

Residential Tenancies Tribunal

[REDACTED] Decision 19-0766-05
[REDACTED]

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:30 a.m. on January 8, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The originating applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing. The originating applicant, [REDACTED], hereafter referred to as tenant1 did not attend the hearing but he was represented by [REDACTED]
[REDACTED].
3. The countering applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing by a conference call. The countering applicant, [REDACTED]
[REDACTED], hereafter referred to as landlord1, did not attend the hearing but he was represented by [REDACTED].

Preliminary Matter:

4. The tenants were not served with the application 10 days prior to the hearing. 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 waived their 10 day right and I proceeded with the hearing.
5. The landlord amended the claim for payment of rent from \$174.19 to \$130.65 and the claim for damages from \$587.65 to \$474.95.

Issues before the Tribunal

6. The tenants are seeking the following:
 - a. Return of the security deposit in the amount of \$1000.00.
7. The landlords are seeking the following:
 - a. Payment of rent in the amount of \$130.65;
 - b. Compensation for damages in the amount of \$474.95.

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.

Issue 1: Payment of rent - \$130.65

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 landlord testified that the tenants moved into the unit on July 1, 2017 for a six month term with rent set at \$1500.00 per month due on the 1st of each month. When the term ended, the tenancy converted to a month to month. The rent was reduced to \$1350.00 per month in May 2018. She testified that the tenants gave her a termination notice by a text message on June 1, 2019 that they were vacating on June 30, 2019. The tenants did not return the key until July 4, 2019. She is seeking rent for the period July 1 – 3, 2019 in the amount of \$130.65.

Tenant Position

12. The tenant acknowledges she sent the termination notice on June 1, 2019. She testified that on June 18, 2019 she sent a text message to the landlord stating that she might not be able to move out until July 1 or 2, 2019 and that she could pay the extra days she stayed. The landlord replied by saying no worries, relax, it is all good.

Analysis

13. I have reviewed the testimony and evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenants notified the landlord by a text message on June 1, 2019 they were moving out on June 30, 2019. The tenants did not move out until July 3, 2019. As the tenants had use and occupation of the rental premises for the period July 1 – 3, 2019 the claim for payment of rent succeeds in the amount of \$133.14 ($\$1350.00 \times 12 \text{ months} = \$16,200.00 \div 365 \text{ days} = \$44.38 \times 3 \text{ days} = \133.14).

Decision

14. The landlords' claim for the payment of rent succeeds as per the following:
 - a) Rent owing for July 1 – 3, 2019.....\$133.14

Issue 2: Compensation for damages - \$474.95

15. The landlord testified that when the tenancy ended there were some damages that needed to be repaired. The door knob and the deadbolt for the entrance door had to be replaced as the key was cracked off in the deadbolt. She purchased the new door knob and deadbolt and the contractor installed them. The cost for the new door knob and dead bolt was \$89.00. The door knob and deadbolt were between 5 and 6 years old.
16. The landlord testified that the door and the door knob for the master bathroom had to be replaced because there was a hole in the door and the door knob was damaged. The door and door knob were 2 years old at the start of the tenancy. The contractor replaced these items at a cost of \$169.00.
17. The landlord testified that the door for the master bedroom had to be painted because the door had scratch marks on it. The cost of the paint was \$18.00.
18. The landlord testified that a wall in the second bedroom had to be plastered and painted because the drywall was damaged. When the tenants removed the stickers from the wall, the drywall came off. The bedroom was painted a couple of months before the tenants moved into the unit. The cost to have this repaired was \$137.00.
19. The landlord submitted into evidence a photograph of the master bathroom door (LL #1), an estimate from PMW Consulting Inc. in the amount of \$587.65

(LL #2), a photograph of the master bedroom door (LL #3), a photograph of the wall in the second bedroom (LL #4) and a photograph of the entrance door knob and deadbolt with a cracked off key in someone's hand (LL #5).

Tenant Position

20. The tenant testified that the key cracked off in the door knob last winter. They removed the cracked off key from the door knob and they were still using that door knob up to the date they moved out.
21. The tenant acknowledges the damage to the master bathroom door but she said that the lock didn't work all of the time. She also acknowledges that she had stickers on the wall in the second bedroom. When she removed the stickers the paint came off but not down to the plaster.
22. The tenant testified that the photograph of the master bedroom door didn't look familiar to her.

Analysis

23. 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) are the tenants responsible for the damages. The burden of proof lies with the landlord to establish, that the damage exists, and that the tenants are responsible for the cost of repairs. Based on the photographs presented, I find that the landlord has failed to show that the tenants caused the damage to the door knob and the deadbolt. As a result the claim for replacement of the door knob and deadbolt fails.
24. With regard to the replacement of the master bathroom door and the repairs to the wall in the second bedroom. The tenant acknowledges the damage to the door and she said that when she removed the stickers from the wall the paint came off. A door is a depreciable item with a life expectancy of 20 years. As the door was 4 years old, the claim for replacement of the door succeeds in the amount of \$135.20 ($\$169.00 \div 20 \text{ years} = \$8.45 \text{ per year} \times 16 \text{ years remaining} = \135.20). Paint is also a depreciable item with a life expectancy of 3 – 5 years. As the bedroom was painted a couple of months before the start of the tenancy, the claim for plastering and painting succeeds in the amount of \$82.20 ($\$137.00 \div 5 \text{ years} = \$27.40 \text{ per year} \times 3 \text{ years remaining} = \82.20).
25. With regard to the painting of the master bedroom door. The landlord did not submit an ingoing inspection report or any evidence to show the condition of the door at the start of the tenancy. Therefore, the claim for the paint for the master bedroom door fails.

Decision

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

- a) Replacement of the master bathroom door \$135.20
- b) Plastering and painting of the second bedroom \$82.20
- c) **Total owing to the Landlords** **\$217.40**

Issue 3: Application for Security Deposit

27. 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

28. The tenant testified that they paid a \$1000.00 security deposit on June 1, 2017.

Landlord Position

29. The landlord acknowledges that a \$1000.00 security deposit was paid in June 2017.

Analysis

30. A \$1000.00 security deposit was paid. The security deposit shall be disposed of as both parties have been partially successful in their claim. The interest rate on security deposits for the period 2017 – 2019 is 0%.

Decision

31. The security deposit shall be disposed of as outlined in this decision and attached order.

Summary of Decision

32. The tenants are entitled to the following:

a) Return of the security deposit.....	\$1000.00
b) Less compensation for rent	(133.14)
c) Less compensation for damages	(217.40)
c) Total owing to the tenants	<u>\$649.46</u>

May 12, 2020

Date

Residential Tenancies Section