

Residential Tenancies Tribunal

Decision 19-0469-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11.15 a.m. on July 18, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matter

4. The landlord amended the claim for the payment of rent from \$850.00 to \$425.00 and the claim for damages should read \$6557.48.
5. The tenant was not present or represented at the hearing. Prior to the hearing I called the number on file for the tenant but I was unable to reach the tenant. 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.

6. The affidavit of service submitted by the landlords show that the notice of this hearing was personally served on the tenant on June 17, 2019. The tenant has had 30 days to provide a response. As the tenant was 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 her absence.

Issues before the Tribunal

7. The landlords are seeking the following:
 - a. Compensation for damages in the amount of \$6557.48;
 - b. Payment of rent in the amount of \$425.00;
 - c. 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, 14 and 19 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Compensation for damages - \$6557.48

Landlord Position

10. The landlords testified that the tenant moved into the unit on January 1, 2014 on a month to month tenancy with rent set at \$850.00 per month due on the 1st of each month. The tenant vacated on May 29, 2019. When the tenant vacated there were damages and the unit was dirty. The fridge, carpets, kitchen flooring, entrance door, range hood and 3 colonial doors needed to be replaced. The fridge which was 11 years old was dented beyond repair. The cost to replace the fridge was \$885.44. The carpets were not cleaned. The carpets in the hallway, one bedroom and the living room were very dirty. Instead of cleaning them they were replaced. When the tenant moved in she agreed that she would have the carpets cleaned before she vacated. The landlords are seeking \$126.50, the cost to have the carpets cleaned, to go towards the purchase of the new carpet. The flooring in the kitchen and the carpet in one bedroom had to be replaced because there were holes in the flooring and the carpet was tore up from the dog. The kitchen flooring was installed just prior to the start of the tenancy. The carpet which was a high grade Berber, was in the unit when they purchased the house in 2008. The

house was built in 2005. The cost to replace the kitchen flooring was \$310.33 and the cost for the carpet for the bedroom was \$331.02.

11. The landlords testified that the steel entrance door has to be replaced as there is a split in the door and the door box. It looked like the door was forced open. The door was the original door and needs to be replaced. In the kitchen a cabinet drawer, the trim underneath the sink, a cabinet door above the sink, the range hood all need to be replaced as they were damaged. The drawer was apart, the trim was split in two, the door had been torn off and re-clued and the range hood was dented. Also the cabinet above the range hood had to be repaired. They said when the person banged the range hood it caused damage to the cupboard. Further, the doors to the master bedroom, the bathroom and the storage room had to be replaced because there were holes in the doors. The doors are the original doors. They received a quote from BP Contracting Ltd. (LL #7) in the amount of \$2811.75 to carry out the repairs. The quote gives a breakdown on each item plus the taxes; \$1000.00 to replace the entrance door; \$200.00 to replace the cabinet drawer; \$200.00 to replace the trim; \$480.00 to replace the colonel doors; \$165.00 to replace the cabinet door; \$200.00 to replace the range hood and \$200.00 to repair the cabinet above the range hood.
12. The landlords testified that there were walls in the unit that needed to be plastered and painted. They hired a lady to plaster the walls at a cost of \$90.00 and they purchased the plaster. The lady had to plaster 3 holes in one wall and 1 hole in another wall in the kitchen. The tenant tried to repair one hole. There were holes in the walls in the kitchen and living room where the tenant had installed curtain rods. The holes were not your normal size holes for curtain rods. The lady had to plaster these holes as well as a wall in the porch as the tenant had put a sticker on the wall. When they removed the sticker the paint came off.
13. Landlord2 testified that her and her parents spent 56 hours cleaning the unit as the unit was very dirty. They used pine sol, magic erasers, wipes and javex to clean the cupboards (inside and outside), countertop, sink, oven, floors, walls, mouldings, doors, windows and the bathroom. After they had cleaned the unit some of the walls and doors had to be painted because they could not get the dirt off them. She said there was urine on one wall in the master bedroom, blood on the master bedroom closet door, and residue from tape on the walls in the living room. She also testified that they (her and her parents) spent 30 hours painting. They had to paint all of the walls in the kitchen, the master bedroom and the porch, as well as the closet door in the master bedroom and the linen closet door. They also painted the living room but they are not claiming for the painting of the living room. The kitchen and the master bedroom have been painted since the tenant moved into the unit. The colour of the walls in the kitchen and bedroom are a different colour than when she

moved in. They gave her permission to paint the kitchen but they did not give her permission to paint the bedroom. They cannot remember when the last time the porch was painted. They testified that they bought a patch to cover a hole in the wall in the porch as the doorknob went through the drywall.

