

Residential Tenancies Tribunal

[REDACTED] Decision 19-0575-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:05 a.m. on August 29, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.

Preliminary Matter

4. The tenants discontinued the claim for payment of utilities in the amount of \$30.43 and amended the claim for return of rent from \$800.00 to \$683.80.
5. The address of the rental unit on the tenants' application should read [REDACTED], not [REDACTED].
6. The landlords amended the claim for damages from \$1779.84 to \$1420.67.

Issues before the Tribunal

7. The tenants are seeking the following
 - a. Return of rent in the amount of \$683.80;
 - b. Refund of the security deposit;
 - c. Hearing expenses.
8. The landlords are seeking the following:
 - a. Compensation for cleaning/damages in the amount of \$1420.67;
 - b. Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. Also relevant and considered in this case are Sections 10, 14, 18 and 19 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Return of rent - \$683.80

Tenant Position

11. The tenants testified that they moved into the unit on August 1, 2018 for a one year term for the period August 1, 2018 to July 31, 2019. The rent was set at \$800.00 per month due on the 1st of each month. On May 1, 2019 they sent a text message to the landlords stating that they would not be renewing the lease. They paid rent for the month of July 2019. On July 4, 2019 they removed their belongings and returned the keys to the landlords. Tenant2 testified that on July 6, 2019 he was in the area and he noticed that someone was moving into the unit. He sent a text message to the landlords and they responded by saying someone had moved into the unit beginning July 6, 2019. The tenants are seeking return of rent for the period July 6 – 31, 2019 in the amount of \$683.80 (\$800.00 x 12 months = \$9600.00 ÷ 365 days = \$26.30 per day x 26 days = \$683.80).

Landlord Position

12. The landlords testified that they received the rent for the month of July 2019 from the tenants. On July 6, 2019 they had re-rented the unit to new tenants and the new tenants paid rent for the remainder of July 2019.

Analysis

13. I have reviewed the testimony and evidence of the tenants and the landlords. I have determined that there is one issue that needs to be addressed; are the tenants entitled to return of the rent. I find that the tenants paid the rent for the month of July 2019. They returned the keys to the landlords on July 4, 2019. On July 6, 2019 the landlords had new tenants move in and paid the rent for the remainder of July 2019. As the landlords received rent from the tenants and on July 6, 2019 they collected rent from the new tenants for the remainder of July 2019, the landlords shall return to the tenants the rent for the period July 6 – 31, 2019 in the amount of \$683.80.

Decision

14. The tenants' claim for rebate of rent succeeds in the amount of \$683.80.

Issue 2: Compensation for cleaning and damages - \$1420.67

Landlord Position

15. Landlord1 testified that she went into the unit on July 3, 2019 and started cleaning the unit before the tenants had returned the keys. She spent 25 hours (25 hours x \$19.40 = \$485.00) between July 3 and 4, 2019 cleaning. They are claiming \$19.40 per hour for their labour. She had to clean the washer, stove, fridge, and dishwasher, behind the stove, cabinets, windows, floors and the bathroom. She also had to clean the siding, the eavestrough and the outside of the entrance door as there was tape left on these items.
16. The landlords stated that some repairs needed to be carried out when the tenancy ended. Landlord 2 testified that the crank on the kitchen window had to be replaced because it was stripped out. He purchased the new crank at Newfoundland Glass & Service Inc. at a cost of \$53.76 and he spent 1½ hours replacing the crank. The windows are 13 years old. There was a crack/cut in the trim inside the freezer. Landlord2 spent 2 hours making the repair as he had to sand the crack and apply a couple coats of an adhesive. The adhesive was purchased at The Home Depot at a cost of \$28.72. The top drawer to the kitchen cabinets needed to be repaired. Landlord2 spent 2 hours between putting a new face on the drawer and then sanding and vanishing the drawer. The supplies he used were purchased at The Home Depot at a cost of \$39.47. He testified that he spent 2 hours repairing the bottom drawer in the stove. One of the wheels/rollers were broken off. He purchased the screws and the roller/wheel at The Home Depot at a cost of \$31.73. The stove is 13 years old.
17. Landlord1 testified that the blind in the master bedroom had to be replaced. The blind was installed just prior to the tenants moving into the unit. The cost

of the blind was \$87.37 and it took 1 hour to install the blind. Also the carpets had to be cleaned. They paid A Little Magic \$109.25 to clean the carpets. The tenants agreed when they moved in that they would have the carpets professionally cleaned before they vacated. In the master bedroom there was a hole in one wall and another wall had a lot of marks on it. There was also a mark on the wall in the hallway. They had to paint the entire bedroom as they couldn't find the paint to match. The room was painted just prior to the start of the tenancy. The landlords spent 4 hours making the repair and the gallon of paint was purchased at The Home Depot at a cost of \$52.87 for a total of \$130.47 ($\$77.60 + \$52.87 = \$130.47$).

18. Landlord1 testified that the lawn was torn up. The ground has sunk down but some of the grass has grown back. They received a quote from Murray's Landscape Service Ltd. in the amount of \$200.00 to repair the lawn. In order to make the repair, they would have to bring fill and then spread grass seed. She said the damage was done by the person the tenants had living with them the winter. She also testified that they had to replace two locks while the tenants were living in the unit. The tenants cracked off a key in the lock on two occasions and the lock had to be replaced each time. They don't have the receipt for the locks but she said the locks cost about \$45.00 each.
19. The landlords submitted into evidence photographs of the unit prior to the start of the tenancy (LL #2), photographs of the unit when the tenancy ended (LL #3), a receipt from Newfoundland Glass & Service Inc. (LL #4), a copy of a receipt from The Home Depot (LL #5), a photograph of the blind (LL #6), a receipt from A Little Magic (LL #7), a copy of the rental agreement (LL #8), a copy of a receipt from The Home Depot (LL #9), photographs of the lawn (LL #10) and a quote from Murray's Landscape Service Ltd. (LL #11) in the amount of \$200.00.

