

Residential Tenancies Tribunal

[REDACTED] Decision 19-838-05
[REDACTED]

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:10 a.m. on November 27, 2019 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.
3. The countering applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Preliminary Matter:

4. The landlord's application should have read; \$4240.00 for damages; \$500.00 for a deductible, and \$1200.00 for rent. The landlord amended the claim for damages from \$4240.00 to \$4195.00.

Issues before the Tribunal

5. The tenant is seeking the following:
 - a. Refund of rent in the amount of \$394.50;
 - b. Refund of the security deposit in the amount of \$600.00;
 - c. Hearing expenses.
6. The landlord is seeking the following:
 - a. Compensation for damages in the amount of \$4195.00;
 - b. Payment of a deductible in the amount of \$500.00;
 - c. Payment of rent in the amount of \$1200.00;
 - d. 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, 14, 19 and 24 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Return of rent - \$394.50

Tenant Position

9. The tenant testified that she moved into the unit on July 19, 2019 on a month to month tenancy with rent set at \$1200.00 per month due on the 20th of each month. On October 6, 2019 she was served with a termination notice under section 24 of the Act to vacate on October 12, 2019. She vacated on October 10, 2019. She is seeking rent back for 10 days in the amount of \$394.50.
10. The tenant acknowledges that there was an incident that took place at her unit on the night of October 5, 2019. She was a victim of violence. The person that was in her unit struck her. She tried to get the person out of the building. On his way out he pulled the fire alarm. He also assaulted another person in the building.

Landlord Position

11. The landlord testified that the tenant was evicted under the section dealing with peaceful enjoyment of the property. She acknowledges the tenant was a victim of violence. The tenant let a person into her unit. This person assaulted another person in the building and he pulled the fire alarm during the night. When the fire alarm was pulled the whole complex was terrorized. The police were called to the unit.
12. The landlord testified that prior to this incident she had received numerous noise complaints concerning the tenant's unit.

Analysis

13. I have reviewed the testimony and the evidence of the tenant and the landlord. I find there is one issue that needs to be addressed; is the tenant entitled to return of rent. I find that the rental period was from the 20th of one month to the 19th of the next month. The tenant was served with a termination notice under

section 24 of the Act to vacate on October 12, 2019. The tenant acknowledges the person she let into her unit pulled the fire alarm and he assaulted another person in the building. Under section 24 a landlord can terminate a tenancy if the tenant contravenes statutory condition 10.7(a). Section 10.7(a) states a *tenant shall not unreasonably interfere with the rights and reasonable privacy of a landlord or other tenants in the residential premises, a common area or the property of which they form a part*. By pulling the fire alarm, it was interfering with the rights of the other tenants living in the building. The landlord had grounds to terminate the tenancy. As the tenant moved out as per the landlord's termination notice and no longer had use and occupation of the rental unit, the tenant's claim for return of rent succeeds in the amount of \$355.05 ($\$1200.00 \times 12 \text{ months} = \$14,400.00 \div 365 \text{ days} = \$39.45 \text{ per day} \times 9 \text{ days} = \355.05) for the period October 11 – 19, 2019.

Decision

14. The tenant's claim for return of rent succeeds in the amount of \$355.05.

Issue 2: Compensation for damages - \$4195.00

15. The landlord testified that when the tenancy ended there were some damages to the unit, items missing and the unit needed to be cleaned. The wall outside the entrance had a hole in it. The person the tenant let into the unit pulled the fire extinguisher of the wall causing damage to the wall and the bolt that was holding the fire extinguisher was damaged. The cost to repair the hole was \$50.00. This included the plaster, primer, paint, labour and the cost of the new bolt.
16. The entrance door had to be replaced because there was a split up the door and there was a dent on the outside of the door. The lock set was damaged and the dead bolt had to be rekeyed. The cost to replace the door was \$1000.00. This includes the cost for the door, the new lock set, the cost to rekey the deadbolt, and the labour to install and paint the door. She is not sure of the age of the door.
17. The hardware for the closet door in the front entrance was damaged. The track was bent and buckled. The cost was \$50.00 for the hardware kit and \$10.00 for the labour to install. Also the closet door in the master bedroom was smashed and the hardware was bent. The closet door and the hardware had to be replaced. The cost of the materials was \$150.00 for the door and the hardware and \$50.00 labour to install the new door.

