

Residential Tenancies Tribunal

[REDACTED] Decision 20-0048-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:30 a.m. on February 18, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Preliminary Matters

4. The application was amended to reflect the address of the rental unit as [REDACTED]
[REDACTED].
5. The landlord confirmed that he had received the application at least 10 days before the hearing.

Issues before the Tribunal

6. The tenant is seeking the following:
 - a. Return of possessions;
 - b. Return of rent in the amount of \$2090.32;
 - 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 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: Return of Possessions

Tenant Position

9. The tenant testified that she went to sublet the unit from the previous tenant. When she went to Advanced Educations and Skills (AES) to make arrangements to have the rent paid to the tenant. They would not pay the rent to him they would send it to the owner of the unit. She moved into the unit on/or about November 15, 2019 on a month to month tenancy with rent set at \$800.00 per month due on the 1st of each month. On [REDACTED] an incident took place and the police were called. When the police arrived she was taken by the police for a matter not related to the unit. When she went back to the unit on [REDACTED] she noticed there was a termination notice on the door. She removed a couple items of clothing and left the unit. Then on [REDACTED] or [REDACTED] she went back to the unit. When she arrived, there was plywood over the entrance door. She tried to contact the landlord to retrieve her items on several occasions. She has not received her items as of the date of the hearing.
10. The tenant testified all of her belongings are in the unit. The following is a list of the items left at the unit:

Couch	Washer
Dresser	Wall picture
TV	DVD player
X-Box	Dishes
Bread maker	Coffee Maker
Dehumidifier	Clothing
Books	Miscellaneous items

11. The tenant testified that she has no money to get her belongings back.

Landlord Position

12. The landlord testified that the tenant's belongings are still in the unit. He is willing for the tenant to go and pick up her belongings. When he went to the unit on [REDACTED] the place was a mess. The tenant's belongings were in the unit. There was a TV at the unit. He noticed the door was damaged; the door box was separated from the door. He posted a termination notice on the door on [REDACTED] to vacate on [REDACTED]. On December 20, 2019 he went back to the unit and he noticed that someone had been going back and forth to the unit. The place had been cleaned up and the TV was removed. He had to put a sheet of plywood over the entrance door because the door wouldn't shut. He submitted photographs of the items left in the unit (LL #1).
13. The landlord testified that he didn't go back to the unit after December 20, 2019 because each time the tenant contacted him. She would tell him not to go in; if he entered the unit she would contact the police.

Analysis

14. I have reviewed the testimony and evidence of the tenant and landlord. I have determined that there is one issue that needs to be addressed; are the tenant's belongings in the unit. I find that the landlord posted a termination notice on the door on [REDACTED]. On/or about December 20, 2019 he put a sheet of plywood to the door because the door was damaged. Once the landlord put the plywood on the door he blocked the tenant from entering the property. It would be unreasonable to expect a tenant to unscrew the plywood each time she would enter the property. I also find that the tenant's belongings are in the unit and the landlord is willing for her to pick them up. I accept the landlord's testimony that the TV and DVD player were in the unit on [REDACTED] but these items were not in the unit on December 20, 2019. As the landlord blocked the tenant from entering the property the landlord shall return the following items to the tenant:

Couch	Washer
Dresser	Wall picture
Dishes	Bread maker
Coffee Maker	Dehumidifier
Clothing	Books
Miscellaneous items	

Decision

15. The landlord shall return the following items to the tenant:

Couch	Washer
Dresser	Wall picture
Dishes	Bread maker
Coffee Maker	Dehumidifier
Clothing	Books
Miscellaneous items	

Issue 2: Payment of rent - \$2090.32

Tenant Position

16. The tenant testified that on [REDACTED] she found a termination notice on the door of the unit. The notice was under section 21 of the Act and it was dated [REDACTED] to vacate on [REDACTED]. She went into the unit and removed a few items of clothing and left the unit. She returned to the unit on [REDACTED] or [REDACTED]. When she went to the unit the landlord had a sheet of plywood over the door. She hasn't been back to the unit since that date.

17. The tenant testified that the rent has been paid by AES for the months of January and February 2020. The end of January 2020 she notified AES that she was not living in the unit. She is seeking the return of rent for the period December 13, 2019 – February 28, 2020.

