

## Residential Tenancies Tribunal

Decision 19-0227-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:40 a.m. on May 21, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing. The tenants [REDACTED] and [REDACTED], hereafter referred to as tenant3 and tenant 4, respectively, did not attend the hearing.
3. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.

### Preliminary Matter:

4. Tenant1 filed an application for return of the security deposit. The landlord filed a counterclaim against all 4 tenants.
5. The landlord's claim should read \$3977.86 not \$3152.86.
6. Tenant3 and tenant4 were not present or represented at the hearing. This Tribunal's policy 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 the application for dispute resolution 10 clear days prior to the hearing date, and where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he/she has been properly served.

7. The affidavits of service submitted by the landlord show that the notice of this hearing was served by substituted service by sending an e-mail to tenant1 on April 18, 2019 and the tenants have had 32 days to provide a response. The landlord provide a copy of the e-mails. As the tenants were properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

### **Issues before the Tribunal**

8. The tenant is seeking the following:
  - a. Refund of the security deposit in the amount of \$825.00;
  - b. Hearing expenses.
9. The landlord is seeking the following:
  - a. Compensation for damages in the amount of \$1827.86;
  - b. Compensation for insurance deductible in the amount of \$2000.00;
  - c. Hearing expenses.

### **Legislation and Policy**

10. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
11. 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 - \$1827.86**

#### Landlord Position

12. The landlord testified that tenant1 moved into the unit on May 1, 2018 for a one year term with rent set at \$1100.00 per month due on the 1<sup>st</sup> of the month. The lease was revised October 2, 2018 to include the other three tenants. The landlord presented a copy of the lease agreement dated October 2, 2018 (LL #1). The tenants moved out on December 30, 2018. When they vacated the door to the master bedroom was damaged. There were dents in the fridge; the oven was not cleaned; the locksets were missing; there was a hole in the wall and the furnace had to be bleed.
13. The landlord testified that the master bedroom door had a crack in it and the casings were damaged. The door had to be replaced and the door casings had to be repaired. Avalon Steamatic Ltd. replaced the door and repaired the

door casings at a cost of \$224.25. The door is 2 or 3 years old. The landlord also testified that he had to replace the locksets to the four bedrooms as they did not return the keys. The cost to replace the locksets was \$91.86. The landlord submitted a photograph of the door (LL #3), a copy of the invoice from Avalon Steamatic Ltd. (LL #2) and a copy of the receipt from The Home Depot for the purchase of the 4 locksets (LL #5).

14. The landlord testified that the oven was filthy when the tenants vacated. The current tenants cleaned the oven but he didn't compensate them. He is seeking \$75.00 for the cleaning of the oven. The landlord presented a photograph of the oven (LL #6). He also testified that there was a hole in the wall in the stairway. The repair has not been carried out and he did not receive a quote. He figures it would cost a lot more than \$100.00 if he had to have a contractor come into the unit and give him a quote. The landlord presented a copy of the Premises Condition Report (LL #4) and a photograph of the wall in the stairway (LL #7).
15. The landlord testified that on December 31, 2018 the tenant who was moving into the unit beginning January 1, 2019 when to the unit. When he went there the unit was icy cold. The new tenant contacted him and told him about the issue. The landlord said he spent a couple of hours trying to make arrangements to have someone go to the unit to have the furnace bleed. He made arrangements with Chafe's Oil to have the furnace bleed. The new tenant paid \$100.00 cash to Chafe's Oil and the landlord deducted \$100.00 from his rent. The landlord said the oil company would only accept cash as it was New Year's Eve. He is seeking \$150.00 for his time in making arrangements to have the furnace bleed. The landlord presented copies of e-mails and text messages between himself and the new tenant concerning the bleeding of the furnace (LL #8 & 9).
16. The landlord testified that the fridge has to be replaced because the door has dents in it. There was no damage to the fridge at the start of the tenancy as per the Rental Premises Condition Report. The dents do not interfere with the operation of the fridge. The fridge was purchased about 5 years ago from Sears. A similar fridge cost \$945.00 + \$141.75 tax = \$1086.75 as per The Home Depot website (LL #10). The landlord submitted a photograph of the fridge (LL #11). He also testified that the tenants had a problem with the fridge shortly after tenant1 moved into the unit. He was going to replace the fridge but instead he had the fridge fixed. The repair company had to replace a part.

#### Tenant Position

17. Tenant1 testified that she took the unit without looking at it and she signed the condition report without viewing the unit. She acknowledges the damage to the bedroom door but she is not sure of the condition of the oven and the wall

in the stairway when she moved into the unit. She also testified that the landlord did not provide keys to the interior doors. He only provided a key to the main door.

18. Tenant1 also testified that when she moved into the unit she had to pay to have the furnace bled. She did not seek compensation from the landlord on the cost.
19. Tenant1 further testified that they would not intentionally use something heavy enough to create the dents in the door of the fridge. Shortly after she moved in there was an issue with the fridge. They had to throw out some food as the fridge was not working. The landlord was going to replace the fridge but he had the fridge repaired.
20. Tenant2 testified that they signed the Condition Report without viewing the unit. When they moved into the unit in October they had to get the key to the unit from tenant1. She testified that the oven was dirty; there was a hole in the wall in the stairway and the dents were in the fridge when she moved into the unit.
21. Tenant2 testified that there was no oil in the tank when they vacated the unit.

