

Residential Tenancies Tribunal

[REDACTED] Decision 19-0290-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:15 a.m. on May 9, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.

Preliminary Matters

4. The landlord amended the claim for damages from \$1270.45 to \$916.82.

Issues before the Tribunal

5. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$1400.00;
 - b. Compensation for damages in the amount of \$916.82;
 - 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, 18, 19, 34 and 35 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 - \$1400.00

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 September 1, 2018 on a month to month tenancy with rent set at \$1400.00 per month due on the 1st of each month. A security deposit in the amount of \$700.00 was paid on August 7, 2018.
10. The landlord testified that she is seeking rent in the amount of \$1400.00 for the month of April 2019 because the tenant sent her a text message on March 14, 2019 stating he was vacating the unit on March 31, 2019. She posted an ad on Kijiji within a few days after receiving the notice and she showed the unit to perspective tenants while the tenant was still living in the unit. The unit was not re-rented as of the date of the hearing. The landlord presented into evidence a copy of the text message (LL #1) and a copy of the ad and responses to the ad (LL #2). The text message stated that he will be moving out of the apartment and gone by April 1st.

Tenant Position

11. The tenant testified that he sent the text message that was presented into evidence and he vacated the unit on March 31, 2019. He said that the landlord showed the unit about three times before he vacated.

Analysis

12. I have reviewed the testimony and evidence of the landlord and tenant. I have determined that there are 2 issues that need to be addressed; (i) is the termination notice a valid notice; and (ii) is the landlord entitled to rent for the month of April 2019. I find the tenant sent a text message on March 14, 2019 stating he was moving out and he would be gone by April 1, 2019. The notice

did not allow the amount of time to be given to terminate the tenancy as required under section 18.(1)(b) of the Act. Also the termination notice did not contain all of the information required to be given when terminating a tenancy as outlined in section 18.(9) and 34 of the Act. The notice is not a valid notice. Further, the landlord tried to mitigate her losses as per section 10.(1)(4) as she advertised the unit on Kijiji within a few days from receiving the text message and the unit was not re-rented for the month of April. The landlord is entitled to rent for the month of April 2019.

Decision

13. The landlord's claim for rent succeeds as per the following:

a. Rent owing for April 2019 \$1400.00

Issue 2: Payment of damages - \$916.82

Landlord Position

14. The landlord testified that when the tenancy ended the three posts on the back deck were damaged from the chain the tenant used to tie on the dog. When she went to the Paint Shop to get a quote for the stain she was advised she would have to paint all of the posts, boards and the railing but not the floor boards. She said the last time the deck was painted was two years ago and she is not claiming for her labour; just for the cost of the paint and supplies. The cost for the paint and supplies is \$174.77 as per the quote from The Paint Shop (LL #4). The landlord submitted photographs of the back deck (LL #3).

15. The landlord testified that one piece of the railing on the stairs inside the unit has to be replaced due to the deep grooves in it. She said the damage was caused by the dog. She received a quote from [REDACTED] (LL #6) in the amount of \$517.50 (\$450.00 + \$67.50 tax = \$517.50) to replace the piece of the railing. This quote cost includes the cost of the materials and labour.

16. The landlord further testified that one wall in the entrance way, one wall in the bathroom and two walls in the hallway were damaged and they need to be plastered and painted. The damage to the walls in the entrance way and the bathroom have tears in the gyproc. The tenant used command strips. When they were removed, some of the paint came off the wall. The walls in the hallway have grooves in them. The landlord said the unit was painted one year before the tenant moved in. She is not claiming for her time to plaster and paint. She is seeking the cost of the two gallons of paint in the amount of \$114.98 (\$99.98 + \$15.00 tax = \$114.98) as per the quote from The Paint Shop

(LL #4). She had to change the colour of the walls because the colour that was on the walls was discontinued.

