

Residential Tenancies Tribunal

Decision 19-0207-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:10 p.m. on May 16, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The landlords, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.

Preliminary Matter:

4. The tenant called [REDACTED] as a witness.
5. The landlords called [REDACTED] as a witness

Issues before the Tribunal

6. The tenant is seeking the following:
 - a. Refund of the security deposit in the amount of \$712.50;
 - b. Hearing expenses.

7. The landlords are seeking the following:
 - a. Compensation for damages in the amount of \$999.60;
 - b. Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. 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 - \$999.60

Landlord Position

10. The landlords testified that when the tenant moved into the unit on August 1, 2015 the unit was brand new. The tenant signed a lease agreement for a 12 month term with rent set at \$950.00 per month due on the 1st of each month. The lease was renewed in 2016 and the rent decreased to \$850.00 per month. When the tenancy ended there were some damages to the unit. They testified that the damages consisted of a blind, a heater, the kitchen cupboards, the flooring and some baseboards and the unit needed some cleaning. Landlord1 testified that the custom blind in the master bedroom had to be replaced because it was full of mildew. They do not have an estimate on the replacement cost. The blinds were installed before the start of the tenancy at a cost of \$1250.00. This included the purchase and installation of 4 blinds. She estimates \$200.00 would cover the cost to replace the blind.
11. Landlord1 testified that the laminate flooring in the living room and the bedroom was damaged. There were 4 sections in the bedroom and 3 or 4 pieces in the living room that were damaged. In order to fix the damaged pieces they would have to remove the baseboards, take up the laminate, replace the damaged pieces and re-install the laminate. She said they own "[REDACTED]" and the cost for the materials would be \$199.60 (40 SF @ \$2.99 S F – 3 boxes) and the labour to make the repairs is \$250.00. Landlord1 also testified that the kitchen cabinets are scratched up and the bottom of the cabinets are beat up. She said the tenant stuck sticky things on the doors and they won't come off. She contacted her cabinet person to see if they could have someone go to the unit and do touchups on the cabinets. She received a verbal quote in the amount of \$100.00.

12. Landlord2 testified that the heater in the living room has to be replaced because it is scratched and there are marks on it. The curtain was too close to the heater and the material melted onto the heater. He tried to remove the material from the heater but it did not come off. He said they have no receipt but they believe \$100.00 would cover the cost of a heater and an electrician to install it. He also testified that he and his fiancé spent 2 hours cleaning the unit. They had to clean the floors, baseboards, underneath the sink, the countertop, the stove and oven. They are charging \$100.00 for the cleaning.
13. Landlord2 further testified that a baseboard in the bathroom and the bedroom have to be replaced. The baseboard in front of the tub looks like water over flowed on it and the face is off one of the baseboards in the bedroom. The damage is more than normal wear and tear. He said they do not have a written quote. You can buy baseboards at a hardware store at a cost of \$50.00.
14. As evidence the landlords presented photographs of the blind (LL #2); two heaters (LL #3); the flooring (LL #4); the cupboards (LL #5); the items that needed to be cleaned (LL #6); and the baseboards (LL #7).
15. In summary landlord1 testified that the damages to the unit were not normal wear and tear.

Witness Position

16. The witness for the landlords testified that when he did the walk through with the tenant the stove and fridge were dirty and the floors looked like they had not been washed. There were all kinds of scratches on the laminate flooring in the bedroom and the living room. The flooring was destroyed in the bedroom where the bed was located and in the living room where the furniture was located. He said there was something melted on the heater and the tenant had put stuff on the kitchen cupboards that took the finish off. Also in the hallway the laminate flooring was apart in two places. He testified that the blind in the bedroom was intentionally left up. A few days later when they pulled down the blind, they discovered there were stains on the blind. He said there was a lot of damage to the unit.

Tenant Position

17. The tenant testified that she didn't see mould on the blind. If there was mould on the blind it can be cleaned. She kept the blind partially up all the time. She said it was damp in the unit. She also testified that the heaters were never screwed onto the wall but they were fully functional. The photograph the landlords presented was the heater in the bedroom. A pillow case fell on the heater.

18. The tenant testified that when she walked through the unit prior to moving out [REDACTED] brought to her attention the damage to the flooring in the bedroom. She wasn't made aware of any damage to the flooring in the living room. She considered the marks in the living room as general wear and tear along with the marks on the kitchen cabinets. She said she had stuck pieces on the doors of the kitchen cabinets but she had missed one of the pieces. She removed the other pieces with goo-gone.
19. The tenant testified that the unit was cleaned before she vacated. Prior to moving out, her parents and her friends helped her clean the unit. She presented a USB containing photographs of the unit (T #1).
20. The tenant further testified that with regard to the baseboard in the bathroom. There was no water damage on the baseboard. She dropped powdered makeup on it. But she acknowledges there was a scrap on the baseboard in the bedroom. Later in her testimony, the tenant said all of the damages were normal wear and tear.

Witness for the tenant

21. The witness for the tenant testified that he helped the tenant clean the unit and the unit was in good condition when the tenancy ended. There were signs of wear and tear.

Analysis

22. I have reviewed the testimony and evidence of the landlords, the tenant and the witnesses in this matter. As far as I can see there is one issue that needs to be addressed; is the tenant responsible for the damages to the unit. The burden of proof lies with the landlords to establish, that the damage exists, and that the tenant is responsible for the costs of repairs. The evidence submitted at the hearing establishes that when the tenancy ended there were some damages and the tenant acknowledges the damages but she said the damages were the result of normal wear and tear. Based on the photographs presented, I would consider the damages to be more than normal wear and tear. Further, the landlords did not present any documentation on the cost of repairs. As there were some damages to the unit and the landlords did not present any evidence on the cost of repairs, I award an arbitrary amount of \$500.00 to have the repairs carried out.

Decision

23. The landlords' claim for compensation for damages succeeds in the amount of \$500.00.

Issue 2: Application for Security Deposit

24. 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

25. The landlords testified a \$712.50 security deposit was paid on July 15, 2015.

Tenant Position

26. The tenant acknowledges she paid a security deposit in the amount of \$712.50 and she is seeking return of the security deposit.

Analysis

27. A security deposit was paid in July 2015. As the landlords have been successful in the claim for the compensation for damages, they shall retain \$500.00 for the damages and \$20.00 for the filing fee for a total of \$520.00. They shall return the balance to the tenant as outlined in this decision and order.

Decision

28. The landlords shall retain \$520.00 from the security deposit and return the balance to the tenant as outlined in this decision and attached order.

Issue 3: Hearing expenses

29. 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

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

Analysis

31. The cost the landlords incurred to file 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 landlords' claim has been partially successful, the tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

Decision


32. The tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

Summary of Decision

33. The tenant is entitled to the following:

a) Return of the security deposit	\$712.50
b) Less Compensation for damages	\$500.00
c) Less Hearing expenses	<u>\$20.00</u>
d) Total owing to the tenant	\$192.50

September 19, 2019
Date


Residential Tenancies Section