

## **Residential Tenancies Tribunal**

[REDACTED] Decision 19-0203-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 1:15 p.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. The landlord [REDACTED] did not attend the hearing but he was represented by [REDACTED].

### **Preliminary Matters:**

4. The tenants reduced the claim for return of possession from \$6119.00 to \$1450.00.
5. Tenant2 left the hearing about half way through the hearing.

### **Issues before the Tribunal**

6. The tenants are seeking the following:
  - a. Return of the security deposit - \$425.00;
  - b. Compensation for repairs to the front door in the amount of \$325.00;
  - c. Return of rent - \$425.00;
  - d. Return of possessions – tires for the vehicle;
  - e. Hearing expenses.

7. The landlords are seeking the following:

- a. Compensation for damages - \$420.11;
- b. Hearing expenses.

## **Legislation and Policy**

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 10, 14, and 19 of the Act and Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF.

### **Issue 1: Return of possessions**

#### Tenant Position

10. The tenants stated they moved into the unit on July 1, 2018 on a month to month tenancy with rent set at \$850.00 per month due on the 1<sup>st</sup> of each month.
11. Tenant1 testified that when they moved out of the unit on March 11, 2019 the four tires for their vehicle were underneath the snow. They were unable to remove the tires. The cost of the tires is \$1450.00.

#### Landlord Position

12. The landlord testified that the tires are in the yard covered in snow. She will allow the tenants to come to the unit to pick up the tires when the snow is gone.

### **Analysis**

13. I have reviewed the testimony of tenant1 and the landlord and I find the tires are at the rental unit.

### **Decision**

14. The landlord shall return the tires to the tenants.

## **Issue 2 – Return of rent - \$425.00**

### **Tenant Position**

15. Tenant1 testified that the landlords received \$850.00 for rent for the month of March 2019 from Advanced Education Skills and Labour (AESL). She testified that on March 7, 2019 a representative from the Sheriff's office came to their unit and gave them a letter and informed them that they had to move out. The officer told them they will give them a couple of days to move and the officer would be back on March 11, 2019 to change the locks. The tenants moved out on March 11, 2019 before the Sheriff Officer came to the unit. Tenant1 stated they are seeking back the \$850.00 less the rent for the 11 days.
16. The tenants testified that they told the landlords in January that they were moving out of the unit. The landlords then gave them a termination notice to vacate the unit. They did not move out. A hearing was held in February 2019 but they did not attend the hearing.

### **Landlord Position**

17. The landlord testified that she gave the tenants a termination notice in January 2019 to vacate the unit. The tenants did not move out on the termination notice. A hearing was held in February 2019 and an order was issued. The order stated the tenants had to vacate the unit. The landlord presented a copy of the Decision and Order, [REDACTED], dated February 25, 2019 (LL #1). She testified that she received \$850.00 for March's rent in early March 2019 from AESL on behalf of the tenants. She said that on March 11, 2019 she received the keys to the unit from the Sheriff's Office.

### **Analysis**

18. I have reviewed the testimony of the tenants and the landlord. I find there is one issue that needs to be addressed: (i) are the tenants entitled to a rebate of rent for the period March 12 – 31, 2019. I also find the landlords served a termination notice on the tenants in January 2019 and the tenants did not move out on the notice. A hearing was held in February 2019 and an order was issued on February 25, 2019 stating the tenants had to vacate the property immediately. The tenants did not move on the order and the landlords had to engage the services of the Sheriff's office to have the tenants removed from the unit. The unit was given back to the landlords on March 11, 2019. Further, the landlords received the \$850.00 rent for the month of March 2019.

## **Decision**

19. The landlords shall return to the tenants the rent in the amount of \$542.55 (\$850.00 - \$307.45 = \$542.55) for the month of March 2019 less the rent for the period March 1 – 11, 2019. The landlords shall retain the \$307.45 (\$850.00 x 12 months = \$10,200.00 ÷ 365 days = \$27.95 per day x 11 days = \$307.45) for the period March 1 – 11, 2019.

### **Issue 3 – Payment of the security deposit - \$425.00**

20. 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.

#### Tenant Position

21. The tenants testified they paid a security deposit in the amount of \$425.00 in June 2018. They are seeking return of the security deposit.

#### Landlord Position

22. The landlord testified that the security deposit was dealt with in the order [REDACTED].

## **Analysis**

23. A security deposit in the amount of \$425.00 was paid in June 2018. After reviewing the Order of the Director dated February 25, 2019, I find the landlords were authorized to retain \$415.47 of the security deposit.

## **Decision**

24. The landlords shall retain the balance of the security deposit in the amount of \$9.73 as outlined in this decision and attached order.

### **Issue 4: Compensation for work completed - \$325.00.**

#### Tenant Position

25. Tenant1 testified that the entrance door did not close properly. There was snow drifting in through the door. She verbally notified the landlords about the problem but the landlords did not correct the problem. On January 27, 2019 she tried to reach the landlords concerning the door but she was unable

to reach them so she hired a contractor through Kijiji to fix the problem. The contractor, [REDACTED], came to the unit and fixed the door. He charged them \$325.00 for the repairs. Tenant1 presented a copy of the receipt from [REDACTED] (T #1) dated January 29, 2019.

26. Tenant1 also testified that when they were moving into the unit the male landlord said there was a problem with the door knob. Sometimes you just have to jiggle with the door knob in order for the knob to work.
27. After the landlord gave her testimony, tenant1 testified that the door was not kicked in.