18. The landlord testified that there were 5 holes between 2 walls in the dining room and on the corner of one wall. The dining room was painted in 2017. There was a dent in the wall in the kitchen by the stove. The kitchen was painted 6 months before the tenant moved in. In one bedroom there were 6 holes between 3 of the 4 walls. The walls were painted before she purchased the house in 2016. When she had the walls painted she changed the colour. She also testified that there was a hole in the ceiling in the living room. The living room hasn't been painted since she purchased the house. The cost to repair is \$50.00 per hole. This includes the plaster, primer, paint and labour.
19. The landlord testified that the kitchen faucet was torn off. The tenant had purchased a new faucet but the faucet did not fit. She had to return the faucet and purchase another one. The difference in the cost of the faucet was \$20.00. The cost to install the new faucet was \$20.00. She also testified that the countertop has to be replaced because there were cracks in the countertop near the sink. She received a verbal quote of \$250.00 to have the countertop replaced. She is not sure of the age of the faucet and the countertop. Also in the kitchen two cabinet doors were loose. The hinges on the doors had to be tightened. The cost to have the doors repaired was \$10.00.
20. The landlord testified that the glass in the vanity door in the bathroom was broken. She had to purchase 2 panes of glass at a cost of \$40.00 and \$20.00 for the labour to have the glass installed. The landlord acknowledges there was a crack in the glass at the start of the tenancy. She also testified that she had to hire a plumber because the toilet was clogged. The plumber snaked the pipes and he found a comb in the pipe. The cost of the plumber was \$100.00. The landlord said when she lived in the unit the toilet worked fine.
21. The landlord testified that the heater in the second bedroom was damaged and it was detached from the wall. She had to replace the heater at a cost of \$150.00; \$100.00 for the heater and \$50.00 for labour.
22. The landlord testified that she spent \$400.00 to clean the unit. On October 6, 2019 after the incident took place she went to view the unit. When she was at the unit she found 2 cigarette butts and there were a couple of small drops of blood on a cupboard door and a small drop on the kitchen flooring. When the tenant moved out the unit was clean. She said she felt it needed to be cleaned because of the bodily fluids and the tenant smoked in the unit. She spent \$50.00 for cleaning supplies and she paid 3 people \$100.00 each to clean the unit. She is also claiming \$50.00 for her own labour to clean the unit.
23. The landlord testified that one of the chairs belonging to the dining room set was smashed. The chair is one year old. She was shopping around for a new chair and the average cost of a chair is \$175.00. She also testified that the corner and the finish on the top of the TV console were damaged. The cost to

repair the console was \$50.00; \$10.00 for glue, \$20.00 for paint and \$20.00 for labour. The console is about 5 years old. The coffee table was damaged and the 2 end tables were missing. It looked like there was nail polish on the coffee table. The coffee and end tables were purchased as a set about 4 years ago at a cost of \$1000.00. The landlord said the coffee table can be used.

24. The landlord testified that she did not do a walk through with the tenant at the start of the tenancy. She does not have the receipts or estimates for the work that was completed. She has photographs of the unit. The landlord presented into evidence the following photographs; the wall outside of the entrance (LL #1); the entrance door (LL #2); the walls in the dining room and the closet door in the entrance (LL #3); the chair and the living room ceiling (LL #4); the TV console (LL #5); the kitchen faucet (LL #6); the kitchen countertop (LL #7), the wall in the kitchen (LL #8); the vanity in the bathroom (LL #9); the closet door in the master bedroom (LL #10); the walls in the 2nd bedroom (LL #11) and the heater in the 2nd bedroom (LL #12). Also presented into evidence were photographs of the kitchen taken on October 6, 2019 (LL #13).

