

Residential Tenancies Tribunal

[REDACTED] Decision 19-0240-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 12:15 p.m. on April 18, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], represented by [REDACTED], [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.

Preliminary Matters:

4. The application was amended to reflect [REDACTED] as the landlord.
5. The claim for payment of rent was amended from \$833.00 to \$1366.20 and the claim for damages was amended from \$977.50 to \$759.62.
6. The tenants were not served with the full claim 10 days prior to the hearing. 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. The tenants waived their 10 day right and I proceeded with the hearing.

Issues before the Tribunal

7. The landlord is seeking the following:

- a. Payment of rent in the amount of \$1366.20;
- b. Compensation for damages in the amount of \$709.62;
- c. 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, 18, 19 and 34 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 in the amount of \$1366.20.

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

Landlord Position

- 11. The landlord stated the tenants moved into the unit on October 15, 2018 for a term agreement (LL #1) to end on May 31, 2019. The rent was set at \$1600.00 per month due on the 1st of each month. The tenants paid a pro-rated amount for the month of October 2018.
- 12. The landlord testified that the tenants sent her a text message (LL #2) on February 13, 2019 notifying her that they were vacating the unit on March 13, 2019. She started advertising the unit for rent on Kijiji on February 15, 2019. The tenants vacated on March 5, 2019 and the unit was re-rented for March 29, 2019 at a reduced rate of \$1250.00 per month. She testified that she received \$260.00 towards March's rent and she is seeking the difference in the rent for the period March 29 – April 13, 2019 as the tenants were required to give a two month notice to terminate the tenancy. The landlord presented a copy of the ad on Kijiji and some of the responses to the ad (LL #3).

Tenant Position

13. Tenant1 testified that she sent a text message to the landlord on February 13, 2019 notifying the landlord they were moving out on March 13, 2019. They moved out on March 5, 2019. She acknowledges they paid \$260.00 towards the rent for March 2019.
14. Tenant2 testified that when the security deposit was paid they were going to rent the unit on a month to month tenancy but before they moved into the unit they signed a term agreement.

Analysis

15. I have reviewed the testimony and evidence of the landlord and the tenants and I have determined that there are two issues that need to be addressed; (i) is the termination notice valid; and (ii) is the landlord entitled to rent. I find that the tenants signed a term agreement for the tenancy to end on May 31, 2019 and the tenants gave a notice on February 13, 2019 that they were vacating on March 13, 2019 but they vacated on March 5, 2019. The tenants did not give a two month notice prior to the end of the term as required under section 18.(1)(c) and the notice was not in the format prescribed by the minister as per sections 18.(9) and 34 of the Act. I also find the tenants paid \$260.00 towards March's rent. Further, the landlord mitigated her losses right away as per section 10.(1) (4). She advertised the unit on Kijiji on February 15, 2019 and the unit was re-rented beginning March 29, 2019 at a reduced rate.
16. As the tenants did not terminate the tenancy as required by section 18(1)(c) of the Act and the landlord mitigate her losses, the landlord is entitled to the rent up to March 28, 2019 in the amount of \$1212.80 ($\$1600.00 \times 12 \text{ months} = \$19,200.00 \div 365 \text{ days} = \$52.60 \text{ per day} \times 28 \text{ days} = \1472.80 less the \$260.00 paid = \$1212.80). The landlord is also entitled to the difference in the rent for the period March 29 – April 13, 2019 ($\$1250.00 \times 12 \text{ months} = \$15,000.00 \div 365 \text{ days} = \41.10 per day) in the amount of \$184.00 ($\$52.60 \text{ per day for rent set at } \$1600.00 - \$41.10 \text{ per day for rent set at } \$1250.00 = \$11.50 \text{ per day} \times 16 \text{ days} = \184.00).

Decision

17. The landlord's claim for payment of rent succeeds in the amount of \$1212.80 for the period of March 1 – 2019 and \$184.00 for the period March 29 – April 13, 2019 for a total of \$1396.80 ($\$1212.80 + \$184.00 = \1396.80).

