

## **Residential Tenancies Tribunal**

[REDACTED] Decision 19-0489-05

Denise O'Brien  
Adjudicator

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### **Introduction**

1. The hearing was called at 9:25 a.m. on July 18, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED] represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED] hereafter referred to as the tenant, participated in the hearing by a conference call. The respondent [REDACTED] did not attend the hearing but he was represented by [REDACTED].

### **Preliminary Matter**

4. The landlord amended the claim for the payment of rent from \$2023.00 to \$2000.00 and the claim for damages from \$3050.00 to \$3057.06.

### **Issues before the Tribunal**

5. The landlord is seeking the following:
  - a. Payment of rent in the amount of \$2000.00;
  - b. Payment of late fees in the amount of \$75.00;
  - c. Compensation for damages in the amount of \$3057.06;
  - d. 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 31 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 \$2000.00**

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 testified that the tenants moved into the unit on July 1, 2018 for a one year term with rent set at \$1000.00 per month due on the 1<sup>st</sup> of each month. On December 5, 2018 the receptionist with the company notified her that the tenants were not living in the unit. She sent a message to the tenant and informed her that if she was to sublet the unit, the sublet would have to complete an application and be approved by their office. The tenant contacted her and they spoke. The tenant said she would have the sublet fill out the application. On January 3, 2019 the sublet filled out the application. That same day the landlord informed the tenant that the sublet was denied because she did not have any source of income. The landlord then testified that she had no communication with the tenants from January 2019 until April 23, 2019 when she sent an e-mail to them to find out what their intentions were regarding the termination of the agreement. The tenant sent a reply on May 7, 2019 stating they would be terminating their lease at the end of June 2019.
10. The landlord further testified that they received the rent for the months of January – April 2019. On July 12, 2019 the tenants sent \$1000.00 for May's rent but as of the day of the hearing it was not cleared through the bank. She stated that on May 8, 2019 the unit was advertised for rent on their website, Kijiji and facebook market place. The unit was re-rented for July 1, 2019. The landlord submitted a copy of the rental agreement (LL #1) and a copy of the rent ledger (LL #2).

#### Tenant Position

11. The tenant testified that they moved out the end of October 2018 and they sublet the unit. The landlord was made aware that they had moved out. She acknowledges they signed a one year term for the period July 1, 2018 – June

30, 2019 and that they have not paid June's rent. She testified that they did not send a formal termination notice but on May 7, 2019 she replied to the landlord's message of April 23, 2019 informing the landlord that they would be terminating the lease at the end of June 2019.

### **Analysis**

12. I have reviewed the testimony and the evidence of the landlord and tenant in this matter. I have determined that there is one issue that needs to be addressed; are the tenants responsible for the payment of rent. I find that a term agreement was in place for the period July 1, 2018 – June 30, 2019 and that on May 7, 2019 the tenants gave a notice that they were terminating the lease as of June 30, 2019. Under section 18.(1)(c) the tenant is required to give a notice not less than 2 months before the end of the term. Section 10(1).4 states that a landlord is required to mitigate his/her losses when a tenancy abandoned a unit. A tenant is considered to have abandoned a unit when the tenancy is not terminated in accordance with the Act or the rental agreement as per section 31.(2)(b) of the Act. I also find that the landlord advertised the unit for rent and the unit was re-rented for July 1, 2019. Further, the tenants paid \$1000.00 on July 12, 2019 but as of the date of the hearing the money was not cleared by the bank. As the tenants did not give a termination notice as required by section 18.(1)(c) and the landlord mitigated her losses, the claim for payment of rent succeeds in the amount of \$2000.00; \$1000.00 for each month for the months of May and June 2019.

### **Decision**

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

a) Payment of rent for May 2019.....	\$1000.00
b) Payment of rent for June 2019.....	<u>\$1000.00</u>
<b>c) Total owing for rent .....</b>	<b><u>\$2000.00</u></b>

### **Issue 2: Late fees - \$75.00**

#### Landlord Position

14. The landlord testified she is seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since May 2019.

### **Analysis**

15. The rental arrears has been established in paragraph 12 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1<sup>st</sup> day and \$2.00 for every day thereafter to a maximum of \$75.00 per late

period. As the rent has been in arrears since May 2019, the late fees have exceeded the maximum of \$75.00.