Tenant Position

25. The tenant testified that the hole in the wall outside the entrance was damaged during the tenancy. The person she let in her unit yanked the fire extinguisher of the wall and caused damage to the wall. She said the bolt was not damaged. She acknowledges that the entrance door had a crack in it but she said her father could have fixed it but the landlord refused. The door knob worked because she used it up to date she vacated. She never used the deadbolt.
26. The tenant testified that the hardware for the entrance closet door was fixed before she vacated. The closet doors in the master bedroom were fine as she presented a photograph of the closet doors.
27. The tenant acknowledges one hole in the wall in the dining room and one hole in the wall in the 2nd bedroom and the damage to the ceiling. The rest of the marks were there when she moved in. In the 2nd bedroom there were also stains on the walls when she moved in. She said that in the kitchen there is no dent in the wall. There was steam on the wall. When she wiped the wall, the paint came off.
28. The tenant acknowledges the damage to the faucet but she replaced the faucet. When the landlord told her the faucet didn't fit the landlord didn't mention anything about the extra cost. The tenant said she didn't notice the cracks in the countertop and she did not cause the cracks. She didn't have an issue with any of the cupboard doors as she used them daily.

29. The tenant testified that there was a crack in the glass in the vanity when she moved into the unit. When her child opened the door, the glass broke. She said that the toilet never worked well from the day she moved in. She told Sheila, the lady who cleans the building, about the toilet.
30. The tenant testified that the heater was not off the wall. It was in that condition when she moved into the unit. She said the heaters were very old.
31. The tenant testified that she cleaned the unit before she vacated. When the incident happened there were 2 small spots of blood on the cupboard door. She said she didn't smoke in the unit but the night of the incident the person she let into the unit had 2 cigarettes that night.
32. The tenant acknowledges the damage to the chair and that the TV console was in that condition when the tenancy started. With regard to the coffee and end tables. There were no end tables in the unit and there was a spot of nail polish on the coffee table when she moved out.
33. The tenant submitted into evidence a photograph of the closet door (T #1), a photograph of the dining room (T #2), a receipt from Canadian Tire for the purchase of the faucet (T #3), 2 photographs of the kitchen wall (T #4), a photograph of closet door in the master bedroom (T #5), photographs of the 2nd bedroom (T #6), a photograph of the heater (T #7) and photographs of the unit taken before she vacated (T #8).

Analysis

34. I have reviewed the testimony and the evidence of the landlord. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the damages. 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 tenant did not walk through the property at the start of the tenancy to write down any deficiencies with the unit. The landlord did not present any receipts or estimates for the work that was carried out. Also the landlord was not aware of the age of the items that she claimed. The tenant acknowledges that there was a hole in the wall outside the entrance door, a mark on the wall in the dining room and the 2nd bedroom and a mark on the ceiling in the living room. As the hole in the wall was caused by the fire extinguisher being pulled off the wall and the landlord did not present any receipts or estimates, I award an arbitrary amount of \$25.00 to repair the hole. As the tenant acknowledges that there was a mark on the ceiling and the landlord does not know when the last time the unit was painted, the claim for repairs to the ceiling fails. With regards to the marks on the other walls, I would consider them to be normal wear and tear.

35. With regard to the replacement of the entrance door and knob set. I find that the door was damaged during the tenancy. Doors and knob sets are depreciable items with a life expectancy of 15 – 20 years. However, the landlord did not present any evidence on the cost of replacing the door and knob set and the age of these items. As the door was damaged during the tenancy, I award an arbitrary amount of \$150.00 to replace the door.
36. With regard to the repairs/replacement to the closet doors, the TV console, the kitchen countertop, the cupboard doors and the heater. The landlord did not show the condition of these items at the start of the tenancy. As a result, the claim for repairs/replacement of these items fails.
37. With regard to the chair, coffee and end tables. The tenant acknowledges the chair was damaged during the tenancy. As the landlord did not present any evidence on the cost of replacement, I award an arbitrary amount of \$60.00 to replace the chair. The landlord did not submit any evidence to indicate that there were end tables in the unit at the start of the tenancy and that the coffee table cannot be used due to the mark on it. The claim for replacement of the coffee and end tables fails.
38. With regard to the replacement of the faucet. The tenant purchased a new faucet for the unit. A faucet is a depreciable item with a life expectancy of 8 – 12 years. As the landlord did not know the age of the faucet and the tenant purchased a new faucet, the claim fails for replacement of the faucet. Since the faucet was damaged during the tenancy, the amount the landlord is claiming to have it installed is a reasonable amount, the claim to have the faucet installed succeeds in the amount of \$20.00.
39. With regard to the glass for the bathroom vanity. The landlord acknowledges there was crack in the glass when the tenant moved in. The landlord did not present any evidence that the glass broke as the result of a willful or negligent act by the tenant. Also the landlord failed to establish that the comb found in the pipe belonged to the tenant or someone the tenant let into the unit. Therefore, the claim for the glass for the vanity and the cost of the plumber fails.
40. With regard to the cleaning of the unit. The landlord admits that the unit was cleaned when the tenancy ended. She claims that the unit needed to be thoroughly cleaned because of the bodily fluids and someone smoked in the unit. Based on the photographs presented after the incident took place, I find that there were 2 very small amounts of blood on the cabinet door and the floor. Also, the landlord did not submit any evidence to establish that there was a smell of smoke in the unit when the tenancy ended. The claim for cleaning fails.