Issue 2 - Compensation for damages - \$709.62

Relevant Submissions

Landlord Position

18. The landlord testified that her employee spent 12 hours cleaning the unit. Her company charges \$30.00 per hour plus tax for a total of \$414.00. This includes the employee's time and the supplies used to clean. The employee had to clean the countertops, stove, fridge, floors, stairs, baseboards, bathtub, sink, light fixtures and walls. Also the furniture had to be cleaned because there were stains on the chesterfield and the pillows and the employee had to launder the linens as the sheets and pillow cases were stained. The landlord said everything was in good condition when the tenants moved in as per the Home Condition Checklist (LL #4). However, the tenants were not present for the outgoing walk through. The landlord presented photographs of the unit taken after the tenants vacated (LL #6) and a copy of the invoice that was sent to the homeowner from the company (LL #5).
19. The landlord testified that there were pillows, pillow cases, a fitted sheet, dish clothes and dish towels missing when the tenancy ended. There was a pillow missing from the loft and one from the bedroom. The fitted sheet was missing from the bedroom and there were no dish clothes or dish towels left in the kitchen. All of these items were between 1 and 2 years old. The replacement pillows were purchased at Costco at a cost of \$20.69 (LL #7) and the sheets, pillow cases and the dish clothes and dish towels were purchased at Dominion (LL #8) for a cost of \$91.03.
20. The landlord testified that she had to purchase light bulbs at a cost of \$26.40 (LL 39) because there were a couple of light bulbs burnt out in the dining room and the loft. She said she is not sure on the number of light bulbs that were burnt out.
21. The landlord testified that the tenants left garbage outside the door and her employee had to bring the garbage to the dump. She is charging \$57.50 to have the garbage removed. The landlord presented a photograph of the garbage left behind (LL #10).
22. The landlord is seeking \$100.00 to have the dog poop removed from the back yard. She was charged \$100.00 by General Repairs & Services (LL #11) to have the dog poop removed.

23. The landlord testified that she paid General Repairs & Services \$50.00 to fix a chair, the sink drain, replace outlet screws and to dispose of yard waste. She said her new tenants noticed these items but she does not have photographs to show the condition of these items.

Tenant Position

24. Tenant2 testified that the pillows and the chesterfield were stained when they moved into the unit and they were never given an inventory of the items that were in the unit. He said they cleaned the unit before they moved out and they kept up on the dog poop removal. He acknowledges that they left some garbage outside the door because it was not garbage day. He testified that they have no knowledge on the items the landlord is claiming to have repaired and she did not present any evidence to show the condition of these items.

25. Tenant1 testified that when they moved into the unit they removed the bedsheets from the bed and put them in the closet because they used their own sheets. She also testified that there were no dishcloths or dish towels in the unit when they moved in.

Analysis

26. I have reviewed the testimony and evidence of the landlord and the tenants and I find the landlord is claiming for cleaning, missing items and garbage removal. In any damage claim 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. Based on the photographs presented, I find that some cleaning was required when the tenancy ended. However, the amount of time the landlord is claiming is unreasonable. I conclude that 4 hours would be a reasonable amount of time to have the unit cleaned.

27. With respect to the missing items, I find the landlord did not provide an inventory of the items that were in the unit at the start of the tenancy. Also, the landlord was unable to determine the number of light bulbs that were burnt out.

28. With regard to the garbage disposal, the removal of dog poop and the minor repairs, I find the tenants left the garbage outside the unit because it was not garbage day. I award an arbitrary amount of \$30.00 to dispose of the garbage. I also find, the landlord did not present any evidence to establish that there was dog poop in the back yard and there were items that needed to be fixed.

Decision

29. The landlord's claim for damages succeeds in the amount of \$138.00 (4 hours x \$30.00 per hour = \$120.00 + \$18.00 tax = \$138.00) for cleaning and \$30.00 for garbage disposal for a total of \$168.00 (\$138.00 + \$30.00 = \$168.00).

Issue 3 – Payment of the security deposit - \$1200.00

30. 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

31. The landlord testified a \$1200.00 security deposit was paid on September 30, 2018.

Tenant Position

32. The tenants acknowledges they paid a \$1200.00 security deposit.

Analysis

33. A security deposit was paid on September 30, 2018. As the landlord has been successful in the claim for rent and some damages, the landlord shall retain the security deposit in the amount of \$1200.00.

Decision

34. The landlord shall retain the security deposit in the amount of \$1200.00 as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

35. 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

36. The landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking this cost.

Analysis

37. The cost the landlord 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 tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00 as the landlord was partially successful in her claim.

Decision

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

Summary of Decision

39. The landlord is entitled to the following:

- a) Payment of rent \$1396.80
- b) Compensation for damages..... \$168.00
- c) Hearing expenses \$20.00
- d) **Less the security deposit (\$1200.00)**
- e) **Total Owing to Landlord..... \$384.80**

July 26, 2019

Date

Residential Tenancies Section