

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0371-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:05 a.m. on June 11, 2019 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 Matter:

4. The landlord's claim for damages should read \$607.03 not \$612.03.

Issues before the Tribunal

5. The tenant is seeking the following:
 - a. Return of possession in the amount of \$70.00;
 - b. Refund of the security deposit in the amount of \$750.00;
 - c. Hearing expenses.
6. The landlord is seeking the following:
 - a. Compensation for damages in the amount of \$607.03;
 - b. 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 Section 14 of the Act and *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Return of possession - \$90.00

Tenant Position

9. The tenant testified that she moved into the unit the middle of September 2015 with a rental agreement to begin on October 1, 2015 for a one year term with rent set at \$1500.00 per month due on the 1st of each month. When she vacated the unit on April 30, 2019 she sent a text message to the landlord telling him she was leaving a couple of things behind and she would pick them up on Saturday, May 4, 2019. The items she left out in the backyard were a base of a table, a small glass table and a silver garbage can. She does not have receipts or estimates on the cost to replace these items. All of the items were purchased in 2015. She is claiming \$50.00 for the base of the table and \$20.00 each for the small glass table and the garbage can. She testified that on Saturday the landlord brought these items to the dump.

Landlord Position

10. The landlord testified that the items the tenant is claiming were left outside. The table had been left outside for some time. There was no top for the base and the garbage can was full of cigarette butts. He assumed they were garbage because they were outside. He said the text message he received from the tenant stated that she would be back to collect the wood.

Analysis

11. I have reviewed the testimony and the evidence of the tenant and the landlord. I have determined that there is one issue that needs to be addressed; is the landlord responsible for the cost of replacement of these items. The tenant vacated on April 30, 2019 and left some items in the back yard. I find the tenant did not present any evidence to prove that she sent a text message to the landlord on April 30, 2019 stating she would return to collect the items left in the backyard. As the items claimed by the tenant are regular household items that would not normally be left outside, I find it reasonable for the landlord to

presume the items were trash to be disposed. Therefore, the tenant's claim for compensation for these items fails.

Decision

12. The tenant's claim for compensation for return of items fails.

Issue 2: Compensation for damages - \$607.03

Landlord Position

13. The landlord testified that in November 2016 he had to replace the cooktop. He received a call from the tenant that the cooktop was broken. When he went to the unit he discovered that the cooktop was shattered. It looked like it was not a normal crack. He paid \$400.03 for the new cooktop and he replaced the cooktop himself. Later in his testimony he testified that he never asked the tenant for the cost of the new cooktop while she lived in the unit.
14. The landlord testified that when the tenancy ended the mirror in the master bedroom and the spice rack in the kitchen were missing. He estimates the cost to replace the mirror to be \$75.00 and \$25.00 for the spice rack. Both of these items are about 6 years old. He is also claiming \$107.00 for garbage removal; \$57.00 (3 hours @ \$19.00 per hour) for labour and \$50.00 for the use of his truck. He testified that there was garbage left inside and outside of the unit. In the basement the newspapers and the flyers were stocked up. There was wood, a Christmas tree, a chair, a garbage can, a table and the base of another table left outside. He had to make 3 trips to the dump because his truck is small and it took him an hour each trip.
15. The landlord submitted into evidence a receipt for the stovetop (LL #1), photographs of the damaged stovetop (LL #2), a photograph of the master bedroom with the mirror on the wall taken on September 11, 2015 (LL #3), a photograph taken in 2014 of the spice rack on the countertop (LL #4) and photographs of the outside (LL #5).

Tenant Position

16. The tenant testified that she took a pot out of the oven and laid the pot on the stovetop. When she laid the pot on the stovetop, the stovetop cracked. The landlord replaced the stovetop right away and he never mentioned anything about the cost. The tenant acknowledges that the mirror is missing from the bedroom and she accepts the \$75.00 to replace the mirror. She also acknowledges that she threw out the spice rack. She said the spices were all dried up.

17. The tenant testified that she was going back to the unit on Saturday to pick up the items she left behind and to bring the garbage to the dump. She estimated one trip to the dump would have been sufficient to dispose of the garbage left behind.

Analysis

18. I have reviewed the testimony and evidence of the landlord and the tenant in this matter. As far as I can see there is one issue that needs to be addressed; (i) is the tenant responsible for the damages. The burden of proof lies with the landlord to establish, that the damage exists, and that the tenant is responsible for the costs of repairs. The tenant acknowledges that the stovetop cracked when she laid a pot on the stovetop. I find the landlord failed to establish that the damage to the stovetop was caused by a willful or negligent act by the tenant. Therefore, the claim for replacement of the stovetop fails. I also find the tenant agrees that the mirror was missing and accepts the amount the landlord is claiming. Further the tenant acknowledges that she threw the spice rack in the garbage. As the spice rack is about 6 years old and the landlord did not present an estimate on the cost to replace, I award an arbitrary amount of \$20.00 for replacement of the spice rack.

19. With regard to the garbage removal. There were some garbage, newspapers, and miscellaneous items to be brought to the dump. The tenant notified the landlord that she would be back on Saturday to remove the wood. The landlord brought the wood to the dump. Based on the photographs presented I find the landlord could have made one trip to the dump to dispose of the garbage, newspapers and the miscellaneous items. As a result, I award \$19.00 for one hour's labour and \$10.00 for the use of his truck for a total of \$29.00.

Decision

20. The landlord's total claim for compensation for damages succeeds as per the following:

a. Replacement of the mirror.....	\$75.00
b. Replacement of the spice rack.....	\$20.00
c. Garbage removal	<u>\$29.00</u>
d. Total	\$124.00

Issue 3: Application for Security Deposit

21. 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

22. The tenant testified that she paid a \$750.00 security deposit on September 14, 2015.

Landlord Position

23. The landlord acknowledges the tenant paid a \$750.00 security deposit.

Analysis

24. A security deposit was paid in September 2015. As the landlord has been partially successful in the claim for the compensation for damages, he shall retain \$124.00 from the security deposit and return the balance in the amount of \$626.00 to the tenant.

Decision

25. The landlord shall retain \$124.00 from the security deposit and return the \$626.00 balance to the tenant as outlined in this decision and attached order.

Issue 3: Hearing expenses

26. 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

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

Landlord Position

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

Analysis

29. The cost the tenant and the landlord incurred to file the applications are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As both the tenant and the landlord have been partially successful in their claims each party shall bear their own hearing expenses.

Decision

30. Each party shall bear their own hearing expenses.

Summary of Decision

31. The tenant is entitled to the following:

- a) Refund of the security deposit\$750.00
- b) **Less compensation for damages****(124.00)**
- c) **Total owing to the tenant**.....**\$626.00**

October 16, 2019
Date


Residential Tenancies Section