

Residential Tenancies Tribunal

[REDACTED] Decision 19-0634-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:10 a.m. on October 10, 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 by conference call.
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing by conference call.

Preliminary Matter

4. This Tribunal's policy concerning notice requirements 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. The tenant was not served with the landlord's claim 10 days prior to the hearing. The tenant waived his 10 day right and I proceeded with the hearing.

Issues before the Tribunal

5. The tenant is seeking the following
 - a. Return of the security deposit in the amount of \$425.00
6. The landlord is seeking the following:
 - a. Compensation for inconvenience in the amount of \$60.00;
 - b. Compensation for damages in the amount of \$115.00.

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 are Sections 10 and 14 of the Act.

Issue 1: Compensation for inconvenience - \$60.00

Landlord Position

9. The landlord testified that the tenant moved into the unit on October 1, 2018 for a one year term with rent set at \$850.00 per month due on the 1st of each month. In July the tenant asked could he sublet the unit. She agreed as long as she could meet the new tenant. She advertised the unit a few days after the tenant had asked about subletting because he had not advertised the unit for rent. She showed the unit at least 10 times between July 25 and 28, 2019. The unit was re-rented for August 1, 2019. She is seeking \$60.00 for her time and travel to go back and forth to show the unit.

Tenant Position

10. The tenant testified that around July 10, 2019 the landlord agreed that he could sublet the unit. She wanted to meet the new tenant. Within a few days of the discussion on subletting the unit, the landlord advertised the unit. He did not ask the landlord to advertise the unit. He said the landlord showed the unit to perspective tenants.

Analysis

11. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there is 1 issue that needs to be addressed; (i) is the landlord entitled to compensation for inconvenience. I find that there was a 1 year term in place until September 30, 2019 and in July the landlord agreed that the tenant could sublet the unit. The landlord advertised the unit for rent as she was trying to re-rent the unit as soon as possible as the tenant had not advertised the unit for rent. She was trying to help the tenant re-rent the unit. The unit was re-rented for August 1, 2020. The amount the landlord is claiming for her time to travel back and forth to the unit and to show the unit is reasonable.

Decision

12. The landlord's claim for compensation for inconvenience succeeds in the amount of \$60.00.

Issue 2: Compensation for damages - \$115.00

Landlord Position

13. The landlord testified that on July 31, 2019 around 8:45 p.m. she went to the unit. She walked through the unit with the tenant and everything looked okay. She told the tenant that she will be in touch with him tomorrow about the security deposit. The tenant left the unit. After he left she looked around and realized it was not cleaned to the same caliber as when he moved in. There were things stuck on the floors; there was grease on the inside of the range hood and on the counter. The oven, windows, bathtub, and baseboards were dirty. She called her friend to come and help her clean. They spent from 9:30 p.m. – 1:00 a.m. cleaning. She paid her friend \$50.00. The next morning she went back to the unit and spent a couple hours cleaning.
14. The landlord testified that when the tenant moved in she provided a key to the lock for the main door and the basement door. When he returned the keys, he did not return the key for the lock to the basement door. She had to purchase a new lock at a cost of approximately \$47.00.

Tenant Position

15. The tenant testified that he cleaned the unit before he left. He walked through the unit with the landlord and the landlord said everything was fine. She would return the security deposit the next morning. The tenant said he never had a key to the lock for the basement door.

Analysis

16. I have reviewed the testimony and the evidence of the landlord and tenant. I have determined there are 2 issues that need to be addressed; (i) did not unit need to be cleaned; and (ii) is the tenant responsible for replacement of the lock. 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 landlord and the tenant did a walk through and the landlord agreed that everything was okay. I also find that the landlord did not submit any evidence to establish that the unit needed to be cleaned. The claim for cleaning fails.

17. With regard to the replacement of the lock. The changing of exterior locks is considered an expense that a landlord would incur to secure the premises after a tenant vacates.

Decision

18. The landlord's claim for damages is unsuccessful.

Issue 3: Application for Security Deposit

19. 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

20. The tenant testified that a \$425.00 security deposit was paid in September 2018.

Landlord Position

21. The landlord acknowledges the tenant paid a security deposit in the amount of \$425.00.

Analysis

22. A \$425.00 security deposit was paid in September 2018. The landlord's claim for compensation for inconvenience was successful. The landlord shall retain \$60.00 from the security deposit and return the balance to the tenant.

Decision

23. The landlord shall retain \$60.00 from the security deposit and return the balance as outlined in this decision and attached order.

Summary of Decision

24. The tenant is entitled to the following:

- a) Return of the security deposit \$425.00
- b) **Less compensation for inconvenience (60.00)**
- c) **Amount owing to the tenant..... \$365.00**

February 24, 2020
Date

[REDACTED]
Residential Tenancies Section