

Residential Tenancies Tribunal

Decision 19-0793-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on November 18, 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.
3. The respondent, [REDACTED], represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing by teleconference.

Preliminary Matters

4. The landlord discontinued the claim for compensation for inconveniences. The claim for damages was amended from \$851.08 to \$600.92.

Issues before the Tribunal

5. The tenant is seeking the following:
 - a. Return of the security deposit in the amount of \$1350.00.
6. The landlord is seeking the following:
 - a. Compensation for damages in the amount of \$600.92;
 - 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 are Sections 10 and 14 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Payment of damages - \$600.93

Landlord Position

9. The landlord testified that the tenant moved into the unit on September 5, 2018 for a one year term with rent set at \$1800.00 per month due on the 1st of each month. The tenant was renting both the upstairs and downstairs units. When the tenancy ended on August 31, 2019 there were some damages. The repairs have not been carried out as of the day of the hearing. The damages includes: the toilet tank cover was broken and the patio screen in the upstairs unit was ripped; the door knob between the upstairs and the downstairs unit is broken as well as the trim around the door on the upstairs side is cracked; the door stop behind the door in the downstairs unit is broken; and the laminate flooring is scratched but he is not sure what area is scratched. He testified that in the downstairs unit, underneath the stove is not cleaned; the oven has a black mark on the bottom; the wall in the living room has to be painted as the tenant painted over a piece of tape; the bi-fold door in the bathroom is off track; the wall in the kitchen is dirty; there is a dent and scratch on the fridge; and the lock for the screen door is broken.
10. The landlord testified that he has a quote on some of the items but the other items he estimated the cost. He received a quote from Amazon Canada's website in the amount of \$25.61 to replace the door knob (LL #1) and \$10.99 for the lock for the screen door (LL #4). He received a quote from The Home Depot website in the amount of \$4.72 for the trim for the door (LL #2) and \$3.15 for the door stop (LL #5). He estimates that it will cost \$53.51 to replace the cover for the toilet tank; \$27.00 to replace the screen for the patio door; \$100.00 to repair the flooring; \$25.00 to clean underneath the stove; \$100.00 to clean the oven; \$55.00 to repaint the living room wall; and \$55.00 to install the bi-fold door.
11. The landlord testified that the remotes for the 2 TV's are missing. He received a quote from Amazon Canada's website in the amount of \$21.14 each. He further testified that it will take 6.9 hours to have the work completed at a rate of \$19.40 per hour for a total of \$133.86 (6.9 hours @ \$19.40 = \$133.86).

Tenant Position

12. The tenant testified that when he did a walk through at the start of the tenancy there was a box of tissues on the toilet tank. A couple of days later he discovered the cover was cracked but he did not notify the landlord. When he moved in, the door between the upstairs and the downstairs units was not working as there was a hook on the upstairs side to keep the door closed. He testified that he was not aware that the door trim was broken and he didn't know the screen for the patio door was damaged. He used the patio door on a regular basis. He said he didn't see any scratches on the floor and the 2 remotes for the TV's were left in the top drawer of the dresser in one of the bedrooms.
13. The tenant testified that he hired a lady to clean the unit after he vacated. He is not sure of the condition of the oven before he moved into the unit. He painted the entire downstairs before he vacated but he is sure he did not paint over tape. The tenant said he didn't see a dent in the fridge and it only takes a few seconds to re-install the bi-fold door.
14. The tenant testified that the door stop and the lock for the screen door were broken during the tenancy. He repaired the door stop and he replaced the lock for the screen. He acknowledges that there might be some dirt around the light switch in the kitchen.

Analysis

15. I have reviewed the testimony of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; were there damages to the unit when the tenancy ended. 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 did not present any evidence to show the condition of the unit at the start of the tenancy or at the end of the tenancy. The tenant acknowledges that there were a couple of items damaged during the tenancy but he made the repairs before he vacated. As the landlord did not present any evidence such as photographs and/or condition reports, to show the condition of the unit at the start and at the end of the tenancy, the claim for damages fails.

Decision

16. The landlord's claim for compensation for damages fails.

Issue 2: Application for Security Deposit

17. 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

18. The tenant testified that a \$1350.00 security deposit was paid on August 13, 2018.

Landlord Position

19. The landlord acknowledges a \$1350.00 security deposit was paid in August 2018.

Analysis

20. A \$1350.00 security deposit was paid in August 2018. As the landlord's claim for compensation for damages is unsuccessful, the landlord shall return the security deposit to the tenant.

Decision

21. The landlord shall return the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

22. 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

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

Analysis

24. The cost the landlord 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 landlord's claim has been unsuccessful, the claim for payment of hearing expenses fails.

Decision

25. The landlord's claim for hearing expenses fails.

Summary of Decision

26. The tenant is entitled to the following:

a) Return of the security deposit \$1350.00

April 6, 2020

Date

Residential Tenancies Section