

Residential Tenancies Tribunal

[REDACTED] Decision 19-0584-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:10 a.m. on September 12, 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. The applicant, [REDACTED], hereafter referred to as tenant2, did not attend the hearing but she was represented by [REDACTED].
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The respondent, [REDACTED] hereafter referred to as landlord2 did not attend the hearing but she was represented by [REDACTED].

Issues before the Tribunal

4. The tenants are seeking the following:
 - a. Return of the security deposit in the amount of \$1685.00;
5. The landlords are seeking the following:
 - a. Compensation for damages in the amount of \$1685.00.

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 and 14 of the Act.

Issue 1: Compensation for damages - \$1685.00

Landlord Position

8. The landlord testified that the tenants moved into the unit in February 2018 for a one year term with rent set at \$2250.00 per month due on the 1st of each month. The tenants vacated on June 30, 2019. When the tenancy ended there were damages that needed to be repaired and some damages were repaired during the tenancy such as the shower door. The window in the master bedroom has to be replaced as the frame is cracked. Early in the tenancy the landlord went to the unit to install a window screen. At that time he noticed the window frame was cracked. Tenant2 told him not to open the window. It looked like the window had been opened and when they tried to close the window they pulled the winder handle and broke the window frame. The impression he got from tenant2 was that the window was damaged by them. The replacement cost of the window is \$332.00 + tax and \$172.50 to have it installed. The blind on that same window was missing the cord. The blind was in working condition when the tenancy started. They have ordered a new blind at The Home Depot at a cost of \$269.79. The blind is 5 years old.
9. The landlord testified that when he went to the unit a week or so after the tenants vacated he noticed the screen for the patio door was off track. He could not move it one way or the other. He then went out of town. While he was out of town his contractor moved it. But when the contractor was moving it he bent the screen. Landlord2 bought a new screen at a cost of \$123.05. When the landlord returned home, he was able to straighten the screen and he re-installed the screen. They could not return the screen they had purchased.
10. The landlord testified that they had to pay \$195.50 to replace the handheld remote for the fireplace. A week prior to March 22, 2018, the tenants contacted him and told him that the fireplace wouldn't turn on. He went to the unit. When he was at the unit he could not correct the problem but he noticed that the remote was intact. He had to call Venture Fireplace & Vacuum Ltd. to have them check out the problem. When the representative went to the unit to check on the fireplace the remote was smashed and held together with tape. The remote had to be replaced at a cost of \$150.00 for the remote, \$20.00 for batteries and \$25.50 for taxes for a total of \$195.50. The remote was 5 years old. Later in the hearing the landlord testified that he didn't know anything

about black tape on the receiver/black box. All he was made aware was that the handheld remote was replaced.

11. The landlord testified that the fireplace didn't work when the tenants moved out. A couple of days after the tenancy ended a representative from Venture Fireplace and Vacuum visited the unit. They had to order a part for the fireplace. When the part arrived, the representative installed the part, cleaned the glass and serviced the fireplace. He was charged \$100.00 + tax for the labour. This included the service of the fireplace, the cleaning of the glass and the installation of the part. He is not sure what portion was spent cleaning the glass and the servicing of the fireplace. The landlord stated that during the time he and landlord2 lived in the unit they had the fireplace serviced a couple of times. The fireplace is small and doesn't give off much heat. He got the impression that the tenants were trying to heat the house with the fireplace. About 2 - 2½ months after the tenants moved in he received a call from Irving, the propane supplier, telling him that the tank was empty. The landlord said while he and landlord2 lived in the unit their annual bill was probably ½ a tank a year. The maintenance on the fireplace was never mentioned to the tenants
12. The landlord testified that they had to replace the glass in the shower stall. He received a call from the tenant in June 2018 that the shower door was broken. He went to the unit to check on the door. While at the unit, he questioned the tenant on the broken wall tile in the shower where the handle was located. He contacted Artika, the manufacturing company. He was advised that they sell thousands of these doors yearly and about 2 – 3 break because they are not installed properly. The doors are very heavy. He testified that the shower door would open 1 or 2" after it was closed. You might have to put a bottle of shampoo to keep it closed. The door was replaced under warranty but he was charged \$450.80 for the shipping and he paid \$172.50 to have the door installed. The door was 5 years old. The landlord said they have 2 shower doors in the unit. Both of them were installed at the same time by the same contractor. The landlord stated that the damage to the shower door was the result of excessive force.
13. The landlord testified that when the tenants were leaving, tenant2 notified him that there was a leak inside the wall from the outside faucet. He hired Dy-Co Builders to replace the faucet at a cost of \$175.84. The faucet was 5 years old. The leak was caused by the water being left on during the winter.
14. The landlord testified that the damage to the window and the screen for the patio door was also caused by excessive force. The landlord submitted into evidence a photograph of the window (LL #1); a photograph of a similar window at The Home Depot (LL #2) for \$332.00 + tax; a quote from Dy-Co Builders Ltd. (LL #3) in the amount of \$172.50 to have the window installed; a photograph of the blind (LL #4); a copy of the order form for the blind (LL #5); a photograph

of the patio screen (LL #6); a copy of the order for the patio screen door (LL #7); a copy of an e-mail from Venture Vacuums dated August 24, 2019 (LL #8). This e-mail states that the remote control for the fireplace was damaged and was duct taped together. Also submitted into evidence was an invoice dated March 22, 2018 from Venture Fireplace & Vacuum Ltd. (LL #9) for the on/off remote control, batteries and the complete service for a total of \$368.00; an invoice from Venture Fireplace & Vacuum Ltd. dated September 9, 2019 (LL #10) for a total of \$339.25 for the cost of the pilot assembly, general service and glass cleaning; an order confirmation from artika in the amount of \$450.80 for the shipping and handling (LL #11); an invoice dated September 7, 2019 from Dy-Co Builders Ltd in the amount of \$172.50 for the installation of the shower door (LL #12); and an invoice from Dy-Co Builders Ltd. in the amount of \$157.84 for the replacement of the outside water faucet (LL #13).