17. The landlord also testified that she had to clean the unit. It took her a week or more to clean as she would spend a couple of hours at a time cleaning. She had to clean the fridge, stove, oven, sinks, dishwasher, underneath the fridge and stove, the floors, windows and the bathroom. She is not claiming for her time. She is claiming for the cost of the cleaning supplies in the amount of \$41.12. The landlord submitted a receipt from Walmart for the purchase of the supplies (LL #8) and photographs of the unit (LL #9).
18. The landlord testified that the shower curtain was missing from the bathroom. She purchased the shower curtain at Bed Bath and Beyond for herself but she didn't use it so she hung it in the unit for the previous tenant. That tenant lived in the unit for about three of months. She does not have a receipt for the shower curtain but she thinks she paid around \$65.00 for the shower curtain. She said the shower curtain was in the bathroom in July 2018 as she presented a photograph of the bathroom (LL #10) taken in July 2018. The photograph shows that there is a shower curtain in the bathroom.

Tenant Position

19. The tenant testified that he is accepting responsibility for the cost of the paint for the back deck, repairs for the replacement of the railing inside the unit and the cost of the cleaning supplies. He acknowledges the damage to the walls in the bathroom and the front entrance but he is not aware of any damages to the walls in the hallway. He testified that there was no shower curtain in the unit when he moved in.

Analysis

20. I have reviewed the testimony and evidence of the landlord and the tenant. I find the tenant is accepting responsibility for the cost of the paint for the back deck in the amount of \$174.77, replacement of the railing for the stairs in the unit in the amount of \$517.50 and \$41.12 for the cleaning supplies. The tenant is also accepting responsibility for the purchase of the paint for the walls in the bathroom and the entrance. I also find the landlord did not provide any evidence to show the condition of the walls in the hallway and that there was a shower curtain in the unit prior to the start of the tenancy. Further, the landlord did not give a breakdown for the paint for the walls. She purchased 2 gallons of paint for 4 walls.
21. As the landlord did not establish the condition of the walls in the hallway at the start of the tenancy, the landlord would be entitled to one gallon of paint for the walls in the bathroom and the entrance way. Paint is a depreciable item with

a life expectancy of 5 years. As the unit was painted one year prior to the tenant moving into the unit the landlord would be entitled to $\$40.25 (\$114.98 \div 2 \text{ gallons} = \$57.49 \text{ per gallon} \div 5 \text{ years} = \$11.50 \text{ per year} \times 3.5 \text{ years remaining} = \$40.25)$ for the purchase of paint for the walls in the bathroom and entrance way.

Decision

22. The claim for damages succeeds in the amount of \$773.64 (\$174.77 for the paint for the back deck + \$517.50 for replacement of the railing inside the unit + \$41.12 for the cleaning supplies + \$40.25 for the purchase of the paint for the walls for a total of \$773.64).

Issue 3: Application for Security Deposit

23. 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

24. The landlord testified a \$700.00 security deposit was paid in August 2018.

Tenant Position

25. The tenant testified that he paid \$700.00 for the security deposit on August 7, 2018.

Analysis

26. A security deposit was paid on August 7, 2018. As the landlord has been successful in her claim for rent and damages she shall retain the \$700.00 security deposit as outlined in this decision and order.

Decision

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

Issue 4: Hearing Expenses - \$44.73

28. 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

29. The landlord paid an application filing fee in the amount of \$20.00 and \$24.73 to have the photographs developed. The landlord is seeking these costs.

Analysis

30. The costs the landlord incurred to make the application and to have the photographs developed are considered reasonable expenses 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 \$44.73.

Decision

31. The tenant shall pay the landlord's hearing costs in the amount of \$44.73.

Summary of Decision

32. The landlord is entitled to the following:

a) Rent owing	\$1400.00
b) Payment for damages.....	\$773.64
c) Hearing expenses	<u>\$44.73</u>
d) LESS: Security deposit	<u>(\$700.00)</u>
e) Total Owing to Landlord.....	<u>\$1518.37</u>

July 26, 2019

Date

Residential Tenancies Section