

Residential Tenancies Tribunal

[REDACTED] Decision 19-0163-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:10 p.m. on May 1, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlords, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing by conference call.
3. The tenants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.

Preliminary Matter

4. The landlord amended the claim for payment of rent from \$2000.00 to \$1000.00; the claim for utilities from \$700.00 to \$400.00 and the claim for replacement of the locks from \$33.00 to \$188.60.
5. The application was amended to reflect the tenant's name as [REDACTED].

Issues before the Tribunal

6. The landlords are seeking the following:
 - a. Payment of rent in the amount of \$1000.00;
 - b. Payment of utilities in the amount of \$400.00;
 - c. Payment of damages in the amount of \$80.00;
 - d. Replacement of locks in the amount of \$188.60;
 - e. 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, 20 and 23 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 - \$1000.00

9. In determining an application for the payment of rent, the landlords are required to establish the rental rate and the payment record.

Landlord Position

10. Landlord1 stated that the tenants moved into the unit on April 1, 2018 with rent set at \$1000.00 per month due on the 1st of each month. Tenant1 signed a lease agreement for 12 months and tenant2 was on a month to month tenancy. Landlord1 testified that they received a termination notice (T #1) from the tenants on January 31, 2019 that the tenants were vacating on February 28, 2019. The notice was given under sections 20 (material breach) and 23 (interference with peaceful enjoyment). Landlord1 said they do not agree with the termination notice and she did not stop them from enjoying the unit. The landlords are seeking rent for the month of March 2019.
11. Landlord1 further testified that after she received the termination notice she advertised the unit for rent on Kijiji, the internet and she hired a real estate agent to try and re-rent the unit. She does not know the dates she advertised the unit but there were showings before the tenants vacated the unit. The unit is re-rented for the end of May 2019.
12. After the tenants gave their testimony landlord1 testified that on one occasion she accused them of stealing a package that was delivered to the unit but her brother had picked up the package. She apologized to the tenants. Landlord1 also testified that the tenants had access to the laundry room in the basement unit. She stayed there for a week in August and October 2018 and a week in January 2019. She never stopped the tenants from doing their laundry when she was staying in the basement unit.

Tenant Position

13. Tenant2 testified that landlord1 made it intolerable for them to live in the unit. They gave a termination notice to the landlords under section 20 because when they moved into the unit they had access to the laundry room in the basement unit. When landlord1 was staying in the basement unit for 2 weeks in May and a week in December she would lock the door to the basement unit and they could not gain access to the laundry room. Also on one occasion when landlord1 was not staying in the basement unit she went to go to the laundry room and landlord1's brother was at the unit. She did not feel comfortable going to the laundry room with him in the unit.
14. Tenant2 testified that the termination notice also included section 23. The reason they gave the notice under section 23 was that landlord1 was interfering with their peaceful enjoyment and her behavior towards them on the telephone. Landlord1 was sending them text messages accusing them of taking things from the unit, breaking the washer and dryer, stealing gas from the gas container and stealing a package that was delivered by a courier. Tenant2 said landlord1's brother showed the unit to other tenants while they were living in the unit.
15. Tenant2 testified that the landlords changed the locks to the basement unit on February 3, 2019.

Analysis

16. I have reviewed the testimony and evidence of the landlords and tenants and I find there are 2 issues that need to be addressed; (i) is the notice a valid notice and (ii) are the landlords entitled to rent for the month of March 2019. Section 23.(1) states that when a notice is given under this section, the notice period required is not less than 5 days and not more than 14 days after the notice is served. The termination notice served on January 31, 2019 has an effective date of February 28, 2019. The notice period given is more than 14 days. Therefore, the termination notice under section 23 is not a valid notice.
17. With regard to the termination notice served under section 20, I find the tenants did not provide any corroborating evidence that they did not have access to the laundry room when the landlords were staying in the basement unit. Also the dates the tenants stated the landlords stayed in the unit are different from the dates landlord1 said they stayed in the unit. Therefore, the termination notice under section 20 is not a valid notice. Further, under section 10.(1)4 of the Act, the landlords tried to mitigate their losses as they had showings before the tenants vacated the unit. As the termination notice was not valid and the

landlords tried to re-rent the unit, the landlords are entitled to rent for the month of March 2019.

