

Residential Tenancies Tribunal

[REDACTED] Decision 19-0962-05
[REDACTED]

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:10 a.m. on January 28, 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. The originating applicant, [REDACTED], hereafter referred to as tenant1 did not attend the hearing but was represented by [REDACTED]
[REDACTED].
3. The countering applicants, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing by a conference call.

Preliminary Matter

4. The landlords discontinued the claim for compensation for inconveniences.

Issues before the Tribunal

5. The tenants are seeking the following:
 - a. Refund of the security deposit in the amount of \$600.00;
 - b. Return of rent in the amount of \$3600.00;
 - c. Compensation for damages in the amount of \$250.00;
 - d. Hearing expenses.

6. The landlords are seeking the following:
 - a. Payment of rent in the amount of \$1200.00;
 - b. Payment of utilities in the amount of \$473.13;
 - 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, 18, 19, 31 and 34 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 - \$3600.00

Tenant Position

9. The tenant testified that the month to month tenancy started on September 1, 2019 with rent set at \$1200.00 per month due on the 1st of each month. They were given the keys to the unit prior to September 1, 2019. She testified that on November 1, 2019 they discovered mice in the unit. They contacted the landlord and the landlord told them to put traps out and the landlord notified them at that time they had a mice problem at the unit before. They put the traps out and they caught 4 or 5 mice. On November 15, 2019 the tenants sent a text message to the landlords informing them that they were moving out. On November 21, 2019 the landlords had a pest control company visit the unit. The representative from the company told the tenant to keep doing what she was doing.
10. The tenant said they are seeking the return of rent because the landlords did not notify them before they moved into the unit, the landlords had a mice problem at that unit for a couple of years. The tenant presented copies of text messages between herself and the landlords for period early November – December 1, 2019 (T #1).

Landlord Position

11. Landlord1 testified that there was a minor mice problem that happens that time of year. She said when the tenants notified them of the mice she offered to buy traps but the tenants refused. A week later they received a call from the tenant informing her the house was infested. She contacted Orkin, a pest control company. A representative from Orkin did an assessment on the unit on November 21, 2019. The representative told her that it is a minor mice

problem and it is the norm for the time of year. She could put out more traps but the tenant is already doing it. Everything that can be done is done. The tenants moved out the end of November 2019. When they went to the unit after the tenants moved out, there was no sign of mice. Between the time the tenants vacated and the date of the hearing they have been at the unit 3 times. Each time they have been at the unit there was no sign of mice.

12. Landlord1 said after speaking with people about the mice problem, she was told the biggest thing that attracts mice is having dog food around.

Analysis

13. I have reviewed the testimony and the evidence of the tenant and landlord1. I have determined that there is one issue that needs to be addressed; are the tenants entitled to the return of rent. I find that the tenants saw some mice in the unit in November 2019. They contacted the landlord and the landlord told them to put out mice traps. A week later the tenants notified the landlords again about the mice problem. The landlords hired Orkin a pest control company to inspect the unit. When the representative visited the unit he told the tenant what she was doing was correct. The representative did not advise the tenant that they should move out. As the representative did not advise the tenants that they should move out because of the mice, the claim for return of rent fails.

Decision

14. The tenants' claim for return of rent fails.

Issue 2: Compensation for damaged furniture - \$250.00

Tenant Position

15. The tenant testified that they had to get rid of their chesterfield because the mice destroyed it. They bought the chesterfield and chair second hand in 2018 at a cost of \$500.00. At that time the chesterfield and chair was about 1½ years old. They are seeking \$250.00 to replace the chesterfield. The tenant submitted a photograph of the chesterfield (T #1).

Landlord Position

16. Landlord1 testified that there was no evidence presented showing a mouse chewing on a chesterfield. She asked if this happened before the tenants moved in or did the dog chew the chesterfield.

Analysis

17. I have reviewed the testimony and the evidence presented of the tenant and the landlords. I have determined that there is one issue that needs to be addressed; are the landlords responsible to replace the chesterfield. I find that the photograph the tenant presented you cannot tell if there are any damages to the chesterfield. As a result the claim for replacement of the chesterfield fails.

