

Residential Tenancies Tribunal

Decision 19-0797-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:20 a.m. on November 28, 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.
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing. The respondent, [REDACTED], did not attend the hearing but he was represented by [REDACTED].

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$1100.00;
 - b. Compensation for damages in the amount of \$1875.85;
 - c. Hearing expenses.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
6. Also relevant and considered in this case are Sections 10, 14, 18, 19 and 31 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 - \$1100.00

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

Landlord Position

8. The landlord testified that the tenants moved into the unit on September 1, 2018 on a month to month tenancy with rent set at \$1100.00 per month due on the 1st of each month. The rent was paid in full up to October 2019. On October 6, 2019 she received a text message from the tenant requesting to use her as a reference. She sent a text message back and asked if they were moving out. The tenant replied by saying that they were moving out on December 1, 2019. The landlord said she advised the tenant that they are required to give a month's termination notice. Then on October 10, 2019 she received a notification from Newfoundland Power that the tenants had requested to close the account effective November 1, 2019. On October 12, 2019 she sent another text message confirming that the tenants were moving out. The tenant sent a text message stating they will be moving on November 1, 2019. On October 14, 2019 the tenant sent another text message stating that they will be vacating on November 15, 2019.
9. The landlord testified that the tenants moved out on November 1, 2019 but she did not try to re-rent the unit because the tenants did not give a proper notice. She started advertising the unit about 2 weeks ago on facebook for January 1, 2020. She is seeking rent for the month of November 2019. The landlord submitted into evidences copies of text messages between herself and the tenant for the period October 6, 2019 – November 15, 2019 (LL #7).

Tenant Position

10. The tenant testified that they did not give the landlord a form stating that they were moving out. She notified the landlord by a text message. She said the information the landlord stated is correct. On November 1, 2019 they moved out and they did a walk through with the landlord. When the walk through was completed they returned the key to the landlord.

Analysis

11. I have reviewed the testimony and evidence of the landlord and tenant. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenancy was a month to month tenancy and the tenant notified the landlord by a text message on October 12, 2019 they were moving out on November 1, 2019. On October 14, 2019 the tenant sent a text message that

they were moving out on November 15, 2019. Then on October 29, 2019 the landlord confirmed that the tenants were moving out on November 1, 2019. The tenants vacated on November 1, 2019. Under section 18.(1)(b) a tenant is required to give a notice not less than 1 month before the end of a rental period. The tenants did not terminate the tenancy as required by section 18.(1)(b). Under section 31.(2) a tenant is considered to have abandoned the unit if the rental agreement is not terminated in accordance with this Act or the rental agreement. Under section 10.(1)(4) the landlord is required to mitigate his/her losses when a tenant is considered to have abandoned the unit. As the landlord did not advertise the unit for rent immediately, I find that the landlord did not try to mitigate her losses. As the landlord did not try to mitigate her losses, the claim for payment of rent fails.

Decision

12. The landlord's claim for the payment of rent fails.

Issue 2: Compensation for damages - \$1875.75

13. The landlord testified that when the tenancy ended some cleaning was required. She hired [REDACTED] to clean the oven, all of the windows, and the bathroom. She paid \$120.00 for the cleaning.
14. Later in her testimony the landlord testified that once they were notified in August 2019 by the tenants about the problem with mildew they had an air exchanger and new siding installed. This work was completed within 6 weeks from the time the tenants notified them of the problem.
15. The landlord testified that when she did an inspection on the unit in August 2019 she noticed that the bedroom door was damaged. On September 27, 2019 she sent a notice to repair the door. When the tenants vacated the unit, the bedroom door was outside. She received a quote of \$235.00 plus tax to have the door replaced.
16. The landlord testified that she noticed that there was a water valve that leaked after the tenants removed the washer. She said it could be a faulty valve and that the tenants did not notify her about the leak. After the walk through was completed on November 1, 2019 the landlord called a plumber. When the plumber was at the unit it was discovered that the flooring was damaged and would need to be replaced. She received a quote of \$490.00 plus tax to replace the flooring.

17. The landlord testified that the tenants had decals on the wall in the dining room. When the decals were removed, the dry wall came off with it. The tenants also attempted to repair the holes in the walls in the living room and hallway. They plastered and painted over the holes. She is claiming for the plastering and priming of the walls. She received a quote of \$450.00 plus tax to plaster, prime and paint. The unit was painted 3 years ago.
18. The landlord stated that the living room window casings have to be replaced because of the scratches. The quote to replace the casings is \$200.00 plus tax.
19. The landlord submitted into evidence a receipt for cleaning from [REDACTED] in the amount of \$120.00 (LL #1), photographs of the oven, bathroom and windows (LL #2), a photograph of the bedroom door (LL #3), photographs of the walls in the dining and living room and the hallway (LL #4), photographs of the living room window casings (LL #5), a copy of the condition report dated September 1, 2018 (LL #6) and a copy of a quote from Fair Cut Contracting in the amount of \$1755.85 for all of the repairs (LL #9).

