

Residential Tenancies Tribunal

Application [REDACTED]

Decision 19-0385-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:30 a.m. on July 3, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED] represented by [REDACTED] hereafter referred to as the landlord, participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED] hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. Compensation for cleaning in the amount of \$402.50;
 - b. Compensation for damages in the amount of \$1377.95;
 - c. Hearing expenses.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
6. Also relevant and considered in this case are Sections 10, and 14 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Compensation for cleaning - \$402.50

Landlord Position

7. The landlord testified that the tenants moved into the unit on October 1, 2017 for a term agreement with rent set at \$1900.00 per month due on the 1st of each month. They vacated the unit on May 2, 2019. When they vacated the owners of the house hired [REDACTED] (LL #3) to clean the unit. They were charged \$402.50. The cleaning consisted of the stove, oven, fridge, dishwasher, microwave, floors, baseboards, 50% of the windows, 3 toilets and the walls in the stairway and the kitchen. Later in her testimony after tenant2 questioned the landlord on the invoice, she acknowledged that the company doing the work was the owner of the house. She was unable to provide the amount of time spent cleaning and the hourly rate. The landlord submitted a USB containing photographs of the unit (LL #4).

Tenant Position

8. Tenant1 testified that they hired someone to clean the unit before they moved out but she acknowledges that the stove, oven and the microwave needed to be cleaned.

Analysis

9. I have reviewed the testimony and the evidence of the landlord and tenants in this matter. I have determined that there are two issues that need to be addressed; (i) did the unit need to be cleaned when the tenancy ended; and (ii) are the tenants responsible for the cleaning. Based on the photographs presented I find some cleaning was required when the tenancy ended and the amount of time to have the unit cleaned would take about 8 hours. When a landlord does the work himself, the amount set by Residential Tenancies for the landlord to claim for his/her labour is \$19.40 per hour. As the homeowners are the owners of the company, the claim succeeds in the amount of \$155.20 (\$19.40 per hour x 8 hours = \$155.20).

Decision

10. The claim for cleaning succeeds in the amount of \$155.20.

Issue 2: Compensation for damages – 1377.95

Landlord Position

11. The landlord testified that when the tenants moved into the unit there were 3 TV mounts on the walls. One in each of the rooms; the living room, bedroom and the rec room. The tenants removed these TV mounts leaving holes in the walls. They installed their own in the same area as the ones that were removed. These TV mounts were removed before they vacated which left more holes in the walls. Also there were holes in one wall in the room with the woodstove. All of these walls had to be plastered and painted. She testified that after the walls were plastered and painted they had to paint all the walls in each of the rooms because the paint did not match. The last time the unit was painted was in the spring of 2016. The work was completed by the homeowner's company at a cost of \$1377.95 (\$960.00 for labour + \$241.22 for materials + \$179.73 taxes for a total of \$1377.95).
12. The landlord submitted an invoice from the homeowner's company, [REDACTED] (LL #3) dated May 7, 2019 for the repairs along with receipts from [REDACTED] (LL #4) for the supplies. The receipts were dated between May 7 and 10, 2019. The landlord also submitted a copy of the incoming inspection report and the outgoing inspection report (LL # 2) and photographs of the walls (LL #5).

Tenant Position

13. Tenant2 acknowledges removing the TV mounts that were installed by the landlord and installing their own in the same location but drilled different holes. He testified that the holes in the walls in the room with the woodstove were there when they moved in.
14. Tenant2 stated that the invoice from the company was issued before the work was completed because the receipts for the materials were dated after the invoice.

Analysis

15. I have reviewed the testimony and evidence of the landlord and the tenants in this matter. I have determined that there are 2 issues that need to be addressed; (i) are there damages to the unit; and (ii) is the landlord entitled to compensation 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 cost of repairs. The tenants acknowledge removing the TV mounts leaving holes in the walls. Installing their own and removing the TV mounts before they vacated leaving more holes in the walls. These 3 walls had to be plastered and painted.

Paint is a depreciable item with a life expectancy of 3 – 5 years. The last time the unit was painted was 3 years ago. I find the landlord has failed to establish why the 4 walls in each of the rooms had to be painted. The amount the landlord is claiming to plaster and paint is excessive as there is only 2 years remaining in the life of the paint. I conclude that \$60.00 would be a reasonable amount to repair each wall. Therefore, the claim for repairs to the 3 walls succeeds in the amount of \$180.00 (\$60.00 x 3 walls = \$180.00). With respect to the wall in the room with the woodstove, I find that the wall had holes in it at the start of the tenancy.

Decision

16. The landlord's claim for damages succeeds in the amount of \$180.00.

Issue 3: Application for Security Deposit

17. 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

18. The tenants testified they paid a \$1425.00 security deposit in September 2017.

Landlord Position

19. The landlord acknowledges a \$1425.00 security deposit was paid prior to the start of the tenancy.

Analysis

20. A \$1425.00 security deposit was paid in September 2017. The landlord shall retain \$355.20 from the \$1425.00 security deposit to cover the cost of the damages and the hearing expenses.

Decision

21. The landlord shall retain \$355.20 from the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

22. 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

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

Analysis

24. The cost the landlord 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 landlord’s claim has been partially successful, the tenants shall pay the landlord’s hearing expenses in the amount of \$20.00.

Decision

25. The tenants shall pay the landlord’s hearing expenses in the amount of \$20.00.

Summary of Decision

26. The tenants are entitled to the following:

- a) Return of the security deposit\$1425.00
- b) LESS: Compensation for cleaning(155.20)
- c) LESS: Compensation for damages (180.00)
- d) LESS: Hearing expenses (20.00)
- e) Total owing to the tenants**\$1069.80**

November 21, 2019
Date


Residential Tenancies Section