

Residential Tenancies Tribunal

[REDACTED] Decision 19-0024-05
[REDACTED]

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:10 a.m. on February 26, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The originating applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The landlord was represented by her legal counsel, [REDACTED].
3. The countering applicants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.

Preliminary Matter:

4. The landlord discontinued the claim for compensation for inconveniences and she amended the claim for payment of utilities from \$134.76 to \$193.96. The landlord reduced the claim under other from \$184.60 to \$124.36 as she is not seeking payment for the propane, cable and internet. She is seeking payment for the rekeying of the locks.
5. [REDACTED] appeared as a witness for the tenants.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$217.74;
 - b. Compensation for damages in the amount of \$746.28;
 - c. Payment of utilities in the amount of \$193.96;
 - d. Payment for the rekeying of the locks in the amount of \$124.36.

7. The tenants are seeking the following:
 - a. Compensation for damaged items in the amount of \$300.00;
 - b. Refund of utilities in the amount of \$885.50;
 - c. Refund of the security deposit in the amount of \$375.00;
 - d. 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, and 19 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 - \$217.74

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

Landlord Position

11. The landlord testified that the tenants moved into the unit on March 1, 2018 on a month to month tenancy with rent set at \$750.00 per month due on the 1st of each month. The tenants were responsible for their own utilities. The rent was paid in full up to December 2017. Rent was paid by cash each month. On December 27, 2019 the landlord served a termination notice on the tenants to vacate on January 2, 2020. The tenants vacated on January 9, 2020 but they did not pay the rent for the nine days in January 2020. The landlord is seeking rent the nine days in the amount of \$217.74.

12. The landlord submitted into evidence a copy of the termination notice dated December 27, 2019 (LL #2).

Tenant Position

13. The tenants acknowledge that they received the termination notice on December 27, 2019 and they vacated on January 9, 2020. They did not pay the rent January 1 – 9, 2020.

Analysis

14. I have reviewed the testimony and evidence of the landlord and the tenants. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the tenants acknowledge that they were served with a termination notice. They vacated on January 9, 2020 without paying the rent for the nine days. As the tenants acknowledge rent was not paid for the period January 1 – 9, 2020, the claim for payment of rent succeeds in the amount of \$221.94 ($\$750.00 \times 12 \text{ months} = \$9000.00 \div 365 \text{ days} = \$24.66 \text{ per day} \times 9 \text{ days} = \221.94).

Decision

15. The landlord's claim for the payment of rent succeeds as per the following:

- a) Rent owing for January 1 – 9, 2020 \$221.94

Issue 2: Compensation for damages - \$746.28

Landlord Position

16. The landlord testified that the entrance door was damaged during the tenancy. The door was 2 years old when the tenancy started and there were no dents in the door. When the tenancy ended there were two dents in the door. She received a quote from The Home Depot in the amount of \$746.28 to have the door replaced as the door could not be repaired. She testified that one evening in late September or early October 2019 she heard a bang, bang, bang coming from the downstairs. She went down to see what happened. She asked the tenants what happened they said nothing. Then she asked what was the noise the tenants said nothing. The next day she walked around the house and she saw the dent.
17. The landlord presented a photograph of the door (LL #3) and a copy of the quote from The Home Depot in the amount of \$746.28 (LL #4).

Tenant Position

18. The tenants testified that the dents were in the door when they moved into the unit. On June 14, 2018 when tenant2 was doing some work for the landlord it was noted at that time. Tenant1 testified that when she went to pay for the utilities on June 14, 2018 the landlord mentioned it to her. The landlord's counsel said to the tenants you didn't notice the dent. Tenant1 replied by saying she didn't see the dent. The dent didn't affect the opening or the locking of the door.
19. Tenant1 testified that there was a wind storm in April 2018. There was a lot of debris in the backyard. Something could have blown and struck the door.

