

Residential Tenancies Tribunal

[REDACTED] Decision 19-0928-05
[REDACTED]

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:25 p.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.
3. The countering applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Preliminary Matter

4. [REDACTED] called [REDACTED] as a witness.

Issues before the Tribunal

5. The tenant is seeking the following:
 - a. Refund of the security deposit in the amount of \$600.00.
6. The landlord is seeking the following:
 - a. Compensation for damages in the amount of \$506.95;
 - b. Payment of rent in the amount of \$1200.00;
 - c. 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 and 19 of the Act and *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF.*

Issue 1: Compensation for damages - \$506.95

Landlord Position

9. The landlord stated that the tenant moved into the unit on July 1, 2017 for a one year term with rent set at \$1200.00 per month due on the 1st of each month. When the term ended the tenancy converted to month to month. The tenant vacated on October 31, 2019. When the tenancy ended the unit needed to be cleaned. The landlord testified that there was a horrible smell when she went into the unit. It was an overpowering smell of dogs. She spent at least 20 hours cleaning as she had to clean every surface in the unit. She had to clean the walls, floors, windows, fridge, stove, behind the fridge and stove, the cupboards and the sink. She had to scrap the dirt out between the hardwood floors and she had to clean the bathroom. The dirt on the walls looked like dog drool. The landlord is claiming 20 hours @ \$19.40 per hour to clean the unit. She said her friend helped her clean for about 7 hours but she did not pay her any money.
10. The landlord said that she had to buy cleaning supplies; she spent \$27.81 at Costco for Mr. Clean and Spray Nine and \$12.64 at Dominion for Magic Erasers.
11. The landlord testified that the bi-fold closet door at the top of the stairs had to be replaced. The wood in the door would split apart when the door was opened. The door is about 17 years old. She also testified that the toilet seat had to be replaced as it was broken. The toilet seat was purchased a couple of months before the tenant moved into the unit. The bi-fold door and the toilet seat were purchased at Power Brothers Inc. at a cost of \$50.00 + tax for the bi-fold door and \$17.99 + tax for the toilet seat.
12. The landlord submitted into evidence a copy of the rental premises condition report dated June 30, 2017 (LL #1), photographs of the unit prior to the start of the tenancy (LL #2), photographs of the unit taken on November 1 and 6, 2019 (LL #3), a receipt from Dominion (LL #4), a receipt from Costco (LL #5), a disc containing a video of the unit on November 3, 2019 (LL #6) and a sworn affidavit from [REDACTED] (LL #7). The affidavit states that there was a terrible smell in the unit and that every surface in the house has to be cleaned. Also presented into evidence a receipt from Power Brothers Inc. (LL #8).

Witness Position

13. [REDACTED], witness for the landlord, testified that there was a very strong smell of dog odor in the unit after the tenant vacated. Also there were stains on the wall, smudges on the windows and dirt on the floors and behind the fridge and stove.

Tenant Position

14. The tenant testified that she cleaned the unit before she moved out. She did not clean behind the fridge and the stove. She acknowledges that there was some cleaning required as there were some drools on the walls.
15. The tenant testified that the bi-fold door was not damaged. It was off the track. She acknowledges that the screw on the toilet seat was cracked off.
16. The tenant submitted into evidence photographs of the unit taken on October 30, 2019 (T #1).

Analysis

17. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there are 2 issues that need to be addressed; (i) did the unit need to be cleaned when the tenancy ended; and (ii) 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 unit needed to be cleaned when the tenancy ended. Based on the video and the photographs presented of the unit, the amount of time the landlord is claiming to clean the unit and the amount she spent on cleaning supplies is reasonable. The landlord's claim succeeds in the amount of \$388.00 (20 hours x \$19.40 per hour = \$388.00) for cleaning and \$39.96 for supplies for a total of \$427.96 (\$388.00 + \$39.96 = \$427.96).
18. With regard to the replacement of the bi-fold door. I find that the landlord failed to establish that the damage to the door was the result of a willful or negligent act by the tenant. The claim for replacement of the bi-fold fails.
19. With regard to the replacement of the toilet seat. I find that the tenant acknowledges that a screw for the toilet seat was cracked damaged during the tenancy. A toilet seat is a depreciable item with a life expectancy of 10 years. As the toilet seat is 2½ years old, the claim for replacement succeeds in the amount of \$15.53 (\$17.99 + \$2.70 tax = \$20.69 ÷ 10 years = \$2.07 per year x 7½ years = \$15.53).

Decision

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

a. Cleaning and supplies.....	\$427.96
b. Replacement of the toilet seat.....	<u>\$15.53</u>
c. Total owing to landlord.....	\$443.49

Issue 2: Payment of rent - \$1200.00

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

Landlord Position

22. The landlord testified that the tenant gave her a termination notice on October 1, 2019 by a text message that she was vacating on October 31, 2019. She accepted the notice. On October 11, 2019 she inspected the unit to see what needed to be done. At that time the house was in a horrible state. She noticed that there was mold on every window in the unit and the air exchanger was not turned on. When the tenant moved out the unit was literally un-rentable. She started cleaning on November 3, 2019 and it took her 2 weeks as she had to work around her regular job. She had to remove the carpets in order to get rid of the smell. She stated she did not try to re-rent the unit.

Tenant Position

23. The tenant testified that she is not responsible for rent for November 2019. She gave her termination notice to move out.

Analysis

24. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; is the tenant responsible for the payment of rent for the month of November 2019. I find that the landlord is seeking rent for November because she said it was un-rentable; she had to clean the unit and replace the carpet. The landlord did not claim for carpet replacement. In No. 16 above, the landlord was awarded 20 hours for cleaning. As the landlord was awarded for cleaning, I award rent for 4 days to have the unit cleaned. The claim for the payment of rent succeeds in the amount of \$157.80 ($\$1200.00 \times 12 \text{ months} = \$14,400.00 \div 365 \text{ days} = \$39.45 \text{ per day} \times 4 \text{ days} = \157.80).

Decision

25. The landlord's claim for rent succeeds as per the following:

a. Rent owing for November 1 – 4, 2019\$157.80

Issue 3: Application for Security Deposit

26. 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

27. The tenant testified that she paid a \$600.00 security deposit in June 2017.

Landlord Position

28. The landlord acknowledges the tenant paid a \$600.00 security deposit.

Analysis

29. A \$600.00 security deposit was paid in June 2017. The landlord shall retain the security deposit as the landlord has been partially successful in her claim for compensation for damages and the payment of rent. The interest rate on security deposits for the period 2017 - 2019 is 0%.

Decision

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

Issue 4: Hearing Expenses - \$73.20

31. 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

32. The landlord paid an application filing fee in the amount of \$20.00 and she paid \$53.20 to have photographs developed. The landlord is seeking these costs.

Analysis

33. The cost the landlord incurred to make the application and to have the photographs developed are considered reasonable expenses 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 partially successful, the tenant shall pay the landlord's hearing expenses in the amount of \$73.20.

Decision

34. The landlord's claim for hearing expenses succeeds in the amount of \$73.20.

Summary of Decision

35. The landlord is entitled to the following:

a. Compensation for damages	\$443.49
b. Payment of rent	\$157.80
c. Hearing expenses.....	\$73.20
d. Less the security deposit.....	<u>(600.00)</u>
e. Total owing to the landlord.....	\$74.49

May 12, 2020

Date

Residential Tenancies Section