

Residential Tenancies Tribunal

[REDACTED] Decision 19-0084-05
[REDACTED]

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:25 a.m. on March 26, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenant, [REDACTED], hereafter referred to as tenant1 participated in the hearing. The tenant, [REDACTED], hereafter referred to as tenant2 was not present but she was represented by [REDACTED].
3. The landlord, [REDACTED], hereafter referred to as landlord, participated in the hearing.

Preliminary Matters:

4. The landlord amended the claim for payment of the utilities from \$600.00 to \$150.00.

Issues before the Tribunal

5. The tenants are seeking the following:
 - a. Return of the balance of the security deposit - \$1266.50.
6. The landlord is seeking the following:
 - a. Compensation for damages - \$2552.60
 - b. Payment of utilities (propane) - \$150.00.
 - c. Application of the security deposit.

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, and 14 of the Act.

Issue 1: Compensation for damages - \$2552.00

9. In any damage claim the applicant is required to show:
 - i) that the damage exists;
 - ii) that the respondent is responsible for the damage through a willful or negligent act;
 - iii) the value to repair or replace the damaged item (s).

Landlord Position

10. The landlord stated that the tenants moved into the unit on February 19, 2018 for a six month term to start on March 1, 2019 with rent set at \$2250.00 per month. When the six month term was up the tenancy converted to month to month. The landlord testified that the carpet on the steps and on the landing in the family room/stairway was damaged when the tenants moved out. There is a tear on the landing about 6" long. The carpet on the landing has to be replaced. He said he had the person who installed the carpet 6 or 7 years ago come to the unit and inspect the carpet. The installer advised the landlord that type of carpet no longer exists. The landlord received a quote from The Carpet Factory (LL #1) in the amount of \$2552.60 to have all of the carpet in the family room/stairway replaced as the type of carpet that is in the family room/stairway is discontinued. The landlord also testified that there was no walkthrough completed with the tenants prior to the start of the tenancy.
11. The landlord further testified that the photographs tenant1 presented do not show the damage to the carpet on the landing.

Tenant Position

12. Tenant1 testified that the cat caused damage to the carpet on the stairs. There is a square corner on the stairs damaged and he is not aware of any other damage to the carpet. He submitted photographs of the damage to the carpet (T #2). He contacted the landlord before the tenancy ended to let him know about the damage and he offered to have someone come in and fix it. He then testified that tenant2 contacted a repair person who patches carpet. She sent

a picture of the damage to the carpet and advised them there was a spare roll of the carpet in the house. She received a verbal quote of \$60.00 to have the carpet repaired. This is stated in a sworn statement signed by tenant2 and witnessed by [REDACTED], A Barrister (T #3). The repair was never carried out. Tenant1 said the person who they received the quote from patched carpet for them at their previous house as the cat had damaged the carpet in that house. The repair person did a good job on patching the carpet.

Analysis

13. I have reviewed the testimony and the evidence of the landlord and tenant1 in this matter. I find there was a corner of the carpet damaged on one of the steps and the tenants received a verbal quote in the amount of \$60.00 to make the repair. I also find the landlord has not provided any evidence to show that the carpet on the landing was damaged and needs to be replaced.

Decision

14. The claim for replacement of the carpet fails but the landlord is awarded \$60.00 to have the carpet repaired.

Issue 2: Payment of propane - \$150.00

Landlord Position

15. The landlord testified that when the tenants moved into the unit, the propane tank was full and the tenants were to have the tank filled before they vacated. There was a propane stove and fireplace in the unit. He is not sure on the amount of propane the tenants used as he has not filled the tank since the tenants moved out. He is estimating the cost to be \$150.00.
16. The landlord further testified there is a 400 liter tank at the house. After tenant1 gave his testimony the landlord said if you use the propane stove for 9 months and had the fireplace on once or twice and the gauge is showing full. There must be something wrong with the gauge.

Tenant Position

17. Tenant1 testified that he was registered with North Atlantic from February – October 2018 to have the propane filled on a regular basis. He used the stove on a regular basis and the propane fireplace was probably turned on once. As far as he was aware the company would come by every so often and top up the tank. He was never charged for propane for that period. He said he was speaking with a representative from North Atlantic and he was advised that the gauge would show it was full if the tank was more than 80% full.

Analysis

18. I have reviewed the testimony of the landlord and tenant1 in this matter. I find the landlord has not provided any documentation to determine the amount of propane the tenants used during the tenancy.

Decision

19. The claim for compensation for payment of propane fails.

Issue 3: Application for Security Deposit

20. 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.

Landlord Position

21. The landlord testified a \$1687.50 security deposit was paid on February 19, 2018.

Tenant Position

22. The tenants are seeking return of the balance of the security deposit in the amount of \$1266.50. Prior to filing the application for return of the balance of the security deposit the tenants agreed for the landlord to keep \$421.00 of the security deposit to put towards the power bill for the unit.

Analysis

23. A security deposit was paid on February 19, 2018. As the landlord has been unsuccessful in the claim for damages and payment of utilities, the landlord shall return the balance of the security deposit to the tenants as outlined in this decision and order.

Decision

24. The landlord shall return the balance of the security deposit in the amount of \$1266.50 to the tenants as outlined in this decision and attached order.

Summary of Decision

25. The tenants are entitled to the following:

a) Return of the balance of the security deposit.....	\$1266.50
b) Less compensation for repairs to the carpet	<u>(\$60.00)</u>
c) Amount owing to the tenants	\$1206.50

May 24, 2019

Date

[REDACTED]
Residential Tenancies Section