Decision

18. The tenants' claim for compensation for replacement of the chesterfield fails.

Issue 3: Payment of rent - \$1200.00

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

Landlord Position

20. Landlord1 testified that the tenant sent a text message on November 15, 2019 stating that they were moving out. On November 16, 2019 the tenant informed the landlord that they would be moving out on December 1, 2019. The tenants did not give a month's notice to vacate the unit. The landlords tried to re-rent the unit right away as they posted an ad on St. John's/Mt. Pearl Yard Sale and they also listed the house for sale. Landlord1 stated that they had one viewing; the person was looking to buy a house.

Tenant Position

21. The tenant testified that she saw the listing on the house sometime in January 2020. She acknowledges she sent a text message notifying the landlords they were moving out.

Analysis

22. I have reviewed the testimony and the evidence of landlord1 and the tenant. I have determined that there is one issue that needs to be addressed; are the tenants responsible for the payment of rent for the month of December 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 where the rental unit is rented from month to month. I find that the tenants sent a notice by a text message on November 15, 2019 stating that they were moving out. On November 16, 2019 the tenant informed the landlords that they would be moving out on December 1, 2019. The notice was not served in accordance with section 18.(1)(b) nor

did it meet the criteria as outlined in section 34 of the Act. 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 tenants were considered to have abandoned the unit, the landlords did not submit any evidence to show that they tried to mitigate their losses. Even though the tenants did not terminate the tenancy as required by the Act, the landlords failed to establish that they tried to mitigate their losses. As a result, the claim for the payment of rent for the month of December 2019 fails.

Decision

23. The landlords' claim for the payment of rent fails.

Issue 4: Payment of utilities - \$473.13

Landlord Position

24. Landlord1 testified that the tenants were responsible for the power bill. The tenants agreed for the landlords to keep the power bill in their name. The tenants paid the power bill for October 2019. The amount outstanding is \$212.72 for the period October 16 – November 15, 2019 and \$260.41 for the period November 15 – December 13, 2019. The landlords presented copies of the 2 Newfoundland Power bills (LL #1).

Tenant Position

25. The tenant acknowledges that they owe for half of October and all of November 2019. She disagrees with the amount for the portion of December 2019.

Analysis

26. I have reviewed the testimony and the evidence of landlord1 and the tenant. I have determined that there is one issue that needs to be addressed; are the tenants responsible for the power bill. I find that the tenant acknowledges that they owe for the power bill for half of October and all of November 2019. With regard to the power bill for December 2019, as the landlords were not awarded rent for the month of December, the tenants are not responsible for the power bill for the period December 1 – 13, 2019. The landlords' claim for payment of the power bill succeeds in the amount of \$212.72 for the period October 16 – November 15, 2019 and \$148.80 ($\$260.41 \div 28 \text{ days} = \$9.30 \times 16 \text{ days} = \148.80) for the period November 15 – 30, 2019 for a total of \$361.52 ($\$212.72 + \$148.80 = \361.52).

Decision

27. The landlords' claim for payment of the power bill succeeds as per the following:

a. October 16 – November 15, 2019.....	\$212.72
b. November 15 - 30, 2019.....	<u>\$148.80</u>
c. Total owing to the landlord.....	\$361.52

Issue 5: Application for Security Deposit

28. 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

29. The tenant testified that they paid a \$600.00 security deposit in August 2019.

Landlord Position

30. The landlords acknowledge that the tenants paid a \$600.00 security deposit.

Analysis

31. A \$600.00 security deposit was paid. 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

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

Issue 6: Hearing Expenses

33. 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

34. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Tenant Position

35. The tenants paid an application filing fee in the amount of \$20.00 and \$4.65 for photocopying. The tenants are seeking these costs.

Analysis

36. The cost the landlords and the tenants incurred to make the application and the cost the tenants incurred for photocopying are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. Even though the tenant's claim has been successful in return of the security deposit, no fee was required to file this type of application. As the tenant's claim for return of rent and compensation for damaged furniture has been unsuccessful, the claim for hearing expenses fail. However, as the landlords' claim for payment for the power bill has been partially successful, the tenants shall pay the landlords' hearing expenses in the amount of \$20.00.

Decision

37. The landlords' claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

38. The tenants are entitled to the following:

- a. Return of the security deposit\$600.00
- b. **Less payment of the power bill(361.52)**
- c. **Less hearing expenses.....(20.00)**
- d. **Total owing to the tenants.....\$218.48**

May 19, 2020

Date

Residential Tenancies Section