

Residential Tenancies Tribunal

[REDACTED] Decision 19-0440-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on September 9, 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.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matter

4. The landlord amended the claim for payment of rent from \$3700.00 to \$3850.00. The claim for damages was amended from \$1095.80 to \$995.80.
5. The tenant was not present or represented at the hearing. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. 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, and where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he/she has been properly served.

6. The affidavit of service submitted by the landlord shows that the notice of this hearing was sent electronically to the tenant on July 25, 2019 and the tenant have had 45 days to provide a response. The landlord submitted a copy of the e-mail along with a copy of an e-mail the tenant sent the landlord on May 4, 2018 containing his e-mail address. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in his absence.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$3850.00.
 - b. Compensation for damages in the amount of \$995.80.

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.

Issue 1: Payment of rent - \$3850.00

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 testified that the tenant moved into the unit on May 20, 2018 for a one year term with rent set at \$950.00 per month due on the 1st of each month. The rent for May was paid on May 10, 2018. The rent for the months of June - September 2018 was paid in full. On October 12, 2018 a payment of \$500.00 was paid towards October's rent and on November 12, 2018 \$600.00 was paid towards November's rent. This was the last payment he received. The landlord reduced the rent from \$950.00 to \$700.00 for the months of December 2018 – February 2019. The original rate of \$950.00 was charged for March 2019. He testified that he served a termination notice under section 19 (failure to pay rent) on March 5, 2019 to vacate on March 15, 2019. The tenant vacated on March 17, 2019.
12. The landlord submitted a copy of the termination notice (LL #1) and a copy of the rent ledger (LL #2).

Analysis

13. I have reviewed the testimony and the evidence of the landlord. I have determined that there is one issue that needs to be addressed; is the rent in arrears. Based on the rent ledger presented I find that since September 2018 the tenant has made 2 payments towards the rent; \$500.00 was paid on October 12, 2018 and \$600.00 was paid on November 12, 2018. The landlord reduced the rent to \$700.00 for the months of December 2019 – February 2019. I also find that the landlord served a termination notice on the tenant to vacate on March 15, 2019. The tenant vacated on March 17, 2019. Rent is owed in the amount of \$2900.00 for the period October 2018 – February 2019. Rent for the month of March can only be awarded up to March 17, 2019, the date the tenant vacated. \$530.91 ($\$950.00 \times 12 \text{ months} = \$11400.00 \div 365 \text{ days} = \$31.23 \text{ per day} \times 17 \text{ days} = \530.91) is owed for March 1 – 17, 2019.

Decision

14. The landlord's claim for payment of rent succeeds in the amount of \$3430.91 as per the following:

a) Rent for October 2018	\$450.00
b) Rent for November 2018.....	\$350.00
c) Rent for December 2018.....	\$700.00
d) Rent for January 2019	\$700.00
e) Rent for February 2019.....	\$700.00
f) Rent for March 1 – 17, 2019	<u>\$530.91</u>
g) Total owing to the landlord.....	\$3430.91

Issue 2: Compensation for cleaning/damages – \$995.80

15. The landlord testified that when the tenant moved out the unit was dirty and there were some damages. He paid Basil Cleaning \$150.00 on May 1, 2019 to clean the unit as the fridge was full of food and the stove, floors, cupboards and the bathroom were dirty. He testified that the tenant left items inside and outside the unit. He and his father spent 3 hours ($\$17.00 \text{ per hour} \times 3 \text{ hours} = \$51.00 \times 2 = \$102.00$) removing the pots and pans, tupperware containers and other items from the kitchen cabinets; taking down the items from the wall and removing a cabinet. They also spent 4 hours ($\$17.00 \text{ per hour} \times 4 \text{ hours} = \$68.00 \times 2 = \$136.00$) removing the tire, wood, a barbecue pit and bags of garbage that were left outside. All of the items had to be brought to the dump.

16. The landlord also testified that he and his father spent 8 hours between plastering, sanding, painting and general repairs. The master bedroom and the living room had to be painted as there were scrapes, chips and gouges in two walls in each of the rooms. The unit was painted just prior to the start of

the tenancy. They had to replace the kitchen faucet, the thermostat in the living room, the toilet seat, the heater in the bathroom and the door knobs for the 2 exterior doors and a dead bolt. The kitchen faucet was damaged. The part that connects to the sink was broken. The faucet was about 4 – 5 years old. The thermostat which was about 5 – 8 years old was cracked and the button was missing. The toilet seat which was 3 years old was broken and the heater was damaged. Also the paint was scraped off the heater. The heater was about 5 – 8 years old. The door knobs didn't work. It looked like someone tried to beat in the door. He testified that they also had to re-install the facing and the baseboards in the entrance way and in another room; replace a receptacle in the bedroom, replace the batteries in the smoke detector and replace a light bulb that was removed from the outside light fixture.

17. The landlord submitted into evidence the photographs of the unit taken after the tenancy ended (LL #4); a photograph of the cabinet left at the unit (LL #5); photographs of the unit prior to the start of the tenancy (LL #6); a copy of a receipt from Dollarama (LL #7) in the amount of \$3.45 for the purchase of paint rollers; a copy of a receipt from Home Hardware in the amount of \$42.76 (LL #8) for the purchase of paint and a receptacle; a copy of a receipt from Home Hardware (LL #9) in the amount of \$96.54 for the purchase of paint, paint brushes and the kitchen faucet; a copy of a receipt from Home Hardware (LL #10) in the amount of \$84.71 for the purchase of finishing nails, a toilet seat, a thermostat and a heater; a copy of a receipt from Home Hardware in the amount of \$106.90 (LL #12) for the purchase of batteries, two door knobs and one deadbolt; a copy of a receipt from Dollarama (LL #13) in the amount of \$1.44 for the purchase of a light bulb; and a copy of the Rental Premises Condition Report (LL #14) dated May 10, 2018 which was signed by both the landlord and tenant.

