

Residential Tenancies Tribunal

Decision 19-0933-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:05 p.m. on March 5, 2020 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.

Preliminary Matter:

4. The application was amended to reflect the landlord's name as [REDACTED] not [REDACTED] and the claim for payment of rent was amended from \$850.00 to \$531.05.
5. [REDACTED] appeared as a witness for the landlord.
6. [REDACTED] appeared as a witness for the tenant.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a. Compensation for damages in the amount of \$1270.00;
 - b. Payment of rent in the amount of \$531.05;
 - c. Hearing expenses.

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, 18, 19 and 22 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 - \$1270.00

Landlord Position

10. The landlord testified that the tenant moved into the unit on July 15, 2017 for a one year term for the period July 1, 2017 – June 30, 2018 with rent set at \$850.00 per month due on the 1st of each month. The tenancy converted to month to month at the end of the term. When the tenancy ended the stove had to be replaced and the unit needed to be cleaned and painted.
11. The landlord testified that the stove was damaged beyond reasonable repair. The stove would smoke when it was turned on because there was so much crud under the burners. He was advised by his electrician not to use the stove. The stove was in the unit when he purchased the house in 2017. He purchased a 2nd hand stove at a cost of \$350.00.
12. The landlord testified that the unit needed to be cleaned when the tenant moved out. He is claiming 6 hours at \$19.40 per hour for his time cleaning but he spent a lot more than 6 hours. The cleaning consisted of the backsplash, the kitchen faucet, the cupboards, underneath the fridge, the windows, blinds, walls and the kitchen floor. He testified that there was also a lingering smell in the unit. It was a vinegary, soya sauce smell. He couldn't fine the smell. He hired [REDACTED] to clean. He is claiming \$200.00 for the time she spent cleaning.
13. The landlord testified that the walls in the living room and the bedroom had to be painted because of the scrapes and residue on the walls. The unit was totally renovated before the tenant moved in. There were scrapes on some walls and the tenant used duct tape to put up pictures on other walls. When she removed the tape, the paint came off. He was charged \$300.00 a room to have the walls plastered and painted.
14. The landlord submitted into evidence photographs of the stove at the end of the tenancy (LL #2), a receipt in the amount of \$350.00 for the purchase of the stove (LL #3), a photograph of the stove taken on July 7, 2017 (LL #4), a receipt from [REDACTED] in the amount of \$600.00 for plastering and painting (LL #5), photographs of the walls (LL #6), photographs of what needed to be cleaned (LL #7), photographs of the unit prior to the start of the tenancy (LL #8), and a USB containing a video of the unit prior to the start of the tenancy (LL #10).

Witness Position

15. [REDACTED], cleaner and witness for the landlord, testified that she cleaned the unit. She had to clean the windows, floors, fridge, washer, bathroom and the light fixtures. She said the place was disgusting. There was mold on the windows and she had to clean them 2 or 3 times and she used a toothbrush to clean them; behind the fridge was very dirty; there was cat fur underneath the fridge and in all of the heaters. She had to wash the floor in the bathroom 5 or 6 times as there was wax on the floor behind the toilet and all of the dirt was stuck to it.
16. [REDACTED] testified that there was a smell in the unit. When she opened up the rubber in the washer, there was mold and a buildup of wool and water. She put a bag over her gloves and she scooped out the buildup. She found hair pins and condoms among the buildup. While she was scooping out the buildup she started urging and she had to leave and come back the next day. The smell was from the washer.
17. [REDACTED] testified that she spent about 27 or 28 hours cleaning and the landlord paid her \$501.00 for the cleaning.

Tenant Position

18. The tenant testified that she cleaned the unit before she moved out. She left it in the same condition that she found it. With regard to the stove she is not sure if she lifted up the coils to clean. She said the photograph that the landlord presented of the stove taken before she moved in does not show under the coils.
19. The tenant testified that there were some small marks on the wall. The landlord didn't provide the measurements of the marks. She said that small damages are considered normal wear and tear.
20. The tenant submitted into evidence photographs of the stove taken before she moved out (T #2), photographs of the walls (T #3) and photographs of the unit (T #3).

Witness Position

21. [REDACTED], witness for the tenant, testified that he helped the tenant clean the entire unit on November 29 and 30, 2019. He didn't see any mold on the windows.

Analysis

22. I have reviewed the testimony and the evidence presented of the landlord, the tenant and the witnesses. I have determined that there is one issue that needs to be addressed; (i) are there damages to the unit and 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. The photographs of the stove at the end of the tenancy show that there is a lot of crud underneath the burner. Based on these photographs I find the landlord's testimony to be more credible that the stove cannot be used because of the crud. A stove is a depreciable item with a life expectancy of 12 years. The landlord did not know the age of the stove and he purchased a 2nd hand stove at a cost of \$350.00. As the landlord did not know the age of the stove, I award an arbitrary amount of \$200.00 for replacement of the stove.
23. With regard to the cleaning. Based on the photographs presented and the testimony of the landlord's witness, I find that the unit needed to be cleaned. The amount the landlord is claiming to have the unit cleaned is reasonable; \$116.00 (6 hours @ \$19.40 per hour = \$116.00) for the landlord and \$200.00 for the cleaner for a total \$316.00 (\$116.00 + \$200.00 = \$316.00). The landlord's claim for cleaning succeeds in the amount of \$316.00.
24. With regard to plastering and painting. Based on the photographs of the unit at the start and the end of the tenancy, I find that there are scraps and residue on the walls in the bedroom and the living room when the tenancy ended. Paint is a depreciable item with a life expectancy of 3 – 5 years. As the unit was painted just prior to the start of the tenancy, the claim for painting succeeds in the amount of \$300.00 (\$600.00 ÷ 5 years = \$120.00 per year x 2½ years remaining = \$300.00).

