

Residential Tenancies Tribunal

[REDACTED] Decision 19-0262-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:30 a.m. on May 2, 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 by conference call.
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing.

Preliminary Matters

4. The landlord amended the claim for payment of utilities from \$200.00 to \$74.95 and the claim for damages from \$95.00 to \$124.00.

Issues before the Tribunal

5. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$850.00;
 - b. Payment of utilities in the amount of \$74.95;
 - c. Payment of late fees in the amount of \$75.00;
 - d. Payment of damages in the amount of \$124.00;
 - e. Replacement of locks in the amount of \$97.12;
 - f. 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, 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 - \$850.00

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 stated that the tenant moved into the unit on November 1, 2018 for a six month term with rent set at \$850.00 per month due on the 1st of each month. A copy of the lease agreement was submitted into evidence (LL #1). The landlord testified that on February 4, 2019 the tenant asked if she could sublet the apartment. She agreed. She told the tenant it would be hard to sublet as she only had two months left in her term. It would be better to look for someone for a year that they both agreed on. She testified that she wanted the tenant to advertise the unit the same way she advertised when the tenant moved into her unit. The tenant had two different perspective tenants that were interested in renting the unit. They may be suitable for two months but they were not suitable for a year's tenancy. The landlord said she normally rents the unit for a one year term but she agreed to rent to this tenant for six months.
10. The landlord further testified that she advertised the unit sometime in March and the unit was re-rented for May 1, 2019. On April 1, 2019 the tenant left a letter (LL #2) along with the keys on the door of the unit. The letter stated she could not pay the rent for the month of April and the apartment is vacant.

Tenant Position

11. The tenant testified that she contacted the landlord on subletting the unit and the landlord agreed. On February 24, 2019 she had a female interested in renting the unit to move in on March 1, 2019. The person was a 20 year old childcare worker who was having a friend live with her. This person also had a pet. The tenant said when she moved into the unit the landlord did not allow pets but she believes the landlord refused this person because of the person's age. On March 24, 2019 she had a couple interested in the unit to move in on

April 1, 2019. The landlord refused again because of their income. The lady was pregnant and her partner was unemployed. He was a seasonal worker.

12 The tenant also testified that when perspective tenants viewed the unit she explained to them that she was moving out the end of April 2019 and the landlord was looking for tenants for a term of one year. She acknowledges she left a letter and the keys on the door on April 1, 2019. The tenant submitted copies of text messages between herself and the landlord concerning the perspective tenants (T #1).

Analysis

13. I have reviewed the testimony and evidence of the landlord and tenant and I find there is 1 issue that needs to be addressed; (i) is the landlord entitled to rent for the month of April 2019. I find that the landlord allowed the tenant to sublet the unit and she had reasonable grounds to refuse the female as a tenant as that person had a cat. With regard to the couple that were interested the landlord refused due to their income. Even though the landlord refused the perspective tenants, the tenant is still required to give a written termination notice, whatever the reason, stating the section of why she is terminating the tenancy as per section 34 of the Act. The letter the tenant left on the door of the unit on April 1, 2019 did not state a section of the Act under which the notice was given nor did it state the address of the rental unit as required by section 34. Therefore, the tenant failed to terminate the rental premises as required. Further, under section 10.(1)4 the landlord mitigated her losses as she advertised the unit and the unit was re-rented for May 1, 2019.

14. The landlord's claim for the payment of rent succeeds in the amount of \$850.00 for the month of April 2019.

Issue 2: Compensation for payment of utilities - \$74.95

Landlord Position

15. The landlord testified that the tenant was responsible for the payment of utilities. She had a lease signed until the end of April 2019. On April 3, 2019 the tenant had the Newfoundland Power bill converted back to the landlord's name. The cost of the utilities for the period of April 3 – 11, 2019 was \$26.81 as per the Newfoundland Power bill (LL #4). She said based on the kwh used for that period she estimates the cost of the utilities for the period April 11 – 30, 2019 is \$48.14 ($169 \text{ kwh} \div 8 \text{ days} = 21.13 \text{ kwh per day} \times 20 \text{ days} = 422.60 \text{ kwh} \times .11391\text{¢ per kwh} = \48.14). The total amount owing is \$74.95 ($\$26.81 + \$48.14 = \74.95) for the month of April.