## **Decision**

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

## **Issue 3: Compensation for damages/missing items - \$3057.06**

### Landlord Position

17. The landlord testified that when the tenancy ended there were items missing and the unit needed to be cleaned. There were items left behind and a door frame was damaged. On June 4, 2019 when their employee went to show the unit to perspective tenants, she discovered that the washer was missing. On June 6, 2019 they posted a notice of abandonment on the door. Then on June 7, 2019 the landlord went into the unit and she inspected the place. At that time she discovered that the dryer and the fridge were missing. The washer and dryer were less than 1 year old and the fridge was brand new when the owner purchased the house in 2015. The cost to replace the washer and dryer was \$1092.50 and the cost of the fridge was \$918.85. The landlord said the items they purchased were on the lower end than the items that were missing.
18. The landlord testified that they paid \$488.75 to have the unit cleaned because the unit was disgusting from top to bottom. Also there were multiple boxes and bags of garbage, a flea infested chesterfield and chair, a broken table and bike, a mattress, blankets, a coat rack and miscellaneous items left in the unit. She said 2 of their employees spent 2 hours removing these items and bringing them to the dump. They are claiming \$50.00 per hour for each employee for a total of \$200.00 (2 hours @ \$50.00 per hour = \$100.00 x 2 people = \$200.00) and \$150.00 trailer fee rental for a total of \$350.00.
19. The landlord testified that repairs had to be made to the door frame for the master bedroom. An employee spent 3 hours @ a rate of \$55.00 per hour (3 hours x \$55.00 per hour = \$165.00) repairing the door frame. Supplies from Kent had to be purchased at a cost of \$15.17 plus some supplies that they had on hand had to be used for a total of \$41.96 for supplies. The total cost for the repair to the door was \$206.96 (\$165.00 for labour + \$41.96 for supplies for a total of \$206.96).
20. The landlord presented into evidence a copy of the move-in inspection report (LL #3); a copy of the outgoing inspection report (LL #4); a receipt from Smith's Furniture and Appliances (LL #5) for the purchase of the washer, dryer and fridge; an invoice from Maxine Stacey Extreme Cleaning (LL #6) for the cleaning of the unit; a packaging slip from Kent for the purchase of supplies for

the door (LL #7); an invoice to the tenants on the total claim (LL #8) and a USB (LL #7). The USB contains photographs of the condition of the unit at the end of the tenancy and the items that were left behind in the unit.

### Tenant Position

21. The tenant testified that she is not disputing that the washer, dryer and fridge were missing when the tenancy ended. She contacted the police as soon as she was notified but she wish that the police could have been involved sooner. The tenant acknowledges that the unit needed to be cleaned. She said that if the landlord said it is in bad shape she believes the landlord. She testified that she is not disputing that there were items left behind but she feels the amount is an exorbitant amount to dispose of the items. She is accepting responsibility for the repair to the bedroom door frame.

### **Analysis**

22. I have reviewed the testimony and the evidence of the landlord and the tenant in this matter. I have determined that there are 4 issues that need to be addressed; (i) were there items missing; (ii) did the unit need to be cleaned and were there damages when the tenancy ended; (iii) were there items left behind; and (iv) are the tenants responsible for the claim. I find that the tenant is accepting responsibility for the replacement of the washer, dryer and fridge. These items are depreciable items with a life expectancy of 11 years for a washer, 14 years for a dryer and 12 years for a fridge. As the washer and dryer are 4½ years old and were purchased as a combination I will base the depreciable value on the average of the two at  $12\frac{1}{2}$  (11 years + 14 years = 25 years  $\div$  2 =  $12\frac{1}{2}$  years) years. The claim for replacement of the washer and dryer succeeds in the amount of \$699.20 ( $\$1092.50 \div 12\frac{1}{2}$  years = \$87.40 per year x 8 years remaining = \$699.20) and \$612.56 ( $\$918.85 \div 12$  years = \$76.57 per year x 8 years = \$612.56) for the replacement of the fridge. The total cost for replacement of the washer, dryer and fridge is \$1311.76 ( $\$699.20 + \$612.56 = \$1311.76$ ). I also find that the tenant is accepting responsibility for the cleaning and the repair to the bedroom door frame. The claim for the cleaning and the repair to the bedroom door frame succeeds in the amount of \$895.71 ( $\$488.75 + \$206.96 = \$895.71$ ).
23. With regard to the claim for disposal of the items. The landlord did not get approval from Residential Tenancies Section to dispose of the furniture nor did the landlord present any evidence on the cost of the rental of the trailer. Also the landlord did not present any evidence on the wages of the employees. Based on the photographs presented, I find that 1 hour would be a reasonable amount of time for 2 people to dispose of the other items left at the unit. As the landlord did not give any evidence on the employees' wages, I award \$60.00 for the garbage removal.

## **Decision**

24. The landlord's claim for damages succeeds as per the following:

a) Compensation for missing items .....	\$1311.76
b) Compensation for cleaning .....	\$488.75
c) Compensation for repairs to the door frame .....	\$206.96
d) Compensation for garbage disposal .....	<u>\$60.00</u>
<b>e) Total owing for damages.....</b>	<b><u>\$2067.47</u></b>

## **Issue 4: Application for Security Deposit**

25. 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

26. The landlord testified that a \$750.00 security deposit was paid in June 2018.

### Tenant Position

27. The tenant acknowledges they paid a \$750.00 security deposit in June 2018.

## **Analysis**

28. A \$750.00 security deposit was paid in June 2018. The landlord shall retain the security deposit as the landlord was successful in the claim for payment of rent and late fees and compensation for damages.

## **Decision**

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

## **Issue 5: Hearing Expenses**

30. 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

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

### **Analysis**

32. 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*. As the landlord's claim has been partially successful, the tenants shall pay the landlord's hearing expenses in the amount of \$20.00.

### **Decision**

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

### **Summary of Decision**

34. The landlord is entitled to the following:

a) Payment of rent.....	\$2000.00
b) Payment of late fees .....	\$75.00
c) Compensation for damages.....	\$2067.47
d) Hearing expenses .....	<u>\$20.00</u>
e) Less the security deposit .....	(750.00)
f) Total owing to landlord .....	<b>\$3412.47</b>

December 10, 2019

Date

Residential Tenancies Section