## **Analysis**

22. I have reviewed the testimony and evidence of the landlord, tenant1 and tenant2 in this matter. As far as I can see there are two issues that need to be addressed; (i) are the tenants 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 tenants are responsible for the costs of repairs. Based on the Rental Premises Condition Report, everything was in good condition at the start of the tenancy. The evidence submitted at the hearing establishes that the bedroom door was damaged, the oven was dirty, there was a hole in the wall in the stairway and there were dents in the fridge when the tenancy ended. Tenant1 acknowledges the damage to the bedroom door. The landlord presented an invoice for the work. An interior door is a depreciable item with a life expectancy of 20 years. As the door is 2 – 3 years old, the cost to have the door replaced succeeds in the amount of \$196.18 ( $\$224.25 \div 20 \text{ years} = \$11.21 \text{ per year} \times 17.5 \text{ years remaining} = \$196.18$ ). I find that even though the oven was dirty the landlord is not entitled to compensation as the tenants that moved into the unit for January 1, 2019 cleaned the oven and the landlord did not compensate them for the work.
23. In regard to the repairs to the wall and the replacement of the fridge, I find the amount the landlord is claiming to have the hole in the wall repaired is a reasonable amount. A fridge is a depreciable item with a life expectancy of 12 years. As the fridge is 5 years old, the claim for replacement succeeds in the

amount of \$633.92 ( $\$1086.75 \div 12 \text{ years} = \$90.56 \text{ per year} \times 7 \text{ years remaining} = \$633.92$ ).

24. With respect to the cost of the replacement of the locksets and compensation for the bleeding of the furnace. The landlord did not bring supporting evidence that the tenants were given keys to the interior doors. As a result compensation for replacement of the locksets fails. However, I find that tenant2 acknowledges there was no oil in the tank when they vacated. Despite the fact the landlord did not submit a receipt for the cost to have the furnace bleed, the amount the landlord is claiming to have the furnace bleed is a reasonable amount as this happened on New Year's Eve evening. Therefore, the claim for compensation succeeds in the amount of \$100.00.
25. Further, I find the costs the landlord is claiming for his time would be a normal cost associated with carrying out his business. As a result, the claim is unsuccessful.

### Decision

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

a. Replacement of the bedroom door .....	\$196.18
b. Repairs to the wall .....	\$100.00
c. Replacement of the fridge .....	\$633.92
d. Cost to bleed the furnace .....	<u>\$100.00</u>
e. <b>Total</b> .....	<b>\$1030.10</b>

### Issue 2: Compensation for payment of the deductible - \$2000.00

#### Landlord Position

27. The landlord testified that on January 2, 2019 he received a call from the downstairs tenant stating that there was a leak coming from the ceiling. When he received the call his fear was that the pipes were frozen. He called his insurance company right away. A representative from the company went to the unit and took photographs of the damages. The flooring in the main bathroom was damaged and the ceiling in the room in the basement unit underneath the bathroom was also damaged along with the flooring in that room. He said the flooring in the entire basement unit had to be replaced because the same flooring was continuous throughout the unit. The insurance company hired Avalon Steamatic Ltd. to make the repairs. The cost of the repairs was \$10,000.00 and he had to pay a \$2000.00 deductible. He was advised by the restoration company that the pipe going to the toilet was leaking.

The restoration company did not state the leak was the result of frozen pipes. They had no proof. The landlord presented an invoice from Avalon Steamatic Ltd. for the insurance deductible owing in the amount of \$2000.00 (LL #11).

28. The landlord testified that in early December 2018 he received a text message from one of the tenants stating that the toilet was clogged. He told them to call a plumber. Later he received a text message stating that they had fixed the toilet. He said the leak in the pipe was either caused by the temperature change in the house or it was caused when the tenants made the repair to the toilet. He testified that the leak coming from the ceiling appeared to be over a period of time.

#### Tenant Position

29. Tenant1 testified that they fixed the toilet with soapy water. She said they also had a problem with the toilet back in May 2018.
30. Tenant2 testified that she unclogged the toilet by using a plunger.

#### **Analysis**

31. I have reviewed the testimony and the evidence of the landlord and tenant1 and tenant2. The issue at hand is: are the tenants responsible to pay the deductible. In early December the toilet was clogged and the tenants cleared the clog with a plunger. When the tenants vacated the unit there was no oil in the tank. Based on the landlord's testimony the representative from the restoration company did not state the leak was the result of frozen pipes. Further the landlord did not present any evidence to establish that the leak from the pipe was the result of a willful or negligent act by the tenants. Therefore, the tenants are not responsible for the payment of the deductible.

#### **Decision**

32. The landlord's claim for compensation for the payment of the insurance deductible fails.

#### **Issue 3: Application for Security Deposit**

33. 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

34. The landlord testified a \$825.00 security deposit was paid in April 2018.

### Tenant Position

35. Tenant1 testified that she paid the security deposit in April 2018 but when the other three tenants moved in they each spent to the value of \$200.00 on items that were needed in the unit.

### **Analysis**

36. A security deposit was paid in April 2018. As the landlord has been partially successful in the claim for the compensation for damages, he shall retain the \$825.00 security deposit.

### **Decision**

37. The landlord shall retain the \$825.00 security deposit as outlined in this decision and attached order.

### **Issue 3: Hearing expenses**

38. 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

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

### Tenant Position

40. The tenants paid \$25.00 to have the Affidavit of Service witnessed.

### **Analysis**

41. The cost the landlord 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 landlord's claim has been

partially successful, the tenants shall pay the landlord's hearing expenses in the amount of \$20.00.

**Decision**


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

**Summary of Decision**

43. The landlord is entitled to the following:

a) Compensation for damages .....	\$1030.10
b) Hearing expenses .....	\$20.00
c) Less the security deposit .....	<u>(\$825.00)</u>
d) <b>Total owing to the landlord.....</b>	<b>\$225.00</b>

October 1, 2019  
Date

  
Residential Tenancies Section