Landlord Position

18. The landlord testified that he was called to the unit on [REDACTED]. When he arrived he found that there were 2 windows smashed out, the smoke detectors were removed and the entrance door was damaged. He called the police. The police arrived. The police removed the tenant from the unit. That same day he posted a termination notice on the door under section 21 (uninhabitable) because the windows were smashed out and the smoke detectors were removed. The effective date of the notice was [REDACTED] [REDACTED]. On [REDACTED] he received a call from the tenant informing him that it was not a valid notice. The place was not uninhabitable. On/or about December 20, 2019 he went to the unit. When he was at the unit he noticed that the entrance door didn't shut so he put a sheet of plywood over the door. He didn't put the plywood to the door to prevent the tenant from entering the unit. He put it there to secure the property.

19. The landlord also testified that he has received the rent for the month of January and February 2020. He has not been back to the unit since December 20, 2019 because each time the tenant called she kept telling him not to enter the property; if he entered she will call the police.

Analysis

20. I have reviewed the testimony and the evidence presented of the tenant and the landlord. I have determined that there is one issue that needs to be addressed; is the tenant entitled to the return of rent. I find that the landlord put a sheet of plywood up to the door on December 20, 2019 as the door wouldn't close. Once the landlord put the plywood to the door he locked the tenant out. If a door is damaged it would be unreasonable for a landlord to put a sheet of plywood up to a door. He is blocking the tenant from entering the unit. The landlord would be required to give the tenant a notice to carry out the repair. If the repair is not carried out he has the option of terminating the tenancy on a short notice. I also find that the landlord received the rent for January and February 2020. As the landlord put a sheet of plywood to the door on/or about December 20, 2019, the landlord shall return the rent for the period December 20, 2019 up to the date of the hearing, February 18, 2020. The amount the landlord shall return is as follows $\$315.60$ ($\$800.00 \times 12$ months = $\$9600.00 \div 365$ days = $\$26.30 \times 12$ days = $\$315.60$) for the period December 20 – 31, 2019; $\$800$ for the month of January 2020; $\$472.14$ ($\$800.00 \times 12$ months = $\$9600.00 \div 366$ days = $\$26.23$ per day $\times 18$ days = $\$472.14$) for the period February 1 – 18, 2019 for a total of $\$1587.74$ ($\$315.60 + \$800.00 + \$472.14 = \1587.74)

Decision

21. The tenant is entitled to the return of rent as per the following:

- a) Return of rent for December 20 – 31, 2019 $\$315.60$
- b) Return of rent for January 2020 $\$800.00$
- c) Return of rent for February 1 – 18, 2020 $\$472.14$
- d) Total owing to the tenant $\$1587.74$

Issue 4: Return of the Security Deposit

22. Under the authority of Section 41.(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

23. Tenant1 testified that a \$400.00 security deposit was paid.

Landlord Position

24. The landlord acknowledges a \$400.00 security deposit was paid. He testified that he did not file a claim to keep the security deposit within 10 days from receiving the application.

Analysis

25. I have reviewed the testimony and evidence of the tenant. I have determined that there is one issue that needs to be addressed; is the tenant entitled to the return of the security deposit. The tenant paid a \$400.00 security deposit. I find that the landlord did not file an application to keep the security deposit within 10 days from receiving the application for dispute resolution as per section 14.(11). Under section 14.(12)

A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

Decision

26. The landlord shall return the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

27. 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

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

Analysis

29. The cost the tenant 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 the tenant's claim was successful, the landlord is responsible to pay the landlord's hearing expenses in the amount of \$20.00.

Decision

30. The landlord shall pay the tenant's hearing expenses in the amount of \$20.00.

Summary of Decision

31. The tenant is entitled to the following:

- a) Return of rent \$1587.74
- b) Return of the security deposit \$400.00
- c) Hearing expenses \$20.00
- d) **Total owing to the tenant** **\$2007.74**
- e) The landlord shall return to the tenant the following possessions

Couch
Washer
Dresser
Wall picture
Dishes
Bread maker
Coffee Maker
Dehumidifier
Clothing
Books
Miscellaneous items

March 12, 2020

Date

Residential Tenancies Section