18. The landlords' claim for the payment of rent succeeds in the amount of \$1000.00.

Issue 2: Compensation for payment of propane and oil - \$400.00

Landlord Position

19. Landlord1 testified that when the tenancy started the propane tank and the oil tank were full. Tenant1 agreed to fill both of the tanks before he vacated. When the tenancy ended the oil tank was just above 1/4 full and the propane tank was empty. The landlords had Irving Oil put \$300.00 worth of oil in the tank but they have not filled the propane tank. The landlords tried to e-mail a copy of the bill from Irving during the hearing but the e-mail had not arrived before the end of the hearing. Landlord1 estimates it will cost \$100.00 to fill the propane tank.

Tenant Position

20. Tenant2 testified that she would not sign the lease agreement because the landlords never provided proof that the oil tank and propane tank were full at the start of the tenancy. She testified that the last time they put oil in the tank was on February 14, 2019 in the amount of \$199.94. They used the propane fireplace once.

Analysis

21. I have reviewed the testimony of landlord1 and tenant2 and I find that tenant1 agreed to fill the oil tank and the propane tank before he vacated. However, the landlords did not provide any evidence showing the amount of oil and propane in the tanks at the start of the tenancy and the cost they incurred at the end of the tenancy. Thus, the claim for payment of the oil and propane fails.

Decision

22. The claim for compensation for the payment of the oil and propane fails.

Issue 3: Repairs to the door - \$80.00

Landlord Position

23. Landlord1 testified that the spring on the screen door was broken when the tenancy ended. They received a verbal quote in the amount of \$80.00 to have the door repaired. The door was installed 3 or 4 months before the start of the tenancy. The landlords presented a photograph of the door (LL #3).

Tenant Position

24. Tenant2 testified that landlord1's brother broke the door. When her brother was showing the unit in mid-February to two people, two screws came out of the door. He said that he will come back to fix the door.

Analysis

25. I have reviewed the testimony and evidence of landlord1 and tenant2 and I find there are 2 issues that need to be addressed; (i) was the door damaged during the tenancy and (ii) are the tenants responsible for the damage. I find that the landlords did not provide a report to show the condition of the door at the start of the tenancy. Further, the landlords failed to establish that the damage to the door was caused by a willful or negligent act by the tenants. Therefore, the claim for repairs to the door fails.

Decision

26. The claim for compensation for repairs to the door fails.

Issue 4: Compensation for the cost for replacement of keys - \$188.60

Landlord Position

27. Landlord1 testified that they incurred \$33.35 to have the key to the mailbox replaced as the tenants did not return the key. They also incurred \$155.25 to have the locks changed on the entrance door as the tenants only returned 1 of the 2 keys. The landlords submitted two receipts (LL #2) for the cost to have the locks changed; one from Canada Post in the amount of \$33.35 and the other receipt from MRG General Group in the amount of \$155.25.

Tenant Position

28. Tenant2 testified that they returned the key to the mailbox to Canada Post. They left the one key the landlord provided at the unit.

Analysis

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

Decision

30. The claim for lock replacement fails.

Issue 5: Application for Security Deposit

31. 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

32. The landlord testified a \$500.00 security deposit was paid in March 2018.

Analysis

33. A security deposit was paid in March 2018. As the landlords have been successful in their claim for rent they shall retain the \$500.00 security deposit as outlined in this decision and order.

Decision

34. The landlords shall retain the security deposit as outlined in this decision and attached order.

Issue 6: Hearing Expenses - \$20.00

35. 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

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

Analysis

37. The cost the landlords 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*. Therefore, I find the tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

38. The tenants shall pay the landlords' hearing costs in the amount of \$20.00.

Summary of Decision

39. The landlords are entitled to the following:

- a) Rent owing \$1000.00
- b) Hearing expenses \$20.00
- c) **LESS: Security deposit (\$500.00)**
- d) **Total Owing to Landlords \$520.00**

September 3, 2019

Date

Residential Tenancies Section