Decision

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

a) Repairs to the wall	\$25.00
b) Replacement of the entrance door.....	\$150.00
c) Replacement of the chair	\$60.00
d) Labour to install the faucet.....	<u>\$20.00</u>
e) Total owing to the Landlord	<u>\$255.00</u>

Issue 3 – Payment of deductible - \$500.00

Landlord Position

42. The landlord testified that on August 18, 2019 she received a call from the [REDACTED] informing her that there was water coming down in the unit below her unit. She said that the tenant noticed water coming from the dishwasher a few days before that but she did not notify the landlord. The landlord had to pay a \$500.00 deductible to have the flooring in her unit replaced because the dishwasher was leaking. The repairs were carried out after the tenant vacated the unit.

Tenant Position

43. The tenant testified that she didn't see water on the floor around the dishwasher. The only thing she saw, there was a little bit of suds came out around the door of the dishwasher. She cleaned it off and she did not see any more suds. She said that the hose on the bottom of the dishwasher was leaking. This was the cause of the leak.

Analysis

44. I have reviewed the testimony and the evidence of the landlord and the tenant. I find there is one issue that needs to be addressed; is the tenant responsible for the deductible. I find that the landlord did not present any evidence to show that the tenant saw water coming from the dishwasher prior to the leak on August 18, 2019. Therefore, the claim for compensation for the deductible fails.

Decision

45. The landlord's claim for compensation for the deductible fails.

Issue 4: Payment of rent - \$1200.00

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

Landlord Position

47. The landlord testified that she could not try to re-rent the unit as the repairs were not carried out. She started advertising the week of November 18, 2019 on Kijiji and facebook marketplace.

Analysis

48. I have reviewed the testimony and the evidence of the landlord and tenant. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the rent. I find that the amount of damages the landlord was awarded in No. 41 above, would not interfere with the landlord's ability to try and re-rent the unit. The claim for payment of rent fails.

Decision

49. The landlord's claim for payment of rent fails.

Issue 5: Application for Security Deposit

50. 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

51. The tenant testified that she paid a \$600.00 security deposit on July 9, 2019.

Landlord Position

52. The landlord acknowledges a \$600.00 security deposit in July 2019.

Analysis

53. A \$600.00 security deposit was paid in July 2019. The security deposit shall be disposed of as both parties have been partially successful in their claim. The interest rate on security deposits for 2019 is 0%.

Decision

54. The security deposit in the amount of \$600.00 shall be disposed of as outlined in this decision and attached order.

Issue 6: Hearing Expenses - \$20.00

55. 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

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

Analysis

57. 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 both the tenant's and the landlord's claim have been partially successful, each party shall bear their own hearing expenses.

Decision

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

Summary of Decision

59. The tenant is entitled to the following:

a) Refund of the rent	\$355.05
b) Refund of the security deposit.....	\$600.00
b) Less compensation for damages	<u>(255.00)</u>
c) Total owing to the tenant.....	<u>\$700.05</u>

April 28, 2020

Date

Residential Tenancies Section