

Residential Tenancies Tribunal

[REDACTED] Decision 19-0429-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:15 a.m. on June 26, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing through conference call.
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Preliminary Matters

4. [REDACTED] and [REDACTED] represented the tenant at the hearing.
5. [REDACTED] witness for the tenant attended by conference call.

Issues before the Tribunal

6. The tenant is seeking the following:
 - a. Refund of rent in the amount of \$1266.67;
 - b. Refund of the oil payment in the amount of \$200.00;
 - c. Return of the security deposit in the amount of \$925.00;
 - d. Hearing expenses.

7. The landlord is seeking the following:
 - a. Payment of damages in the amount of \$1299.15;
 - b. Payment of utilities in the amount of \$34.87;
 - c. Application of the security deposit;
 - d. 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, 31, 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: Refund of rent - \$1266.67

Tenant Position

10. The tenant testified that she moved into the unit on June 1, 2013 for a one year term with rent due on the 1st of each month. A rental agreement was signed each year for 12 months. The last rental agreement was for the period June 1, 2018 to May 31, 2019. The rate of rent at the end of the tenancy was set at \$1520.00 per month. She testified that she had been living out of province since January 2019 and her mother was staying at the unit. On March 23, 2019 she sent a termination notice to the landlord by e-mail stating that she was vacating on April 6, 2019 because the landlord was asking for a termination notice. She paid the rent for the month of April 2019. She is seeking the return of rent because the landlord did not allow access to the unit after April 5, 2019. She left the province on April 5, 2019.
11. The tenant submitted a copy of the termination notice (T #1). This notice does not state a section of the Act. A copy of the rental agreements for the period June 1, 2017 to May 31, 2018 and June 1, 2018 to May 31, 2019 were also submitted into evidence (T #3).

Landlord Position

12. The landlord testified that he knew the tenant would be leaving before the term ended on May 31, 2019. He would work with the tenant to find a new tenant to cover the last month's rent. In March he advertised the unit on Kijiji and NL Classified. He asked the tenant for confirmation when she would be vacating because he couldn't technically rent the unit for May 1, 2019 since they had an agreement until May 31, 2019. The tenant sent him a letter notifying him she

would be vacating on April 6, 2019. On April 4, 2019 they walked through the unit because the tenant was leaving the province on April 5, 2019.

13. The landlord further testified that he did not change the locks. He re-rented the unit for May 1, 2019 and the new tenant moved into the unit on April 28, 2019.

Analysis

14. I have reviewed the testimony and evidence of the landlord and I have determined that there is one issue that needs to be addressed; is the tenant entitled to return of rent. I find that there was a term agreement in place until May 31, 2019. The tenant was leaving before the end of the term and she sent a termination notice by e-mail to the landlord on March 23, 2019 stating that she was vacating on April 6, 2019. Under section 18.(1)(c) the tenant is required to give not less than a 2 month notice before the end of the term that she is vacating at the end of the term. Also, the termination notice did not state a section of the Act as required by section 34. Further, under section 10.(4), the landlord is required to mitigate his losses when a tenant abandons a unit. A tenant is considered to have abandoned the unit if the rental agreement is not terminated in accordance with the Act or the rental agreement as per section 31.(2). I find the landlord mitigated his losses as he had the unit re-rented for May 1, 2019. The tenant's claim for return of rent fails.

Decision

15. The tenant's claim for return of rent fails.

Issue 2: Payment of oil - \$200.00

Tenant Position

16. The tenant testified that she had approximately \$400.00 worth of oil delivered to the unit on April 2, 2019 but she is seeking half of the amount back. When she moved into the unit she agreed not to let the tank run dry as per the rental agreement. She is unsure of the amount of oil in the tank at the start of the tenancy. She testified that that there was no agreement in place that she would leave half of a tank of oil when she vacated the unit. When the landlord did the walk through with her on April 4, 2019 the landlord said that you only needed to put half of the amount of oil that you had put in the tank. The tenant submitted a copy of the invoice in the amount of \$399.94 from Western Petroleum dated April 2, 2019 (T #2).

Witness Position

17. Mr. [REDACTED], witness for the tenant, testified that when the landlord was at the unit on April 4, 2019 he stated that the amount of oil in the tank was over and above what was required because the tank was $\frac{1}{2}$ full when the tenant moved into the unit.

