

Residential Tenancies Tribunal

[REDACTED] Decision 19-0183-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:25 a.m. on April 2, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2 respectively, participated in the hearing.
3. The landlord, [REDACTED], hereafter referred to as the landlord participated in the hearing by way of a conference call.

Preliminary Matters

4. The tenants amended the claim for payment of utilities from \$353.69 to \$253.69.

Issues before the Tribunal

5. The tenants are seeking the following:
 - a. Return of the security deposit in the amount of \$525.00;
 - b. Payment of utilities in the amount of \$253.69;
 - 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 14, of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF.*

Issue 1: Return of the security deposit - \$525.00

8. In determining an application for the return of the security deposit, the tenant is required to establish a security deposit was paid.

Tenant Position

9. The tenants testified that they moved into the unit on October 1, 2017 for a one year term. The rent was set at \$1050.00 per month due on the 1st of each month. They paid a security deposit in the amount of \$525.00 on that same day. They moved out of the unit on February 15, 2019 and the landlord has not returned the security deposit as of the date of the hearing.

Landlord Position

10. The landlord testified that a security deposit in the amount of \$525.00 was paid.

Analysis

11. I have reviewed the testimony and evidence of the tenants and the landlord and I find a security deposit was paid in October 2017. The tenants moved out of the unit on February 15, 2019. I also find the landlord has not filed an application to keep the security deposit as per Section 14.(11). Section 14.(12) states:

14.(12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

Decision

12. The landlord shall return the security deposit in the amount of \$525.00.

Issue 2: Payment of utilities - \$253.69

Tenant Position

13. Tenant2 testified that in January 2019 the ceiling in the upstairs back bedroom fell in due to a leak. The landlord hired a company to make the repairs. The

representatives from the company stripped out the bedroom including the insulation. They put a giant dehumidifier and a fan in the room to dry out the room and the representatives advised the tenants to keep the bedroom door open. The dehumidifier and fan were going 24 hours a day for the period January 27 – February 15, 2019. Tenant1 said their power bill increased due to the use of the dehumidifier and the fan and that they had to turn up the heat because they couldn't close the door to stop the heat from going out through the giant hole in the ceiling.

14. Tenant2 testified that on January 27, 2019 the landlord gave them a verbal notice to vacate the unit. When the representatives from the company were doing the work they found asbestos in the ceiling. He said that was one of the main reasons they had to be out of the unit as soon as possible. Tenant2 presented photographs of the bedroom (T #2).
15. Tenant1 testified that they are charging \$11.00 + tax per day for the 20 days. This is based on the Newfoundland Power bill (T #3) for the period January 17 – February 15, 2019.
16. Tenant1 also testified that in late September or early October 2018 they notified the landlord that there was a leak. On October 22, 2018 they notified the landlord that the leak was getting worse.

Landlord Position

17. The landlord testified that there is a certain amount of electricity used for daily living. The tenants did not give a breakdown on the cost of electricity for each of the items. The landlord also testified that tenants were asked to move out on January 27, 2019 but they never moved out until February 15, 2019. They did not pay any rent for the period February 1 – 15, 2019.
18. The landlord further testified that when the leak occurred he had a contractor inspect the roof and the leak was caused by an ice dam. The contractor also told him it was a different issue than the leak the tenants brought to his attention in the fall.

Analysis

19. I have reviewed the testimony and evidence of the tenants and the landlord and I find there was a leak in the upstairs back bedroom. The leak was not caused by the tenants. I also find the tenants are claiming they incurred extra cost on the power bill because of the use of a dehumidifier, a fan and they had to turn up the heat in the unit because the bedroom was stripped out due to the leak. Based on the Newfoundland Power bill, I find the tenants used 94 KWh

more for the period January 17 – February 15, 2019 than they did for the same period in 2018.

Decision

20. The tenants' claim for payment of the power bill succeeds in the amount of \$12.32 (94 KWh x \$.11391 cent per KWh = \$10.71 + \$1.61 tax = \$12.32).

Issue 3: Hearing Expenses - \$20.00

21. 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*.

Tenant Position

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

Analysis

23. The costs the tenants 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*. Therefore, I find the landlord is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

24. The landlord shall pay the tenants' hearing costs in the amount of \$20.00.

Summary of Decision

25. The tenants are entitled to the following:

- a) Refund of the security deposit.....\$525.00
- b) Payment of utilities..... \$12.32
- c) Hearing expenses \$20.00
- d) **Total Amount owing to the tenants****\$557.32**

July 3, 2019

Date

[REDACTED]
Residential Tenancies Section