

Residential Tenancies Tribunal

[REDACTED] Decision 19-0678-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:10 p.m. on October 8, 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], was not present but she was represented by [REDACTED].
3. The respondents, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.

Preliminary Matters

4. [REDACTED] appeared as a witness for the tenants.
5. The landlords asked to amend the claim for damages from \$4150.00 to \$5364.75. When they filed their application they just estimated the cost for repairs. Later they received a quote from JWR Renovations and Project Management Inc. Tenant1 disagreed.

Issues before the Tribunal

6. The tenants are seeking the following:
 - a. Return of the security deposit in the amount of \$500.00.
7. The landlords are seeking the following:
 - a. Compensation for damages in the amount of \$4150.00;
 - b. Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 10, 14 and 19 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 - \$896.40

10. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

11. The landlords testified that the tenants moved into the unit on July 28, 2016 on a month to month tenancy with rent set at \$1000.00 per month due on the 1st of each month. The tenants gave them a termination notice on June 20, 2019 that they were vacating on July 31, 2019. They tried to re-rent the unit as they advertised the unit for rent on facebook within a week. The tenants vacated the unit on August 4, 2019 and returned the keys on August 11, 2019. A couple of days later the landlords went into the unit to inspect. Upon inspection they discovered that the unit was dirty. They sent a message to the tenants stating they were giving them a week to clean the unit.
12. After tenant1 gave her testimony the landlords testified that they never gave tenant1 permission to enter on August 27, 2019. It was the week before they sent a message to the tenants advising them they could go back and clean the unit. They never heard back from the tenants.

Tenant Position

13. Tenant1 acknowledges that they gave a termination notice in June 2019 to vacate on July 31, 2019. They vacated on August 4, 2019 and returned the keys on August 11, 2019. On August 27, 2019 she returned to the unit to clean as her aunt had a key. She never notified the landlords that she was going to enter the unit.

Analysis

14. I have reviewed the testimony and evidence of the landlords and tenant1. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenants gave a termination notice to vacate the unit on

July 31, 2019 and they vacated on August 4, 2019. The keys were returned to the landlord on August 11, 2019 but the tenants had an extra key that they did not return. On/or about August 18, 2019 the landlords gave the tenants a week if they wanted to go back to clean the unit. The landlords never heard from the tenants. On August 27, 2019 tenant1 went back into the unit without notifying the landlords. As the tenants did not vacate until August 4, 2019 and they entered the unit on August 27, 2019 without the notifying the landlords, the claim for payment of rent succeeds for the period August 1 – 27, 2019 in the amount of \$887.76 ($\$1000.00 \times 12 \text{ months} = \$12,000.00 \div 365 \text{ days} = \$32.88 \text{ per day} \times 27 \text{ days} = \887.76).

Decision

15. The landlords' claim for payment of rent succeeds in the amount of \$887.76 for the period August 1 – 27, 2019

Issue 2: Payment of damages - \$4150.00

Landlord Position

16. The landlords testified that a couple of days after the tenants moved out they inspected the unit. The unit was dirty and there were some repairs that needed to be carried out. The cleaning and the repairs have not been completed as of the day of the hearing. They estimate that it would take 2 people a day to clean as the fridge, stove, oven, windows, light fixtures, doors, floors, and behind the fridge, stove, washer and dryer needs to be cleaned. Also the carpets on the stairs and downstairs need to be cleaned and deodorized due to the stains and the smell of animals. They received a quote in the amount of \$675.00 to clean the unit and the carpets.
17. The landlords testified that the window screen in the living room is ripped. The screen is about 10 years old. They received a verbal quote from Kent in the amount of \$50.00 to replace the screen. They also testified that there were some scrapes and nicks in the walls in the living room, dining room and the hallway. In one area it looked like the paint came off when the tenants were removing the hooks from the wall. They received a quote in the amount of \$500.00 to plaster, prime and paint. The unit was painted in 2016. There was also a hole in the stucco ceiling in the basement. They received a quote in the amount of \$375.00 to repair the hole. They said that in order to repair the hole, a piece of drywall will have to be replaced, that portion of the ceiling would have to be stucco and then painted.
18. The landlords testified that the mouldings for the 2 closets and the 2 columns in the basement are damaged. It looks like the cat or dog used them as a

scratch post. The mouldings for the 2 columns and the 2 closets need to be replaced. They estimated that \$800.00 would cover the cost to have them replaced but they received a quote of \$950.00 to have the work completed. The columns were 5 years old when the tenants moved in.

19. The landlords testified that the laminate flooring in the dining room, living room and hallway has to be replaced because the flooring is swollen in the center of the living room. They said that you cannot just replace an area of the flooring. The entire flooring has to be replaced. Also the flooring is damaged as you enter the dining room from the kitchen. The flooring was 5 years old when they moved in. They made an educated guess of \$1200.00 to replace the flooring but the quote they received from the contractor was \$1690.00.
20. The landlords also testified that the tenants left some items on the steps and some debris on one side of the house. They received a quote of \$325.00 to remove the garbage.
21. The landlords submitted into evidence a copy of the quote from JWR Renovations and Project Management Inc. (LL #1) and photographs of the unit (LL #2). Some of the photographs were taken on August 17, 2019 and some were taken on August 30, 2019.