Landlord Position

18. The landlord testified that when the tenant moved into the unit the oil tank was half full. She agreed she would leave half a tank of oil when she vacated. On April 27, 2019, the day prior to the new tenant moving into the unit, the oil tank was half full.

Analysis

19. I have reviewed the testimony and evidence of the landlord and tenant. I have determined that there is one issue that needs to be addressed; is the tenant entitled to payment for the oil. I find that in the rental agreement the tenant agreed not to let the oil tank run dry. I also find that the tenant put almost \$400.00 worth of oil in the tank on April 2, 2019. As the tenant was responsible for the rent for the month of April as outlined in no. 14 the tenant would be responsible for the oil up to the date the landlord re-rented the unit. Further, the tenant failed to establish the amount of oil in the tank at the start of the tenancy. As a result, the claim for payment for the oil fails.

Decision

20. The tenant's claim for payment for the oil fails.

Issue 3: Payment of utilities - \$34.87

Landlord Position

21. The landlord testified that the tenant had the power taken out of her name on April 8, 2019 even though the rental agreement did not expire until May 31, 2019. The new tenant moved into the unit on April 28, 2019. The amount of the utilities for the period April 8 – 28, 2019 is \$34.87. The landlord submitted copies of two Newfoundland Power bills totaling \$34.87 (LL 32).

Tenant Position

22. The tenant testified that she had the power taken out of her name because she didn't have access to the unit.

Analysis

23. I have reviewed the testimony and the evidence of the landlord and tenant in this matter. I find that the tenant was responsible for the utilities. She did not terminate the tenancy as required by the Act and she had the utilities taken out of her name on April 8, 2019. The new tenant moved into the unit on April 28, 2019. Therefore, the tenant would be responsible for the utilities for the period April 8 – 28, 2018 in the amount of \$34.87.

Decision

24. The landlord's claim for payment of the utilities succeeds in the amount of \$34.87.

Issue 4: Damages - \$1299.15

Landlord Position

25. The landlord testified that when the tenancy ended there were some repairs that needed to be carried out. The tenant installed an eye bolt in the ceiling in the bedroom. When he removed the eye bolt it left a $\frac{1}{2}$ " hole in the ceiling. He spent 6 hours (@ \$19.00 per hour) making the repair as he had to plaster, prime and paint the ceiling. He also had to purchase a paint roller, a brush, compound, primer and paint at a cost of \$135.31. The ceiling was last painted about 1 or 2 years before the tenant moved into the unit. He testified that he had to replace the screen for the patio door as the screen was damaged. He purchased the materials at Kent at a cost of \$61.49 and he spent 3 hours (@ \$19.00 per hour) replacing the screen.
26. The landlord testified that he had to replace the vanity in the bathroom of the master bedroom as the sink had been dislodged from the surface. It was resting on the plumbing fixture. The vanity was installed about $1\frac{1}{2}$ years before the start of the tenancy. He purchased a new vanity at a cost of \$286.35 and it took him 5 hours to replace the vanity. The landlord also testified that the finish was worn on one area of the hardwood in the bedroom. It looks like she had a desk and chair in the room and the chair caused the damage. She did not use a protective on the flooring. He has not repaired or placed the hardwood but he received a quote from Kent in the amount of \$815.95 for the labour to replace the entire hardwood in the bedroom. He said based on the quote he received from Kent and the receipt from when he purchased the hardwood in 2008, he can do the work for \$360.00. The repair would be the cheapest way out.
27. The landlord testified that he and his mother spent over 4 hours cleaning the unit but he is only claiming for his time. They had to clean the floors as there

was something leaked from a garbage bag on the floor in the porch and there was dog hair everywhere. They also had to clean the walls and the cupboards. There were items left in the cupboard. The landlord also testified that he spent 6 hours picking up the miscellaneous items left in the unit and bringing the items to the dump.

28. The landlord submitted a receipt from Kent (LL #4) for the purchase of the paint and paint materials, materials for the screen and the vanity. He also submitted photographs of the ceiling in the bedroom (LL #5), the screen door (LL #6), the sink (LL #7), the flooring in the bedroom (LL #9), items that needed to be cleaned (LL #13), and the items that were left behind (LL #14). The receipt from Kent (LL #10) for the purchase of the flooring in 2008 and the quote from Kent (LL #11) were also submitted as evidence along with the estimate cost (LL #12) to replace the flooring and an Affidavit from Joan Harte stating she cleaned the unit (LL #15).