Analysis

18. I have reviewed the testimony and the evidence of the landlord. I have determined that there are 2 issues that need to be addressed; (i) are there damages to the unit; and (ii) is the tenant responsible for the damages. I find that some cleaning was required when the tenancy ended. The amount the landlord is claiming is reasonable. With regard to the disposal of the items left inside and outside. Based on the photographs presented, the amount the landlord is claiming is unreasonable. I conclude that it would take no more than 2 hours to dispose of the items left behind. The claim for garbage removal succeeds in the amount of \$34.00 (2 hours @ \$17.00 per hour = \$34.00).
19. With respect to the claim for the painting and the general repairs the amount the landlord is claiming is reasonable as there was some painting and minor repairs required when the tenant moved out. The claim for labour succeeds in the amount of \$272.00. Paint is a depreciable item with a life expectancy of 3

– 5 years. As the unit was painted in 2018, the claim for painting supplies succeeds in the amount of \$64.36 (\$3.45 for rollers + \$9.17 for paint brushes + \$26.44 for paint + \$41.39 for paint = $\$80.45 \div 5 \text{ years} = \$16.09 \text{ per year} \times 4 \text{ years remaining} = \64.36). With regard to the replacement of the kitchen faucet, the thermostat, the heater, and the door knobs. Based on the photographs that were presented, these items needed to be replaced. All of these items are depreciable items with the exception of the heater. A heater should last a lifetime. The life expectancy of a kitchen faucet is 8 years. As the faucet was between 4 and 5 years, the amount awarded to replace the faucet is \$26.67 ($\$60.94 \div 8 \text{ years} = \$7.62 \text{ per year} \times 3\frac{1}{2} \text{ years remaining} = \26.67). The life expectancy of the thermostat is 10 years. As the thermostat was between 5 – 8 years, the amount awarded to replace the thermostat is \$14.95 ($\$22.99 \div 10 \text{ years} = \$2.30 \text{ per year} \times 6\frac{1}{2} \text{ years remaining} = \14.95). The life expectancy of the door knobs and the dead bolt is 15 years. As the door knobs and the deadbolt are between 5 – 8 years, the amount awarded to replace the door knobs and the dead bolt is \$54.74 ($\$26.44 + \$26.44 + \$43.69 = \$96.57 \div 15 \text{ years} = \$6.44 \text{ per year} \times 8\frac{1}{2} \text{ years remaining} = \54.74). With respect to the replacement of the toilet seat. After reviewing the Rental Premises Condition Report, the toilet seat was broken when the tenancy started. The claim for replacement of the toilet seat fails.

20. With respect to the re-installment of the facing and the baseboards and the replacement of the light bulbs, batteries and the receptacle. I accept the landlord's testimony that the facing and the baseboards had to be re-installed and the light bulb, the batteries and the receptacle were missing when the tenancy ended. Therefore, the claim succeeds in the amount of \$16.21 (\$3.06 for the finishing nails + \$1.44 for the light bulb + \$10.34 for the batteries + \$1.37 for the receptacle for a total of \$16.21).

Decision

21. The landlord's claim for compensation for cleaning and damages succeeds in the amount of \$672.02 as per the following:
 - a) Cleaning.....\$150.00
 - b) Garbage removal\$34.00
 - c) Labour for painting and general repairs\$272.00
 - d) Painting supplies.....\$64.36
 - e) Replacement of the heater.....\$39.09
 - f) Replacement of the kitchen faucet.....\$26.67
 - g) Replacement of the thermostat.....\$14.95
 - h) Replacement of the door knobs/dead bolt\$54.74
 - i) Replacement of light bulbs, batteries and the Receptacles\$16.21
 - j) **Total owing to the landlord\$672.02**

Application for Security Deposit

22. 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

23. The landlord testified that a \$950.00 security deposit was paid in cash on May 10, 2018.

Analysis

24. A \$950.00 security deposit was collected. Under section 14.(1)(c) under a fixed term a landlord shall not demand a security deposit that is more than $\frac{3}{4}$ of the amount payable for the first month if rent was divided into monthly payments. As the rent was \$950.00 per month, the most the landlord could collect was \$712.50 ($\$950.00 \times 75\% = \712.50). The tenant made an overpayment of \$237.50. Under section 14.(3) where a landlord collected a security deposit that is more than the amount permitted under subsection (1)(c), the overpayment may be applied towards the rent. The landlord shall retain the \$712.50 security deposit as the landlord was awarded rent and compensation for damages. The landlord shall also apply the overpayment of the security deposit in the amount of \$237.50 towards the payment of rent.

Decision

25. The landlord shall retain the security deposit in the amount of \$712.50 and apply the overpayment of the security deposit of \$237.50 towards the outstanding rent as outlined in this decision and attached order.

Summary of Decision

26. The landlord is entitled to the following:

- a) Payment of rent.....\$3430.91
- b) Compensation for cleaning/damages.....\$672.02
- c) **Less the security deposit****(712.50)**
- d) **Less the overpayment of the security deposit.....(237.50)**
- e) **Total owing to the landlord****\$3152.93**

January 2, 2020

Date

Residential Tenancies Section