Analysis

20. I have reviewed the testimony and the evidence of the landlord and the tenants. I have determined that there is one issue that needs to be addressed; (i) are the tenants responsible for the replacement of the door. 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 photograph the landlord presented, I find that there are 2 small dents in the door. The landlord did not present any evidence to corroborate that the door needs to be replaced. Further, the landlord did not present any evidence to show the condition of the door at the start of the tenancy. As a result the claim for replacement of the door fails.

Decision

21. The landlord's claim for compensation for replacement of the door fails.

Issue 3: Payment of utilities - \$193.96

Landlord Position

22. The landlord testified that the tenants were responsible for the power for the unit. The power was kept in the landlord's name. The tenants paid the power bill on the 15th of each month. The landlord received the payment on December 15, 2019 for the power for the month of November 2019.
23. The landlord submitted into evidence two Newfoundland Power bills (LL #5); one was in the amount of \$134.76 for the period November 28, 2019 – December 31, 2019 and the other bill was in the amount of \$165.85 for the period December 31, 2019 – January 28, 2020. She is seeking \$59.20 ($\$165.85 \div 28 \text{ days} = \$5.92 \text{ per day} \times 10 \text{ days} = \59.20) for the period December 31, 2019 to January 9, 2020.

Tenant Position

24. The tenants do not dispute the claim for the payment of the power bill.

Analysis

25. I have reviewed the testimony and the evidence of the landlord and the tenants. The tenants do not dispute the claim for the power bill. As the tenants do not dispute the claim, the claim for payment of the power bill succeeds in the amount of \$193.96 (\$134.76 for the period November 28, 2019 – December 31, 2019 + \$59.20 for the period December 31, 2019 – January 9, 2020 for a total of \$193.96).

Decision

26. The landlord's claim for payment of the power bill succeeds as per the following:

a) Power bill for November 28 – December 31, 2019	\$134.76
b) Power bill for January 1 – 9, 2020.....	<u>\$59.20</u>
c) Total owing to the landlord	\$193.96

Issue 4: Payment to have locks rekeyed - \$124.36

Landlord Position

27. The landlord testified that the tenants did not return the keys to the unit. She hired Tulks Glass Key Shop Ltd. to rekey the locks. She was charged \$124.36. The landlord submitted a copy of the receipt from Tulks Glass Key Shop Ltd (LL #6).

Tenant Position

28. The tenants disagrees with the claim. Tenant1 testified that she contacted the landlord to do a walk through and return the keys. She never heard from the landlord.

Analysis

29. The rekeying of exterior locks is considered an expense that a landlord would incur to secure the premises after a tenant vacates. Therefore, the claim for the rekeying of the locks fails.

Decision

30. The landlord's claim for rekeying the locks fails.

Issue 5: Compensation for damaged items - \$300.00

31. Tenant1 testified that on July 31, 2018 they discovered mold on their queen size box spring and mattress. The mold was on the side of the mattress and on the bottom of the box spring. There was also mold on the heater and on the wall. Tenant2's mother cleaned the box spring and mattress but she could not get rid of the mold. The box spring and mattress was 6 years old. They purchased a second hand bedroom set at a cost of \$600.00. The set included the box spring and mattress. They are seeking \$300.00 for the replacement cost.
32. Tenant1 testified that when they were moving in the landlord told them how to lay out the bedroom. The tenants submitted into evidence photographs of the box spring, mattress, the wall and the heater (T #3).

Witness Position

33. [REDACTED] witness for the tenants testified that there was mold on the wall underneath the window and on the box spring and mattress. She cleaned the mold off the wall but she couldn't get it off the box spring and mattress. She said she sold the tenants a bedroom set for \$600.00.

Landlord Position

34. The landlord testified that the mattress was pushed right up against the wall. The heater that was in the photograph was not functional. There was another heater in the room. She requested the tenants to keep the temperature at a certain degree and she bought them a dehumidifier.