Tenant Position

29. The tenant testified that her x-boyfriend installed the eye bolt in the ceiling. With regard to the sink in the bathroom. The only thing she can remember was that the back piece was not connected to the wall or countertop when she moved in. With respect to the flooring in the bedroom, the landlord did not mention the flooring nor did she see any damages when they did the walk through. She said she is not convinced she caused the damage. She had a desk and chair in that room but she had a protective clear mat underneath the chair.
30. The tenant testified that the dog sheds very little hair and there was one bag of garbage left in the sun room.
31. The tenant's representative stated she assumed she would be able to go back into unit on April 28, 2019 to clean.

Witness Position

32. [REDACTED], witness for the tenant, testified that he was present when the landlord and tenant walked through the unit on April 4, 2019. The landlord said there was no obvious damage and he would be refunding the security deposit.

Analysis

33. I have reviewed the testimony of the landlord, the tenant, the representatives and the witness in this matter. I have determined that there are 2 issues that need to be addressed; (i) are there damages to the unit; and (ii) is the landlord entitled to compensation for the damages. The burden of proof lies with the

landlord to establish, that the damage exists, and that the tenant is responsible for the cost of repairs. I find that an eye bolt was installed in the ceiling and the landlord had to remove the bolt. The landlord is claiming for paint and labour to make the repair. The last time the ceiling was painted was 7 – 8 years ago. Paint is a depreciable item with a life expectancy of 3 – 5 years. Even though the paint has outlived its life expectancy, the landlord had to repair a small hole in the ceiling. I award an amount of \$50.00 to have the hole repaired. I also find that the screen for the patio door was damaged although the tenant said it was a small tear. Even if it is a small or large tear, the screen has to be replaced. The cost the landlord incurred to have the screen replaced is a reasonable amount. The claim for replacement of the screen succeeds in the amount of \$118.49 (\$61.49 for materials plus \$57.00 for labour for a total of \$118.49). With regard to replacement of the vanity in the bathroom, I find that the landlord failed to establish the condition of the vanity at the start of the tenancy or that the damage occurred due to a willful or negligent act by the tenant. Therefore, the claim is unsuccessful.

34. With respect to the repair to the flooring in the bedroom. The landlord did not present any evidence showing the condition of the floor prior to the start of the tenancy. I accept the testimony of the tenant that she didn't see any damage to the flooring at the time of the walk through. Therefore, the claim for repairs to the flooring fails. With respect to the cleaning and the removal of items left behind. Based on the photographs presented I find some cleaning was required and the amount the landlord is claiming is reasonable. However, the amount the landlord is claiming to dispose of the items left in the unit is unreasonable. I conclude that 2 hours would be a reasonable amount of time to pick up the items, bring them to the dump and his time at the dump. Therefore, the claim for garbage removal succeeds in the amount of \$38.00 (2 hours @ \$19.00 per hour = \$38.00).

Decision

35. The landlord's claim for damages succeeds as per the following:
 - a) Repairs to the ceiling\$50.00
 - b) Replacement of the screen for the patio door.....\$118.49
 - c) Compensation for cleaning.....\$76.00
 - d) Compensation for garbage removal.....\$38.00
 - e) **Total claim for damages.....\$282.49**

Issue 5: Application for Security Deposit

36. 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

37. The tenant testified she paid a \$925.00 security deposit prior to moving into the unit on June 1, 2013.

Landlord Position

38. The landlord acknowledges a \$925.00 security deposit was paid prior to the start of the tenancy.

Analysis

39. A \$925.00 security deposit was paid prior to June 2013. The landlord shall retain \$317.36 from the \$925.00 security deposit to cover the payment of utilities and the cost of the damages.

Decision

40. The landlord shall retain \$317.36 from the security deposit as outlined in this decision and attached order.

Issue 4: 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*.

Landlord Position

42. The landlord paid an application filing fee in the amount of \$20.00 and \$52.74 for the development of photographs and the purchase of flash drives (LL #17). The landlord is seeking these costs.

Tenant Position

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

Analysis

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

Decision

45. Each party shall bear their own hearing expenses.

Summary of Decision

46. The tenant is entitled to the following:

a) Return of the security deposit	\$925.00
b) LESS: Payment of the utilities.....	(34.87)
c) LESS: Compensation for damages	(282.49)
d) Total owing to the tenant	<u>\$607.64</u>

November 6, 2019

Date

Residential Tenancies Section