#### Landlord Position

28. The landlord testified that the door was kicked in. She said there was no problem with the door when they moved into the unit. The tenants signed a Rental Premises Condition Report (LL #5) on June 25, 2018 stating the door was in good condition. The landlord presented a photograph of the door (LL #3). She said the photograph was taken in May 2018.

#### **Analysis**

29. I have reviewed the testimony and the evidence presented and I find the tenants did not provide any evidence to show the condition of the door. Also if there was a problem with the door the tenants did not address the problem in writing to the landlords to give the landlords a reasonable period of time to correct the problem. Further, the Rental Premises Condition Report submitted by the landlord shows that the door was in good condition when the tenants moved into the unit.

#### **Decision**

30. The tenants' claim for compensation for repairs to the door fails.

#### **Issue 4: Compensation for damages - \$420.00**

#### Landlord Position

31. The landlord testified that when the tenants vacated the unit, the door box for the entrance door was damaged. The door box was split and it has to be replaced. They received a quote in the amount of \$290.11 from Sunserve Windows and Doors (LL #7) to have the door box replaced. She said the door box is about 4 years old and was in good condition when the tenants moved

into the unit as per the Rental Premises Condition Report (LL #5). The landlord presented photographs of the door box after the tenants vacated (LL #2) and a photograph of the door prior to the start of the tenancy (LL #3). The photograph of the door taken prior to the start of the tenancy is not a close up photograph.

32. The landlord testified that the window screen in the second bedroom was damaged. They found the window screen outside the unit. She presented photographs of the screen (LL #6). The screen was replaced in February 2019 by Sunserve Windows and Doors at a cost of \$30.00 (LL #7).
33. The landlord testified that when the tenancy ended the smoke alarm was not on the base and there was tape over the base of the smoke alarm. She testified that the smoke alarm is 2 years old and the cost to replace the smoke alarm was \$34.49 (\$29.99 + \$4.50 tax = \$34.49). The landlord submitted a photograph of the base of the smoke alarm (LL #8) and a receipt from Kent (LL #9) for the purchase of the new smoke alarm.
34. The landlord testified that she paid [REDACTED] \$60.00 (3 hours @ \$20.00 per hour) to clean the unit. The cleaning consisted of the windows, fridge, stove, oven and the sink. The landlord presented a receipt from [REDACTED] (LL #10) and photographs of what needed to be cleaned (LL #11).

#### Tenant Position

35. Tenant1 testified that the door was rotten. She said the landlord was rushing them when they did the walkthrough of the unit prior to them moving in. She also testified that the smoke alarm was on the counter when they moved into the unit. They put the smoke alarm back on the base but it fell down.
36. Tenant1 also testified that she spent 6 or 7 cleaning the unit prior to moving out. She said she did not clean the oven because it was not clean at the start of the tenancy.

#### **Analysis**

37. I have reviewed the testimony and evidence of the landlord and tenant1. The burden of proof lies with the landlords to establish, that the damage exists and that the tenants are responsible for the costs of repairs. I find that the door box and the window screen were damaged during the tenancy. The rental premises condition report signed by both the landlords and tenants indicates the door and the windows were in good condition at the start of the tenancy. Door boxes and window screens are depreciable items with a life expectancy

of 15 years for the door box and 12 years for the screen. As the door box is 4 years old, the landlord is awarded \$212.74 ( $\$290.11 \div 15 \text{ years} = \$19.34 \text{ per year} \times 11 \text{ years remaining} = \$212.74$ ) for replacement of the door box. The landlord is also awarded \$7.50 ( $\$30.00 \div 12 \text{ years} = \$2.50 \text{ per year} \times 3 \text{ years} = \$7.50$ ) for replacement of the screen.

38. With regard to the replacement of the smoke alarm. Based on the photograph presented of the base of the smoke alarm, I find the smoke alarm was missing at the end of the tenancy. A smoke alarm is a depreciable item with a life expectancy of 10 years. As the smoke alarm was 2 years old, the claim for replacement succeeds in the amount of \$27.60 ( $\$34.49 \div \$3.45 \times 8 \text{ years remaining} = \$27.60$ ).
39. With respect to the cleaning, after reviewing the photographs presented some cleaning was required when the tenancy ended. I find the amount the landlords are claiming to clean the unit is reasonable.

**Decision:**

40. The landlords' claim for damages succeeds as per the following:
  - a. Replacement of the door box ..... \$212.74
  - b. Replacement of the window screen..... 7.50
  - c. Replacement of the smoke alarm..... 27.60
  - d. Compensation for Cleaning ..... 60.00
  - e. Total owing for damages ..... \$307.84

**Hearing Expenses**

41. 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**

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

### Landlord Position

43. The landlords paid an application filing fee in the amount of \$20.00 and \$19.22 for the development of photographs for a total of \$39.22. The landlords are seeking these costs.

### **Analysis**

44. The costs the tenants and the landlords incurred to make the application are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. However, as both the tenants and landlords have been partially successful in their claim, each party shall bear their own hearing expenses.

### **Decision**

45. Both the tenants and landlords shall bear their own hearing expenses.

### **Summary of Decision**

46. The tenants are entitled to the following:

- a) Refund of rent.....\$542.55
- b) Balance of the security deposit .....\$9.73
- c) **Less compensation for damages.....\$307.84**
- d) **Total Owing to tenants.....\$244.44**
- e) **The landlord shall return the tires to the tenants**

July 5, 2019

Date

Residential Tenancies Section