14. The landlords testified that they bought the plaster at a cost of \$11.78 from Kent (LL #15) and the patch at a cost of \$8.03 from Canadian Tire (LL #21). They purchased the paint at the Paint Shop (LL #17) at a cost of \$54.03 and the paint supplies at the Great Canadian Dollar (LL #18) at a cost of \$16.14.
15. The landlords testified that the tenant painted the railing outside a blue colour and she added junk lumber to the railing. Also one piece of the original board was cracked off. They are claiming 1 hour to remove the junk lumber and to replace the broken piece of the original board. They also had to remove pieces of white plastic. These pieces must have been from a rope lighting the tenant had installed on the railing. They are seeking \$4.08 for the cost of the piece of board and \$18.39 for the primer as the tenant changed the colour of the railing. The board and primer were purchased at Kent (LL #15 & 20).
16. The landlords testified they spent 2 hours removing garbage. They had to dismantle a flower bed that the tenant had made and they had to remove wood, a bucket, a shovel and paint cans that were left underneath the patio. They made arrangements to have the garbage picked up as bulk garbage.
17. The landlords testified that the closet door in the second bedroom was taken down and the hardware was missing. The cost of the materials was \$15.92. Also two blinds were damaged that needed to be replaced; one in the kitchen and one in the living room. The blinds were installed in December 2013. The cost to replace the blinds is \$42.53 as per the receipt from Kent (LL #15).
18. The landlords submitted into evidence a receipt from Atlantic Home Furnishings and Flooring for the purchase of the fridge (LL #1); three photographs of the fridge (LL #2); a quote from Avalon Steamatic Ltd. (LL #3) for the cleaning of the carpets; a receipt from Atlantic Home Furnishings & Flooring (LL #4) for the purchase of the flooring and carpet; photographs of the flooring in the kitchen and the carpets in the unit (LL # 5 & 6); photographs of the entrance door, cabinet drawer, trim underneath the sink, the 3 interior doors, cabinet door above the sink, range hood and the walls (LL #8 - 14); and photographs of the unit (LL #16). These photographs show what needed to be cleaned. Also presented into evidence were photographs of the railing outside, the porch, the garbage, the blinds and the closet door in the second bedroom (LL #19, 22, 23, 24 & 25), and a receipt from the Home Depot (LL #26) for the purchase of the hardware for the closet door.

Analysis

19. I have reviewed the testimony and the evidence of the landlords in this matter. I have determined that there are 3 issues that need to be addressed; (i) were there damages to the unit; (ii) did the unit need to be cleaned and painted; and (iii) is the tenant responsible for the damages, cleaning and painting. 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. Based on the photographs presented I find that the kitchen flooring, the carpet in the second bedroom, the fridge, entrance door, cupboards, range hood, interior doors were damaged and needed to be replaced. All of these items are depreciable items. Also the carpets in the other areas were very dirty and the cabinet above the range hood was damaged. The landlords are entitled to compensation for these items as per the following:

| Item | Age | Life Expectancy | Cost | Amount entitled to |
|------------------|--------|-----------------|-----------|--|
| Kitchen flooring | 5½ yr. | 10 yr. | \$310.33 | $\$310.33 \div 10 \text{ years} = \$31.03 \text{ per year} \times 4\frac{1}{2} \text{ years remaining} =$ \$139.64 |
| Bedroom Carpet | 14 yr. | 10 yr. | \$331.02 | The carpet has outlived its life expectancy |
| Fridge | 11 yr. | 12 yr. | \$855.44 | $\$855.44 \div 12 \text{ years} = \$71.29 \text{ per year} \times 1 \text{ year remaining} =$ \$71.29 |
| Entrance door | 14 yr. | 15 yr. | \$1000.00 | $\$1000.00 \div 15 \text{ years} = \$66.67 \text{ per year} \times 1 \text{ year remaining} =$ \$66.67 |
| Cabinet drawer | 14 yr. | 20 yr. | \$200.00 | $\$200.00 \div 20 \text{ years} = \$10.00 \text{ per year} \times 6 \text{ years remaining} =$ \$60.00 |
| Cabinet trim | 14 yr. | 20 yr. | \$200.00 | $\$200.00 \div 20 \text{ years} = \$10.00 \text{ per year} \times 6 \text{ years remaining} =$ \$60.00 |
| Cabinet door | 14 yr. | 20 yr. | \$165.00 | $\$165.00 \div 20 \text{ years} = \$8.25 \text{ per year} \times 6 \text{ years remaining} =$ \$49.50 |

| | | | | |
|------------------|--------|--------|----------|---|
| 3 Interior doors | 14 yr. | 20 yr. | \$480.00 | $\$480.00 \div 20 \text{ years} = \$24.00 \text{ per year} \times 6 \text{ years remaining} =$ \$144.00 |
| Range hood | 14 yr. | 10 yr. | \$200.00 | The range hood has outlived its life expectancy |
| Total | | | | \$591.10 |

With respect to the claim of \$126.50 towards the purchase of the carpets for the hallway, one bedroom and living room instead of cleaning the carpets. I find it would be more practical to replace the carpets than clean them. Further, the \$200.00 the landlords are claiming to repair the cabinet above the range hood is reasonable.