Analysis

35. I have reviewed the testimony and evidence of the tenants, the landlord and the witness. I have determined that there is one issue that needs to be addressed; is the landlord responsible for the replacement of the box spring and mattress. I find that there is some black on the box spring and mattress. The tenants did not present any evidence to show the condition of the box spring and mattress at the start of the tenancy or any documentation from a mold remediation specialist stating the mattress cannot be used. As a result, the claim for compensation for replacement of the box spring and mattress fails.

Decision

36. The tenants' claim for compensation for replacement of the box spring and mattress fails.

Issue 6: Rebate on utilities - \$885.50

37. Tenant1 testified that before they moved into the unit there was no discussion on the cable or internet costs. The ad that was posted on NL Classifieds stated the internet was included in the rent. They had the internet within a week from the time they moved into the unit. They were living in the unit 2½ months when the landlord came looking for the money for the internet. When the landlord came looking for the money they figured they would pay it because they did not want to move out right away. They also paid for the previous months and they have paid for the internet each month thereafter.
38. Tenant1 stated they are seeking return for the cost of the internet for each month for the 22 months that they were living in the unit. They paid \$40.25 per month; the total owing is \$885.50 ($\$40.25 \times 22 \text{ months} = \885.50). The tenants submitted into evidence a copy of the ad from NL Classifieds (T #4).

Landlord Position

39. The landlord testified that they had an agreement that the rent would be \$750.00 per month and the tenants were responsible for their utilities. The agreement was that the tenants would pay for their own power bill and the other bills the landlord and the tenants would split 50/50. The cable and internet bills would be kept in the landlord's name and they would pay half of the amount of the bills when they became due.
40. The landlord testified that she would not let the tenants go 2½ months without paying the bill. The landlord presented a copy of the rental agreement that was signed by the landlord and tenant2 on February 14, 2018 (LL #1).
41. The representative stated the ad also stated that the rent would be \$765.00 but the tenants paid \$750.00 per month.

Analysis

42. I have reviewed the testimony and the evidence of the tenants and the landlord. I have determined that there is one issue that needs to be addressed; are the tenants entitled to a rebate for the cost of the internet. I find that the ad the tenants presented stated that the rent was \$765.00 per month and that Wi-Fi was included in the rent. The rental agreement that was presented and signed by the landlord and tenant2 stated that the monthly rent was \$750.00 per month

and pay own utilities (POU). The tenants paid for their use of the utilities during the tenancy. As the rental agreement stated that the tenants were responsible for their own utilities, the claim for a rebate for the cost of the internet fails.

Decision

43. The tenants' claim for rebate for the cost of the internet fails.

Issue 7: Application for Security Deposit

44. 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

45. The tenants testified that they paid a \$375.00 security deposit on February 14, 2018.

Landlord Position

46. The landlord acknowledges that a \$375.00 security deposit was paid in February 2018.

Analysis

47. A \$375.00 security deposit was paid. The landlord shall retain the security deposit as the landlord's claim for payment of rent and the power bill has been successful. The interest rate on security deposits for the period 2018 – 2019 is 0%.

Decision

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

Issue 8: Hearing expenses - \$105.77

49. 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*.

Tenant Position

50. The tenants paid an application filing fee in the amount of \$20.00 and \$17.77 for the development of the photographs for a total of \$37.77. They are also seeking \$34.00 for ink and \$8.00 for paper as they had to print of documents. Their total claim for hearing expenses is \$105.77 (\$20.00 + \$17.77 + \$34.00 + \$8.00 = \$105.7). The tenants are seeking these costs.

Analysis

51. The cost the tenants incurred to make the application and the cost 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 tenants' claim has been unsuccessful, the claim for hearing expenses fails.

Decision

52. The tenants' claim for hearing expenses fails.

Summary of Decision

53. The landlord is entitled to the following:

a) Payment of rent.....	\$221.94
b) Payment of the power bill	\$193.96
c) Less the security deposit.....	(375.00)
d) Total owing to the landlord	<u>\$40.90</u>

May 28, 2020

Date

Residential Tenancies Section