

Residential Tenancies Tribunal

Application [REDACTED]
Application [REDACTED]

Decision 19-0397-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on June 27, 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 respondent, [REDACTED] hereafter referred to as the tenant, participated in the hearing.

Preliminary Matter:

4. The landlord discontinued the claim for vacant possession and amended the claim for damages from \$900.00 to \$604.07.
5. The tenant stated he was not served with the amended application for dispute resolution. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date. The tenant waived his 10 day right in receiving the application so I proceeded with the hearing.
6. The tenant called the following witness:
 - a. [REDACTED]

Issues before the Tribunal

7. The landlord is seeking the following:
 - a. Compensation for damages in the amount of \$604.07;
 - b. Hearing expenses.
8. The tenant is seeking the following:
 - a. Return of his security deposit.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. 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: Payment of damages/cleaning - \$604.07

Landlord Position

11. The landlord testified that the tenant moved into the unit on September 1, 2018 for a one year term with rent set at \$600.00 per month due on the 1st of each month. On May 23, 2019 the tenant was served with a termination notice to vacate on May 29, 2019. The tenant vacated on May 28, 2019. When the tenant vacated there were some damages and the unit needed to be cleaned. There was a split in the main door frame. An employee with their maintenance section spent 4.5 hours (@ \$19.40 per hour) making the repair. He had some materials on hand but he had to purchase some materials at a cost of \$10.50. The total cost for repairs was \$97.80 (\$19.40 x 4.5 hours = \$87.30 for labour + \$10.50 for materials = \$97.80). She said the door looked like it was kicked in. The door was in good condition at the start of the tenancy as per the ingoing inspection report.
12. The landlord testified that the tenant left loose garbage in the garbage bin and cigarette butts on the ground. An employee of the company spent one hour (at the rate of \$19.40 per hour) putting the garbage in a bag, picking up the cigarette butts and bringing the garbage to the dump. They were charged a \$250.00 fee at the dump. She said the garbage could have been put at the curbside.

13. The landlord testified that the faucet handle in the shower was broken. It was replaced at a cost of \$17.47 (\$15.19 + \$2.28 = \$17.47) for the handle and \$19.40 for labour for a total of \$36.87. The faucet was 5 years old.
14. The landlord testified that they hired [REDACTED] to clean the unit. They were charged \$230.00. The cleaner had to clean the fridge, stove, inside and outside of the kitchen cabinets, closet doors, windows and the bathroom and wash all of the walls. They had to spray for smoke odour. The landlord said there was a discoloration on the walls from the tenant smoking in the unit.
15. The landlord submitted into evidence a photograph of the door frame (LL #1), an invoice from [REDACTED] for the purchase of the board for the door (LL #2), a copy of the employee's time sheet (LL #4), a copy of the ingoing inspection report (LL #5), photographs of the garbage (LL #6), photographs of the faucet handle (LL #7), a copy of an invoice from Kent for the purchase of the faucet handle (LL #8), a copy of the invoice from [REDACTED] (LL #9), photographs of the unit (LL #10) and a copy of the outgoing inspection (LL #12).

Tenant Position

16. The tenant testified that the door was damaged when he moved into the unit. He did not leave loose garbage in the bin. There were 4 different garbage bins. The garbage he left in the bin could have been brought to the curbside. He said that the washer on the faucet in the shower kept falling down. He also testified that he had the unit cleaned before he vacated. The person who cleaned the unit would not clean the oven because it was too dangerous. The wires for the burners were loose.
17. The tenant presented into evidence two photographs of the door (T #2), photographs of the garbage in the bin (T #3) and photographs of the unit (T #4). The photograph of the burner shows that the wires are loose.

Witness Position

18. The witness for the tenant testified that she cleaned the unit on the day that the tenant was moving out.

Analysis

19. I have reviewed the testimony and evidence of the landlord, tenant and the witness in this matter. As far as I can see there are two issues that need to be addressed; (i) is the tenant responsible for the 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 costs of repairs. I find that based on the ingoing and outgoing inspections, the door box was damaged during the tenancy. The amount the landlord is claiming for labour and materials is reasonable. With regard to the garbage disposal the landlord failed to establish that the loose garbage in the bin belonged to the tenant. I also find that the landlord did not support the claim with corroborating evidence that the handle on the faucet was damaged. The washer for the faucet was loose. As a result, the claim for garbage removal and replacement of the faucet handle fails. With respect to the cleaning of the unit, based on the photographs presented by both the landlord and the tenant, I find some cleaning was required. However, the amount the landlord is claiming is unreasonable, I conclude that \$100.00 would be a reasonable amount to have the unit cleaned.

Decision

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

a. Repairs to the door	\$97.80
b. Cleaning of the unit	<u>\$100.00</u>
c. Total owing for damages	\$197.80

Issue 2: 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.

Landlord Position

22. The landlord testified a \$450.00 security deposit was paid in August 2018.

Tenant Position

23. The tenant acknowledges a \$450.00 security deposit was paid in three installments in August 2018. He submitted a copy of the payment schedule (T #1).

Analysis

24. A security deposit was paid in August 2018. As the landlord has been partially successful in their claim, they shall retain \$197.80 for damages and \$45.94 for hearing expenses for a total of \$243.74 from the security deposit.

Decision

25. The landlord shall retain \$243.74 from the security deposit 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*.

Landlord Position

27. The landlord paid an application filing fee in the amount of \$20.00 and \$25.94 for the development of photographs for a total of \$45.94. They are seeking these costs. The landlord presented a receipt from [REDACTED] for the development of the photographs (LL #11).

Analysis

28. The costs the landlord incurred to file the application and to have the photographs developed are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. The tenant shall pay the landlord's hearing expenses in the amount of \$20.00 for the application fee and \$25.94 for the development of the photographs for a total of \$45.94.

Decision

29. The tenant shall pay the landlord's hearing expenses in the amount of \$45.94.

Summary of Decision

30. The tenant is entitled to the following:

- a) Refund of the security deposit\$450.00
- b) **Less compensation for damages**\$197.80
- c) **Less hearing expenses**.....\$45.94
- d) **Total owing to the tenant**.....\$206.26

October 23, 2019
Date


Residential Tenancies Section