20. With regard to the cleaning and painting of the unit. I find that the unit needed to be cleaned but based on the photographs presented and the size of the unit, the amount of time the landlords are claiming is unreasonable. I conclude that 20 hours would be a reasonable amount of time to clean the unit. The claim for cleaning succeeds in the amount of \$388.00 (20 hours x \$19.40 = \$388.00). I also find that there were some holes in the walls and some painting was required when the tenant vacated. The amount of time the landlords are claiming to paint is also unreasonable. Paint is a depreciable item with a life expectancy of 3 to 5 years. As the kitchen was painted 1 year before the tenant moved out, the bedroom was painted within the last 5 years and they are not sure when the last time the porch was painted, I award an arbitrary amount of \$300.00 for labour and materials to paint the unit.
21. With regard to the labour to remove the excessive lumber on the railing outside and the garbage removal, the amounts the landlords are claiming are reasonable. I also find that 2 blinds were broken and needed to be replaced and that the hardware for the bedroom door closet was missing. Blinds are also a depreciable item with a life expectancy of 10 years. As the blinds are 5½ years old, the claim succeeds in the amount of \$19.13 ($\$42.53 \div 10 \text{ years} = \$4.25 \text{ per year} \times 4\frac{1}{2} \text{ years remaining} = \19.13). The amount the landlords are claiming for the hardware for the closet door is realistic.

Decision

22. The landlords' claim for compensation for damages succeeds as per the following:
- a) Replacement of the kitchen flooring\$139.64

| | |
|---|-------------------------|
| b) Replacement of the fridge | \$71.29 |
| c) Replacement of entrance door | \$66.67 |
| d) Replacement of cabinet drawer | \$60.00 |
| e) Replacement of cabinet trim | \$60.00 |
| f) Replacement of cabinet door | \$49.50 |
| g) Replacement of interior doors | \$144.00 |
| h) Compensation for carpet cleaning | \$126.50 |
| i) Compensation for repairs to the kitchen cabinet..... | \$200.00 |
| j) Compensation for cleaning | \$388.00 |
| k) Compensation for painting | \$300.00 |
| l) Compensation for repairs to the railing outside..... | \$19.40 |
| m) Replacement of the blinds | \$19.13 |
| n) Compensation for hardware for the closet door | \$15.92 |
| o) Compensation for garbage removal..... | \$38.80 |
| p) Total | <u>\$1698.85</u> |

Issue 2: Payment of rent - \$425.00

23. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

24. The landlords testified that they gave the tenant a termination notice under section 24 (interference with peaceful enjoyment) of the Act on May 16, 2019 to vacate on May 29, 2019. The tenant vacated on that date but the unit was uninhabitable. They spent 2 weeks getting the place ready to rent. On/or about June 8, 2019 they advertised on Kijiji, NL Classifieds and Facebook Marketplace stating that it was available immediately. They re-rented the unit on June 12, 2019 for the tenancy to begin on June 15, 2019.

Analysis

25. I have reviewed the testimony and the evidence of the landlords. I have determined that there is one issue that needs to be addressed; is the tenant responsible for rent for June 1 – 15, 2019. I find that when the tenancy ended the landlords had to do some work to the unit. As the landlords needed some time to carry out the repairs, the claim for payment of rent for 2 weeks in June 2019 succeeds in the amount of \$425.00.

Issue 3: Application of the security deposit

26. 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

27. The landlords testified a \$425.00 security deposit was paid in January 2014.

Analysis

28. A security deposit was paid in January 2014. As the landlords have been successful in their claim for the payment of rent and damages, they shall retain the \$425.00 security deposit as outlined in this decision and order.

Decision

29. The landlords shall retain the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

30. 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

31. The landlords paid an application filing fee in the amount of \$20.00 and \$50.00 to have the application served on the tenant for a total of \$70.00. The landlords are seeking these costs.

Analysis

32. The cost the landlords incurred to make the application and have the application served are considered reasonable expenses 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 \$70.00.

Decision

33. The tenant shall pay the landlords' hearing expenses in the amount of \$70.00.


Summary of Decision

34. The landlords are entitled to the following:

- a) Compensation for damages \$1698.85
- b) Payment of rent..... \$425.00
- c) Hearing expenses \$70.00
- d) **Less the security deposit** **(425.00)**
- e) **Total owing to the landlords** **\$1768.85**

December 9, 2019

Date


Residential Tenancies Section