 that they are vacating on April 30, 2019. They are not disputing that rent is owed for the month of April 2019. As the tenants acknowledge that the rent has not been paid for the month of April 2019, the claim for payment of rent succeeds in the amount of \$800.00.

Decision

13. The landlord's claim for payment of rent for the month of April 2019 succeeds in the amount of \$800.00.

Issue 2: Late fees - \$75.00

Landlord Position

14. The landlord testified she is seeking payment of late fees in the amount of \$75.00 as the rent has not been paid for the month of April 2019.

Tenant Position

15. The tenants said the late fees should not apply because they gave more than a month's notice.

Analysis

16. The rental arrears have been established in paragraph 13 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent has not been paid for the month of April 2019, the late fees have exceeded the maximum amount of \$75.00.

Decision

17. The landlord's claim for late fees succeeds in the amount of \$75.00.

Issue 3: Payment of damages/cleaning - \$1283.56

Landlord Position

18. The landlord testified that when the tenants vacated the unit there were 5 light bulbs burnt out. Two light bulbs were burnt out in the stove and 1 each in the bedroom, bathroom and outside. She purchased a package of 12 at [REDACTED] at a cost of \$39.99 plus \$6.00 tax for a total of \$45.99. She is seeking ½ of the cost of the light bulbs. She testified that there were marks on some walls and the unit had to be cleaned. There were yellow streaks on the 4 walls in the porch, 1 wall in the main bedroom and 1 wall in the living room. The walls had to be painted. It looked like the tenants were smoking in the unit. The landlord said the unit was painted 6 months before the tenants moved into the unit. She had to purchase paint trays, liners and rollers as she had the paint on hand. The cost of the supplies was \$35.62. The landlord further testified that herself, her

parents and her sister spent two days at the unit; 8 hours each day for a total of 64 hours at a rate of \$19.00 per hour for a total of \$1216.00 (8 hours x 4 people = 32 hours per day x 2 days = 64 hours x \$19.00 per hour = \$1216.00). Of that 64 hours, 4 hours was spent painting. The other 60 hours was spent cleaning the unit and cleaning up outside. They had to clean the fridge, stove, sink, windows, heaters, floors, baseboards and behind the washer and dryer. She said most of the work was spent on the baseboards. Also there was black on the windows and they had to scrap dog poop of the heaters and the floor. An hour was spent outside picking up dog poop and cigarette butts. She said the unit was cleaned when the tenants moved in because she hired a cleaner to clean the unit.

19. The landlord testified that the track was broken on the closet door in the living room. The cost to replace the track was \$10.15.
20. The landlord presented into evidence a receipt from [REDACTED] (LL #1) for the purchase of the light bulbs; a receipt from [REDACTED] (LL #2) for the purchase of the paint supplies; photographs of the walls (LL #3); a receipt from [REDACTED] (LL #4) for the purchase of the track for the door; a photograph of the track (LL #5); photographs of what needed to be cleaned (LL #6); and a video of someone cleaning a window (LL #7).

Tenant Position

21. The tenants testified that all of the light bulbs were replaced during the tenancy. The marks were on the wall when they moved into the unit and they cleaned the unit before they moved out on March 29, 2019. The door fell off the track when they were closing the closet door. They also testified that they did not do a walk through with the landlord at the start of the tenancy. The tenant presented photographs of the unit taken on March 29, 2019 (T #3).

Analysis

22. I have reviewed the testimony and evidence of the landlord, tenant1 and tenant2 in this matter. As far as I can see there are two issues that need to be addressed; (i) are the tenants responsible for the damages to the unit and (ii) is the landlord entitled to compensation for the damages. The burden of proof lies with the landlord to establish, that the damage exists, and that the tenants are responsible for the costs of repairs. The landlord failed to establish the condition of the walls, the track for the closet door and the number of light bulbs working at the start of the tenancy. As a result, the claim for compensation for these items fail. With respect to the cleaning of the unit, I find some cleaning was required. However, based on the photographs presented by both the landlord and tenants the amount of time the landlord is claiming to clean is excessive, I conclude that 6 hours would be a reasonable amount of time to

clean the unit. Therefore, the claim for cleaning succeeds in the amount of \$114.00 (6 hours @ \$19.00 per hour = \$114.00).

Decision

23. The landlord's claim for compensation for damages succeeds in the amount of \$114.00.

Issue 4: Application for Security Deposit

24. Under the authority of Section 47.(j) the director may authorize a landlord to offset money a tenant owes to the landlord against money the landlord owes to the tenant. Further under subsection (m), the director has the authority to determine the disposition of the security deposit.

Landlord Position

25. The landlord testified a \$400.00 security deposit was paid on September 2, 2018.

Tenant Position

26. The tenants acknowledge they paid a security deposit in the amount of \$400.00 on September 2, 2018.

Analysis

27. A security deposit was paid in September 2018. As the landlord has been partially successful in her claim, she shall retain the \$400.00 security deposit.

Decision

28. The landlord shall retain the \$400.00 security deposit as outlined in this decision and attached order.

Issue 5: 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 landlord paid an application filing fee in the amount of \$20.00 and \$83.92 for paper and ink for the printer for a total of \$103.92. She is seeking this cost. The landlord presented a receipt from Staples for the printing supplies (LL #8).

Analysis

31. The cost the landlord incurred to file 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*. However, the amount she is claiming for printing supplies is excessive as her claim for damages was partially successful. I award 25% of the printing cost. The tenants shall pay the landlord's hearing expenses in the amount of \$20.00 for the application fee and \$20.98 ($\$83.92 \times 25\% = \20.98) for the printing supplies for a total of \$40.98 ($\$20.00 + \$20.98 = \40.98).

Decision

32. The tenants shall pay the landlord's hearing expenses in the amount of \$40.98.

Summary of Decision

33. The landlord is entitled to the following:

a) Payment of rent	\$800.00
b) Late fees	\$75.00
c) Compensation for damages	\$114.00
d) Hearing expenses	\$40.98
e) Less the security deposit	<u>(\$400.00)</u>
f) Total owing to the landlord.....	\$629.98

October 16, 2019

Date

Residential Tenancies Section