

Residential Tenancies Tribunal

Decision 19-0343-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1: 10 p.m. on May 23, 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 landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Preliminary Matters

4. The tenant amended the claim for compensation for other from \$805.00 to \$500.00.

Issues before the Tribunal

5. The tenant is seeking the following:
 - a. Return of the security deposit in the amount of \$475.00;
 - b. Return of rent in the amount of \$685.00;
 - c. Payment of utilities in the amount of \$1027.00;
 - d. Compensation for work completed in the amount of \$500.00;
 - e. Hearing expenses

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
7. Also relevant and considered in this case is 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 the security deposit - \$475.00

Tenant Position

8. The tenant testified that he moved into the unit on September 17, 2018 on a month to month tenancy with rent set at \$685.00 per month due on the 1st of each month. He paid a security deposit in the amount of \$475.00 on that same day. On May 3, 2019 the landlord posted a termination notice on the door of the unit to vacate immediately and he vacated on that date. He testified that the landlord has not returned the security deposit.

Landlord Position

9. The landlord testified that she is not disputing a security deposit was paid and she did not file a counterclaim within 10 days from receiving the Application for Dispute Resolution.

Analysis

10. I have reviewed the testimony and evidence of the tenant and the landlord. I have determined that there is one issue that needs to be addressed; is the tenant entitled to return of the security deposit in the amount of \$475.00. The landlord did not dispute a security deposit was paid. Also the landlord did not file a counterclaim to keep the security deposit. as per section 14.(11). Under section 14.(12)

A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

Decision

11. The landlord shall return the \$475.00 security deposit to the tenant.

Issue 2: Return of rent - \$685.00

Tenant Position

12. The tenant testified that his rent was paid before May 1, 2019 by Advanced Skills Education and Labour. On May 3, 2019 after the rent was paid for the month the landlord gave him a termination notice to vacate immediately. He vacated that same day. He is seeking the return of rent for the period May 3 – 31, 2019. Later he testified that on April 30, 2019 he received a letter from Newfoundland Power that the power was being disconnected due to nonpayment. The power was disconnected on April 30, 2019. The tenant presented a copy of the letter from Newfoundland Power (T #1).

Landlord Position

13. The landlord testified that she received the rent for May before May 1, 2019. On May 3, 2019 she received an e-mail from Newfoundland Power stating the tenant had requested to close the electricity account effective that date. When she received the e-mail she contacted Newfoundland Power and she was advised that the power had been cut to the unit. She then served the tenant with a termination notice to vacate immediately.
14. The landlord testified that she advertised the unit on May 3 or 4, 2019 on Kijiji, NL Classifieds and Craig's List. She also contacted Stella's Circle, The Wiseman Center and Naomi Center concerning the renting of the unit. The unit had not been re-rented as of the day of the hearing.

Analysis

15. I have reviewed the testimony and evidence of the tenant and the landlord in this matter. I have determined that there is 1 issue that needs to be addressed; (i) is the tenant entitled to the return of rent. The landlord had to terminate the tenancy on a short notice under section 21 because the power was disconnected to the unit due to the nonpayment by the tenant. I find that the landlord's testimony is credible in that she tried to mitigate her losses in a timely fashion as required by section 10.(1) 4. As the landlord had grounds to terminate the tenancy on a short notice and she tried to mitigate her losses, the tenant's claim for return of the rent fails.

Decision

16. The tenant's claim for return of rent fails.

Issue 3: Payment of utilities - \$1027.53

Tenant Position

17. The tenant testified that he was paying for the cost of electricity for the three lights and three heaters in the hallway/entrance way for the three floors. He was never informed that the lights and heaters were on his power bill. He said he has no idea of what portion of the power bill would cover the cost for the three lights and three heaters. He presented a bill dated May 6, 2019 from Newfoundland Power in the amount of \$1027.53 (LL #2). This bill shows that there was a previous balance owing in the amount of \$874.75 and the cost of the electricity for the period March 21 – April 22, 2019 is \$150.78.