Decision

25. The landlord's claim for compensation for damages succeeds as per the following:
 - a) Replacement of the stove\$200.00
 - b) Cleaning\$316.00
 - c) Plastering and painting\$300.00
 - d) Total owing to the landlord\$816.00**

Issue 2: Payment of rent - \$531.05

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

Landlord Position

27. The landlord testified that the tenant sent him a text message on October 28, 2019 that she was moving out the end of November 2019. The message did not contain all of the pertinent information for a termination notice. On November 6, 2019 she gave him a termination notice that she was moving out on November 30, 2019. He posted an ad on Kijiji on November 6, 2019 and he renewed the ad every 24 hours. He had a lot of showings. After the 8 showing he didn't show the unit anymore because every person that viewed the unit complained about the condition of the unit. He re-rented the unit on December 18, 2019 for the tenancy to start on December 20, 2019. The landlord is seeking rent for the period December 1 – 19, 2019 in the amount of \$531.05.
28. After the tenant gave her testimony, the landlord testified that when he was at the unit on November 2, 2019 the unit was not clean. On November 3, 2019 he served a landlord's request for repairs. The request was to clean the unit and have it cleaned by November 7, 2019. When he went to the unit on November 7, 2019 he met the tenant at the door and she told him she wasn't going to clean, it's clean to her standard. On November 13, 2019 the tenant told him there was no change in the unit and she was not going to clean. That day he gave her a termination notice under section 22 (tenant's obligations not met) of the Act to vacate on November 19, 2019. The tenant did not vacate until November 30, 2019.
29. The landlord testified that he communicated with the tenant through text messages and e-mails concerning the viewings and the cleaning of the unit. The landlord submitted into evidence a copy of the termination notice dated November 6, 2019 (LL #1), copies of text messages between himself and the tenant for the period November 13 – 19, 2019 (LL #9) and photographs of the unit taken on November 3, 2019 (LL #10).

Tenant Position

30. The tenant acknowledges that she sent a text message to the landlord on October 28, 2019 stating that she was moving out. She felt the notice was sufficient. On November 6, 2019 she sent a formal termination notice.
31. The tenant said the landlord's request for repairs on November 3, 2019 was vague and unreasonable. She thought she had to move everything out and she felt the unit was clean and there were no damages. On November 13, 2019 she was served with a termination notice to vacate on November 19, 2019 because the unit was not cleaned. She moved out on November 30, 2019.

32. The tenant testified that she only received a few requests from the landlord to show the unit.
33. The tenant submitted into evidence a copy of the text message she sent to the landlord on October 28, 2019 (T #1), a copy of an e-mail from the landlord dated November 3, 2019 re: cleaning of the unit (T #5), a copy of the notice to enter premises dated November 6, 2019 (T #6), a copy of the termination notice dated November 13, 2019 (T #7), and a copy of the landlord's request for repairs dated November 3, 2019 (T #8).

Analysis

34. 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 period December 1 – 19, 2019. I find that the tenant was on a month to month tenancy and she sent a text message to the landlord on October 28, 2019 stating she was moving out on December 1, 2019. Then on November 6, 2019 she sent a formal termination notice to the landlord that she was vacating on November 30, 2019. She vacated on November 30, 2019. Under section 18.1(b) the tenant is required to give a termination notice not less than one month before the end of a rental period. The tenant did not terminate the tenancy as required by section 18.1(b).
35. I also find that the landlord served a termination notice on the tenant on November 13, 2019 under section 22 (tenant's obligations not met) to vacate on November 19, 2019. Based on the photographs of the unit taken on November 3, 2019, the landlord had grounds to request repairs. I find that the landlord's testimony was credible in that the repairs were not carried out on November 13, 2019 when he served the termination notice.
36. As the termination notice dated November 13, 2019 was a valid notice and the tenant vacated on November 30, 2019 the landlord would not be entitled to rent for December 2019. However, the landlord was awarded compensation for cleaning and plastering and painting. As the landlord was awarded compensation for the cleaning and plastering and painting, the landlord would be entitled to rent for the period to have the work completed. Based on the award, I find that a week would give the landlord a reasonable amount of time to have the work completed. Therefore, the claim for payment of rent succeeds in the amount of \$195.65 ($\$850.00 \times 12 \text{ months} = \$10,200.00 \div 365 \text{ days} = \$27.95 \text{ per day} \times 7 \text{ days} = \195.65).

Decision

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

a. Rent owing for December 1 – 7, 2019.....\$195.65

Issue 3: Application for Security Deposit

38. 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

39. The tenant testified that she paid a \$600.00 security deposit on July 15, 2017.

Landlord Position

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

Analysis

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

Decision

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

Issue 4: Hearing Expenses - \$49.20/\$11.90

43. 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

44. The landlord paid an application filing fee in the amount of \$20.00 and \$29.20 for the development of the photographs for a total of \$49.20. The landlord is seeking these costs.

Tenant Position

45. The tenant paid \$11.90 for printing of the photographs and the documents presented into evidence. The tenant is seeking this cost.

Analysis

46. The cost the landlord incurred to make the application and the cost the landlord and the tenant incurred to have the photographs developed and the documents printed 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 successful, the tenant's claim for hearing expenses fails. The tenant shall pay the landlord's hearing expenses in the amount of \$49.20.

Decision

47. The landlord's claim for hearing expenses succeeds in the amount of \$49.20.

Summary of Decision

48. The landlord is entitled to the following:

a. Compensation for damages	\$816.00
b. Payment of rent	\$195.65
c. Hearing expenses.....	\$49.20
d. Less the security deposit.....	<u>(600.00)</u>
e. Total owing to the landlord.....	\$460.85

May 26, 2020

Date

Residential Tenancies Section