

Residential Tenancies Tribunal

[REDACTED] Decision 19-0604-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:30 p.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 landlord, participated in the hearing through a conference call.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matter

4. The tenant was not present or represented at the hearing. Prior to the hearing, I spoke with the tenant and she could not attend by conference call. She said she was not aware of the hearing. She has the landlord's number blocked from her phone. 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.

5. The affidavit of service submitted by the landlord shows that the notice of this hearing was electronically served to the tenant on August 14, 2019. A copy of the e-mail along with an e-mail the tenant sent to the landlord on February 4, 2019 were also submitted. The tenant has had 27 days to provide a response. 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 her absence.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a. Compensation for cleaning/damages in the amount of \$2514.56;
 - b. Hearing expenses.

Legislation and Policy

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

Issue 1: Compensation for damages - \$2514.56

Landlord Position

9. The landlord testified that the tenant moved into the unit on November 1, 2018 on a month to month tenancy with rent set at \$1100.00 per month due on the 1st of each month. A termination notice was given to the tenant the end of March 2019 to vacate the end of June 2019. The tenant moved out on May 25, 2019. When the tenant was moving out she could not get her furniture through the entrance door. She took the door off hinges. When she removed the door, the door slipped and came down across the French door. The top right hand corner was damaged. The metal is bent and it broke away from the factory production. He said there is no way to repair it. He received a quote from Kent in the amount of \$2261.33 to replace the door. The door is 11½ years old. The landlord has not replaced the door but he has put nails and screws in the door as a temporary fix.
10. The landlord also testified that when the entrance door fell on the French door it broke the glass in one slot in the bottom of the door. The glass cannot be replaced in a French door. The door has to be replaced. He replaced the door at a cost of \$172.50. The door is 11½ years old. He further testified that he

rented a truck from U-haul Equipment at a cost of \$70.70 to bring the old door to the dump. He had to purchase \$11.03 worth of fuel for the truck at Canadian Tire.

11. The landlord submitted into evidence a photograph of the entrance door (LL #1), a quote from Kent (LL #2) in the amount of \$2261.33 to replace the entrance door, a receipt from The Home Depot (LL#3) in the amount of \$172.50 for the purchase of the French door, a photograph of the French door (LL #4), a copy of the contract from U-haul Equipment (LL #5) and a copy of the receipt from Canadian Tire for fuel in the amount of \$11.03 (LL #6).

Analysis

12. I have reviewed the testimony and evidence of the landlord. I have determined that there is one issue that needs to be addressed; is the tenant 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 exterior and the French doors were damaged when the tenancy ended. Doors are a depreciable item with a life expectancy of 15 years for both the exterior and the French doors. As the doors are 11½ years old, the claim for replacement of the doors succeeds in the amount of \$567.91 ($\$2261.33 + \$172.50 = \$2433.88 \div 15 \text{ years} = \$162.26 \text{ per year} \times 3\frac{1}{2} \text{ years remaining} = \567.91).
13. With regard to the claim for the rental of the truck and the purchase of fuel. The landlord had to dispose of the old French door. The amount the landlord is claiming is reasonable. Therefore, the claim for the rental of the truck and the fuel succeeds in the amount of \$81.73 ($\$70.70 + \$11.03 = \81.73).

Decision

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

| | |
|--|----------------|
| a) Replacement of the two doors | \$567.91 |
| b) Compensation for disposal of the door | <u>\$81.73</u> |
| c) Total owing to the landlord | \$649.64 |

Issue 2: Hearing Expenses

15. 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

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

Analysis

17. The cost the landlord incurred to file 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 successful, the tenant shall pay the landlord's hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

19. The landlord is entitled to the following:

| | |
|---|------------------------|
| a) Compensation for damages..... | \$649.64 |
| b) Hearing expenses | <u>\$20.00</u> |
| c) Total owing to the landlord | <u>\$669.64</u> |

December 19, 2019

Date

Residential Tenancies Section