Tenant Position

22. Tenant1 testified that they cleaned the unit before they vacated. On August 18, 2019 she received a message from the landlords stating that the unit wasn't cleaned and they were giving them an opportunity to go back and clean. The landlords gave a list of what needed to be cleaned. She went back on August 27, 2019 and she cleaned what the landlords stated needed to be cleaned. Some of the items she cleaned was behind the fridge and stove and she scrubbed the carpet downstairs using multiple cleaners. She vacuum the stairs. Tenant1 acknowledges the screen was torn during the tenancy but she doesn't believe it will cost \$50.00 to replace. She testified that most of the marks on the walls are from the furniture as the furniture was next to the wall. Tenant1 admits that when she removed the hook from the wall in the living room the paint came off. She acknowledges the unit was freshly painted before they moved in but she said she does not remember a hole in the ceiling.
23. Tenant1 acknowledges that the mouldings for the columns and the closets were tore up but she disagrees with the amount the landlords are claiming. With regard to replacement of the flooring. She testified that they never spilled anything on the flooring. The only thing they did was clean the flooring. She said the scuffs on the flooring from the kitchen to the dining room were there when they moved in.

24. Tenant1 testified that they left a few items on the back step as her cousin was going to drop by to bring them to the dump. They also left a couple of cans of paint in the basement. Tenant1 submitted into evidence photographs of the unit taken on August 27, 2019 (T #1).

Analysis

25. I have reviewed the testimony and the evidence presented of the landlords and tenant1. I have determined that there are 2 issues that need to be addressed; (i) does the unit need to be cleaned; and (ii) are there damages to the unit. I find some cleaning was required. However, based on the photographs presented by the landlords and tenant1, the amount the landlords are claiming is unreasonable. I award \$100.00 for cleaning. With regard to the cleaning of the carpet, the landlords did not present any evidence to show the condition of the carpet at the start of the tenancy.

26. With regard to the replacement of the window screen. The tenant acknowledges the damage but the landlords did not submit any evidence on the cost of replacement. I award an arbitrary amount of \$25.00 to replace the window screen. With regard to the plaster and painting of the walls and the repair to the ceiling in the basement. The tenant acknowledges the nicks to the walls and that the unit was painted prior to the start of the tenancy. She doesn't recall a hole in the ceiling. If the unit was painted prior to the start of the tenancy more than likely there was no hole in the ceiling at the start of the tenancy. The landlord submitted a photograph which shows that there is a hole in the ceiling. Painting is a depreciable item with a life expectancy of 3 – 5 years. As the unit was painted just prior to the start of the tenancy, the claim for painting succeeds in the amount of \$350.00 (\$500.00 for painting + \$375.00 for the repairs = $\$875.00 \div 5 \text{ years} = \$175.00 \text{ per year} \times 2 \text{ years remaining} = \350.00).

27. With regard to the replacement of the mouldings for the 2 columns and the 2 closets. The tenant acknowledges the damage to these items. The landlords received a quote of \$950.00. The mouldings for the columns and the closets should last a life time. As the landlords received a quote of \$950.00 to replace the mouldings, the claim succeeds in the amount of \$950.00.

28. With regard to the replacement of the flooring. The landlords did not submit any evidence to show the condition of the flooring at the start of the tenancy. As there was no evidence presented to show the condition of the flooring at the start of the tenancy, the claim for replacement of the flooring fails. With regard to the garbage removal. Based on the photographs presented I find there were a couple of items left on the back step. The amount the landlords are claiming is unreasonable. I award an arbitrary amount of \$50.00 to dispose of these items.

Decision

29. The landlords' claim for compensation for damages succeeds as per the following:

a) Cleaning	\$100.00
b) Replacement of the window screen	\$25.00
c) Painting and repairs to ceiling	\$350.00
d) Replacement of the mouldings for the columns & closets	\$950.00
e) Garbage disposal	\$50.00
f) Total owing to the Landlord	<u>\$1475.00</u>

Issue 4: Application for Security Deposit

30. Under the authority of Section 41.(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

31. Tenant1 testified that a \$500.00 security deposit was paid in July 2016.

Landlord Position

32. The landlords acknowledges a \$500.00 security deposit was paid in July 2016.

Analysis

33. A \$500.00 security deposit was paid in July 2016. The landlord shall retain the security deposit as they have been successful in their claim for the payment of rent and compensation for damages.

Decision

34. The landlords shall retain the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

35. 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

36. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Analysis

37. The cost the landlords 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 landlords' claim has been partially successful, the tenants are responsible to pay the landlords' hearing expenses in the amount of \$20.00.

Decision

38. The tenants shall pay the landlords' hearing expenses in the amount of \$20.00.

Summary of Decision

39. The landlords are entitled to the following:

a) Payment of rent.....	\$887.76
b) Compensation for damages.....	\$1475.00
c) Hearing expenses.....	<u>\$20.00</u>
d) Less the security deposit	<u>(500.00)</u>
e) Total owing to the landlords	<u>\$1882.76</u>

March 4, 2020

Date

Residential Tenancies Section