Landlord Position

18. The landlord testified that the lights and the heaters in the hallway are wired to the tenant's unit but the heaters have been disconnected about 10 years. She said she usually tells the tenant about this when the tenant moves into the unit. She testified that she contacted Newfoundland Power concerning the amount the lights would burn and she was advised that the cost for the electricity for the three lights would be no more than \$15.00 per year. The tenant is being compensated for the cost of the electricity as his rent is \$685.00 per month and the rent for each of the other two apartments is \$700.00 per month.

Analysis

19. 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 utilities. The lights and the heaters in the hallway are wired to the tenant's unit. I find that the tenant was not aware that the lights and heaters were wired to his unit but he did not provide a breakdown on the cost of the usage for each month. Further, I accept the landlord's testimony that the heaters were disconnected. As the lights were wired to the tenant's unit and the tenant did not provide a breakdown on the cost, I award an arbitrary amount of \$60.00 to cover the cost of the electricity for the lights in the hallway/entrance way.

Decision

20. The tenant's claim for payment of utilities succeeds in the amount of \$60.00.

Issue 4: Compensation for work completed - \$500.00

Tenant Position

21. The tenant testified that shortly after he moved into the unit the bathroom ceiling caved in. The landlord agreed that she was going to pay him \$350.00 to replace the ceiling but she never gave him the money. He said he had to remove the ceiling; pay someone to take it away and then he replaced the ceiling.
22. The tenant testified that he spent one hour repairing the front entrance door and the landlord agreed to pay him \$40.00 for the repairs but he never received the money.
23. The tenant testified that he was away for a three days and when he came back the fridge was not working. The freezer was full and the food that was in the fridge spoiled. He said he had all kinds of stuff in the fridge. There were containers of stews and chili. There were pork chops and pizza pockets in the fridge. He does not have a receipt but he estimates there was about \$110.00 worth of food in the fridge. He testified that within a day the landlord had the fridge replaced.

Landlord Position

24. The landlord testified that she paid the tenant \$300.00 cash 3 different times for work he did at the unit. She paid him \$300.00 for the repairs to the bathroom. She was not aware of the damage to the door. She said the tenant told her the police were at the unit and they broke the door. She contacted the police but there was no report that the police were at the unit.
25. The landlord testified that she had the fridge replaced right away when the tenant contacted her about the problem with the fridge. She said if the freezer was blocked, no way would the food defrost in three days. She doesn't believe he had \$110.00 worth of food in the fridge.

Analysis

26. I have reviewed the testimony of the tenant and the landlord. I have determined that there are two issues that need to be addressed; (i) is the landlord responsible for compensation for work completed and (ii) is the landlord responsible for the cost for replacement of food. I find the landlord agreed to compensate the tenant in the amount of \$300.00 for repairs to the bathroom and the landlord paid the tenant this amount. With regard to the damage to the

door, the tenant did not present any documentation that the door was damaged and the landlord would compensate him for the repair to the door. Therefore, the claim for compensation for repairs is unsuccessful.

27. With respect to the cost for replacement of the food, there was no evidence presented to indicate the tenant had problems with the fridge prior to this happening. When the landlord was notified of the problem, the fridge was replaced within a reasonable period of time. Further, the tenant did not submit any evidence to show what was in the fridge. As a result, the claim for the cost of replacement of the food fails.

Decision

28. The tenant's claim for compensation for work completed and replacement of food fails.

Issue 5: Hearing expenses in the amount of \$20.00

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*.

Tenant Position

30. The tenant paid an application filing fee in the amount of \$20.00 and \$13.11 to have the application sent by registered mail. The tenant is seeking these costs.

Analysis

31. The costs the tenant incurred to make the application and to have the application sent by registered mail are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the tenant's claim has been partially successful, the landlord is responsible to cover the cost of the hearing expenses in the amount of \$33.11.

Decision


32. The landlord shall pay the tenant's hearing expenses in the amount of \$33.11.

Summary of Decision

33. The tenant is entitled to the following:

- a) Return of the security deposit..... \$475.00
- b) Payment of utilities\$60.00
- c) Hearing expenses \$33.11
- d) **Total owing to the tenant****\$568.11**

October 8, 2019
Date


Residential Tenancies Section