Tenant Position

16. The tenant testified she was not living in the unit during the month of April.

Analysis

17. I have reviewed the testimony and evidence of the landlord and tenant. I have determined there is one issue that needs to be addressed; (i) is the tenant responsible for the payment of utilities for the month of April 2019. The tenant vacated on April 1, 2019 without giving a valid termination notice and she had the power bill converted back to the landlord's name on April 3, 2019. As the tenant is liable for rent as per paragraph 14, the tenant would be responsible for the utilities for the remainder of the month of April 2019.

Decision

18. The claim for compensation for the payment of the utilities succeeds in the amount of \$74.95.

Issue 3: Replacement of the locks - \$97.12

Landlord Position

19. The landlord testified that she sent a notice of abandonment to the tenant by a text message. She then changed the locks on the unit at a cost of \$97.12. The landlord presented a receipt from The Home Depot (LL #3) for the purchase of the locks.

Tenant Position

20. The tenant testified that she returned the key that the landlord provided. She said a landlord should change the locks after every tenancy.

Analysis

21. The changing of locks is considered an expense that a landlord would incur to secure the premises after a tenant vacates. Therefore, the claim fails.

Decision

22. The claim for compensation for the replacement of the locks fails.

Issue 4: Compensation for the cost for damages - \$124.00

Landlord Position

23. The landlord testified that in the living room when the tenancy ended there was a stain on the window ledge and the tenant had installed a TV mount on a wall. She had to purchase plaster at a cost of \$10.00 and her father spent 2 hours (@ \$19.00 per hour) plastering and painting. She said she gave the tenant permission to install the TV mount as long as she repaired the walls before she vacated.
24. The landlord testified that she spent 4 hours (4 hours @ \$19.00 per hour = \$76.00) cleaning the unit. The tenant had installed weather stripping. Instead of putting it on the door frame she installed it on the door. She said she spent a lot of time trying to clean the door with "goo gone" and she had to clean the tub, toilet, fridge, oven and the mould that was in the corner in the 2nd bedroom.

Tenant Position

25. The tenant testified that she never installed a TV mount on the wall. When she moved into the unit there was a stain on the window ledge and there were holes in the wall in the living room. She also testified that she cleaned the unit before she vacated but she accepts responsibility for the cleaning of the mould in the 2nd bedroom. The tenant presented photographs of the unit (T #2).

Analysis

26. I have reviewed the testimony and evidence of the landlord and tenant. As far as I can see there are two issues that need to be addressed: (i) did the tenant cause damage; and (ii) did the unit need to be cleaned when the tenancy ended. I find the landlord did not present any evidence to show the condition of the unit at the start and at the end of tenancy. However, the tenant acknowledges there may be some mould in the 2nd bedroom. As there was no evidence presented to show the amount of mould, I award two hours at the rate of \$19.00 per hour for the landlord to clean the mould.

Decision

27. The claim for compensation for cleaning succeeds in the amount of \$38.00 (2 hours x \$19.00 = \$38.00) and the claim for repairs fails.

Issue 5: Late fees - \$75.00

Landlord Position

28. The landlord testified that 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.

Analysis

29. The rental arrears has been established in paragraph 14 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 been paid for the month of April 2019 the late fees have exceeded the maximum amount of \$75.00.

Decision

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

Issue 6: Application for Security Deposit

31. 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

32. The landlord testified a \$450.00 security deposit was paid in October 2018.

Tenant Position

33. The tenant acknowledges she paid a security deposit in the amount of \$450.00.

Analysis

34. A security deposit was paid in October 2018. As the landlord has been successful in the claim for rent she shall retain the \$450.00 security deposit as outlined in this decision and order.

Decision

35. The landlord shall retain the security deposit as outlined in this decision and attached order.

Issue 7: Hearing Expenses - \$20.00

36. 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

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

Analysis

38. 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 tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

39. The tenant shall pay the landlord's hearing expenses in the amount of \$20.00.

Summary of Decision

40. The landlord is entitled to the following:

a) Rent owing	\$850.00
b) Late fees	\$75.00
c) Compensation for cleaning	\$38.00
d) Hearing expenses	<u>\$20.00</u>
e) LESS: Security deposit	<u>(\$450.00)</u>
f) Total Owing to Landlord	<u>\$533.00</u>

September 16, 2019

Date

Residential Tenancies Section