Tenant Position

15. The tenant testified that he is not disputing the damage to the window. When they opened the window, they realized there was a defect in the window. Tenant2 brought it to the landlord's attention but it was never suggested that the damage was their fault. The tenant said when they opened the blind, the connection in the blind opened up and fell apart. He was wondering why the landlord ordered a new blind when he could have ordered a textile cord and have it reattached.
16. The tenant testified that when they moved into the unit the screen for the patio door was very difficult to operate. They didn't use the screen. They kept the screen to the right side except for when they were moving out. They moved the screen to clean the glass. The screen got jammed when they went to put it back.
17. The tenant testified that the handheld remote was not in perfect condition at the start of the tenancy. It was not replaced. The black box/receiver under the cover of the fireplace was replaced. When the representative from the company who services the fireplace removed the cover of the fireplace the black box/receiver which receives the signals was taped up. It had sticky tape around it. The representative replaced the black box/receiver and he cleaned the fireplace.
18. The tenant testified that they used the fireplace. They were never given instructions on how to use or the maximum use of the fireplace. There was no mention of service or cleaning the fireplace in the rental agreement. The fireplace was working the last time they used it in March 2019. He was surprised to hear that it wasn't working when they moved out.

19. The tenant testified that there was nobody home when the shower door shattered. He was out of town at work and tenant2 was on vacation. He said that if someone was in the shower when the door shattered there would be a lot of bleeding. As the landlord stated the manufacturing company said the doors would break if they are not properly installed and the landlord testified that the door did not close properly. The tenant testified that he spoke with the engineers he worked with at the refinery about the shower door. They confirmed what the manufacturing company told the landlord. If the door is not installed properly, it would break. A glass door is hanging from a bar with 2 holes drilled in it. If the door is tilted it is producing cracks that will start to propagate from the holes. Eventually the door would collapse. He said that the new shower door closes properly. When the new door was being installed the technician realized the bar that the door was hanging from was not completely in line. He corrected that by drilling new holes. The tenant submitted a photograph of the bathroom (T #1). The photograph was taken when he discovered the door was damaged.
20. The tenant testified that they made the landlord aware that the outside pipe was leaking. They didn't leave the water on during the winter. There was a handheld handle on the hose. Each time they used the hose they would have to turn on the water.

Analysis

21. I have reviewed the testimony and the evidence of the tenant and the landlord. I have determined that there are 2 issues that need to be addressed; (i) are there damages to the unit; and (ii) are the tenants responsible 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 the tenant is not disputing the damage to the window. He said when they opened the window they realized there was a defect. The landlord did not present any evidence to show the condition of the window prior to the start of the tenancy. The claim fails. With regard to the replacement of the blind. The tenant acknowledges the blind was damaged during the tenancy. A blind is a depreciable item with a life expectancy of 10 years. As the blind is 5 years old, the landlords are awarded \$134.90 ($\$269.79 \div 10 \text{ years} = \$26.98 \text{ per year} \times 5 \text{ years remaining} = \134.90) for the replacement of the blind.
22. With regard to the replacement of the screen for the patio door. The tenant acknowledges the screen for the patio door was jammed when the tenancy ended. He said they had a problem with the screen from the start of the tenancy. The landlord purchased a new screen before trying to fix the screen. As the landlord was able to fix the screen, the claim for replacement of the screen fails. With regard to the replacement of the handheld remote for the fireplace. The landlord did not present any evidence to show the condition of

the handheld remote at the start of the tenancy and before it was replaced. As a result, the claim for replacement of the handheld remote fails.

23. With regard to the maintenance on the fireplace. I find that the tenants used the fireplace more than the landlords had used it when they were living in the unit. The maintenance on a fireplace would be the responsibility of the landlord. With respect to the replacement of the shower door, I find that the landlord acknowledges that the glass shower door did not close properly and he was advised by the manufacturing company that a glass door can break if it is not properly installed. If a door doesn't close properly more than likely it was not properly installed. I also find that the tenant was advised by engineers that if a glass door was tilted and it did not close properly, it would eventually break. As the door did not close properly, the claim for replacement of the shower door fails.
24. With respect to the cost to have the outside faucet replaced. The landlord did not present any evidence to show the condition of the faucet and that the damage was caused as the result of a willful or negligent act by the tenants. As a result, the claim fails.

Decision

25. The landlords claim for compensation for damages succeeds as per the following:
 - a) Replacement of the blind \$134.90

Issue 2: Application for Security Deposit

26. 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

27. The tenant testified that a \$1685.00 security deposit was paid in 2 installments in December 2017 and January 2018.

Landlord Position

28. The landlord acknowledges the tenants paid a security deposit in the amount of \$1685.00.

Analysis

29. A \$1685.00 security deposit was paid between December 2017 and January 2018. The landlords shall retain \$134.90 from the security deposit for compensation for replacement of a blind and return the balance in the amount of \$1550.10.

Decision

30. The landlords shall retain \$134.90 from the security deposit and return the balance in the amount of \$1550.10 as outlined in this decision and attached order.

Summary of Decision

31. The tenants are entitled to the following:

- a) Return of the security deposit \$1685.00
- b) **Less Compensation for replacement of the blind (134.90)**
- c) **Total owing to the tenants \$1550.10**

January 31, 2020

Date

Residential Tenancies Section