Tenant Position

20. The tenant testified that she accepts responsibility for the replacement of the bedroom door and the cleaning of the oven. She said that there was an ongoing issue with mould and mildew in the unit. She would clean the windows but the mould would keep re-occurring. The windows were cleaned before she moved out. The tenant said that they had a problem with mould and mildew and it was verbally brought to the landlord's attention in October and December 2018.
21. The tenant testified that when they went to shut off the valve for the washer, they couldn't get the valve completely shut off. They put a tote to catch the water. That evening they went back to check on it and there was a little drop of water in the bottom of the tote. She cannot remember if it was the next day or the day after she notified the landlord of the leak. When they did the walk through on November 1, 2019 there was no water damage done to the flooring.
22. The tenant acknowledges that she put decals on the wall. She said that they plastered and painted over the holes in the walls. There was a frame on the wall in the hallway when they moved into the unit.
23. The tenant testified that the window casings were in that condition when she moved into the unit.

24. The tenant submitted into evidence photographs of the laundry room taken on November 1, 2019 (T #1), photographs of the unit prior to the start of the tenancy (T #2) and copies of text messages between the tenant and landlord during the tenancy (T #3).

Analysis

25. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there are 2 issues that needs to be addressed; (i) did the unit need to be cleaned when the tenancy ended; and (ii) 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 some cleaning was required when the tenancy ended. The amount the landlord is claiming for cleaning is a reasonable amount. As a result the claim for cleaning succeeds in the amount of \$120.00.

26. With regard to the replacement of the bedroom door. The tenant acknowledges the damage to the door. A door is a depreciable item with a life expectancy of 20 years. As the door is 3 years old, the claim for replacement of the door succeeds in the amount of \$202.65 ($\$235.00 + \$35.25 \text{ tax} = \$270.25 \div 20 \text{ years} = \$13.51 \text{ per year} \times 17 \text{ years remaining} = \202.65).

27. With regard to the replacement of the flooring in the laundry room. I find that even though the water valve had leaked, there was no evidence presented that it was caused as the result of a willful or negligent act by the tenants. I also find that the landlord did not present any evidence to show the condition of the flooring at the end of the tenancy. As the landlord did not show the condition of the flooring, the claim for replacement of the flooring fails.

28. With regard to the plastering and priming of the walls. I find that the tenants put decals on the wall in the dining room. When the decals were removed the drywall came off. Based on the condition report signed at the start of the tenancy and the photographs taken at the end of the tenancy, there were holes in the walls in the living room and hallway when the tenancy ended. The tenants tried to repair the holes by plastering and painting over the holes. As the drywall came off when the decals were removed and the tenants tried to repair the holes in the walls, the tenants would be responsible for the plastering and priming of the walls. The quote the landlord received included painting. As the quote did not give a breakdown, I award an arbitrary amount of \$150.00 to plaster and prime.

29. With regard to the replacement of the casings for the living room window. I find based on the condition report at the start of the tenancy and the photographs at the end of the tenancy, the window casings were damaged during the

tenancy. The quote the landlord received to replace the casings is reasonable. The claim for replacement of the casing succeeds in the amount of \$200.00 + \$30.00 tax = \$230.00.

Decision

30. The landlord's claim for compensation for damages succeeds as per the following:

a) Cleaning.....	\$120.00
b) Replacement of the bedroom door.....	\$202.65
c) Plastering and Priming.....	\$150.00
d) Replacement of the window casing.....	<u>\$230.00</u>
e) Total owing to the landlord	\$702.65

Issue 3: Application for Security Deposit

31. 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.

Landlord Position

32. The landlord testified that the tenants paid a \$550.00 security deposit on August 20, 2018.

Tenant Position

33. The tenant acknowledges they paid a \$550.00 security deposit.

Analysis

34. A \$550.00 security deposit was paid in August 2018. The landlord shall retain the security deposit as she has been partially successful in the claim for compensation for damages. The interest rate on security deposits for 2019 is 0%.

Decision

35. The landlord shall retain the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

36. 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

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

Analysis

38. 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 was partially successful, the tenants are responsible to pay the landlord's hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

40. The landlord is entitled to the following:

a) Compensation for damages	\$702.65
b) Hearing expenses	\$20.00
c) Less the security deposit	<u>(550.00)</u>
d) Total owing to the Landlord.....	<u>\$172.65</u>

April 30, 2020

Date

Residential Tenancies Section