Tenant Position

20. Tenant1 testified that her and her mother cleaned the unit but she will admit that the stove was not cleaned and that she left a bit of dirt in the washer. Also there was tape left on the outside door and on the eavestrough. She testified that the crank for the window and the drawer for the stove were working on the day that they moved out. Since they moved into the unit the drawer was a bit stiff to move. She said they took down the blind when they moved into the unit. The blind was put back up before they moved out.
21. Tenant1 testified that the damage to the lawn was caused by them. It happened during the winter. The upstairs tenant's vehicle was parked on their side of the driveway. It was brought to the landlord's attention about the upstairs tenant parking on their side of the driveway. The landlord spoke to the

upstairs tenant about the issue. He removed the vehicle for 2 days. She said they didn't realize they were parking on the grass until the snow started to melt.

22. Tenant2 accepts responsibility for the damage to the freezer and the amount they are claiming is acceptable.
23. The tenants are accepting responsibility for the carpet cleaning, repairs to the cabinet drawer and painting of the bedroom. They acknowledge that they broke off 2 keys in the locks but they disagree with the amounts the landlords are claiming. Tenant2 stated that the 3rd lock the landlords installed was a better quality than the other 2 locks.

Analysis

24. I have reviewed the testimony and the evidence of the landlords and the tenants. I have determined that there are 3 issues that need to be addressed; (i) did the unit need to be cleaned; (ii) were there damages to the unit; and (iii) are the tenants responsible for the cleaning and 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 tenant1 acknowledges that some cleaning was required. Based on the photographs presented by the landlord and tenant1's testimony the amount the landlords are claiming to clean is unreasonable. I conclude that 6 hours would be a reasonable amount of time to clean. The claim succeeds in the amount of \$116.40 (6 hours x \$19.40 per hour = \$116.40). With regard to the replacement of the crank for the window and the wheel/roller for the drawer for the stove, the landlords failed to establish that the damage was caused by a willful or negligent act by the tenants. As a result, the claim fails.
25. With regard to the replacement of the blind, based on the photograph the landlords presented, the blind was damaged when the tenancy ended. A blind is a depreciable item with a life expectancy of 7 – 8 years. As the blind was 1 year old, the claim succeeds in the amount of \$93.45 (\$87.37 for the blind + \$19.40 labour = \$106.77 ÷ 8 years = \$13.35 per year x 7 years = \$93.45).
26. With respect to the repairs to the freezer and the kitchen cabinet drawer, the carpet cleaning, the painting and repairs to the lawn, the tenants accept responsibility for these items. The claim succeeds in the amount of \$67.12 (2 hours @ \$19.40 per hour = \$38.40 for the labour and \$28.72 for the adhesive for a total of \$67.12) for repairs to the freezer; \$78.27 (2 hours @ \$19.40 per hour = \$38.80 for the labour and \$39.47 for the supplies) for repairs to the cabinet drawer; \$109.25 for carpet cleaning and \$200.00 for the repairs to the lawn. Paint is a depreciable item with a life expectancy of 3 – 5 years. As the unit was painted in 2018, the claim for painting succeeds in the amount of \$104.40 (\$130.47 ÷ 5 years = \$26.10 per year x 4 years remaining = \$104.40).

27. With respect to replacement of the locks, the tenants acknowledge that the landlords had to replace the locks twice but they disagree with the amount for the cost of the locks. I find that the amount the landlords are claiming to replace an exterior lockset is reasonable. Therefore, the claim for replacement of the 2 locksets succeeds in the amount of \$90.00 ($\$45.00 \times 2 = \90.00).

Decision

28. The landlords' claim for damages succeeds as per the following

a) Cleaning.....	\$116.40
b) Replacement of the blind	\$93.45
c) Repairs to the freezer	\$67.12
d) Repairs to the cabinet drawer	\$78.27
e) Carpet cleaning.....	\$109.25
f) Repairs to the lawn	\$200.00
g) Painting.....	\$104.40
h) Replacement of the locks.....	<u>\$90.00</u>
i) Total owing to the landlord.....	\$858.89

Issue 3: Application for Security Deposit

29. 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

30. The tenants testified they paid a \$600.00 security deposit in July 2018.

Landlord Position

31. The landlords acknowledge a \$600.00 security deposit was paid.

Analysis

32. A \$600.00 security deposit was paid in August 2018. The landlords shall retain the \$600.00 security deposit towards the claim.

Decision

33. The landlord shall retain the \$600.00 security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

34. 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*.

Tenant Position

35. The tenants testified that they paid a \$20.00 filing fee and \$15.24 to send the application by mail. The tenants are seeking these costs.

Landlord Position

36. The landlords testified they paid an application filing fee in the amount of \$20.00; \$17.08 for registered mail and \$11.72 for copies for a total of \$48.80. The landlords are seeking these costs.

Analysis

37. The cost the tenants and landlords incurred to file the applications, send the applications by mail and the cost for photocopying 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 tenants' claim and the landlords' claim have been successful, each party shall bear their own hearing expenses.

Decision

38. Each party shall bear their own hearing expenses.

Summary of Decision

39. The tenants are entitled to the following:

a) Refund of rent	\$683.80
b) Return of the security deposit	<u>\$600.00</u>
c) Less Compensation for cleaning/damages	<u>(858.89)</u>
d) Total owing to the tenants	<u>\$424.91</u>

December 20, 2019

Date

Residential Tenancies Section