

Residential Tenancies Tribunal

Decision 19-0482-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:10 a.m. on July 22, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Preliminary Matter

4. The landlord called [REDACTED] with [REDACTED], as a witness. The witness attended by conference call.

Issues before the Tribunal

5. The tenants are seeking the following
 - a. Return of the security deposit;
 - b. Hearing expenses.

6. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$800.00;
 - b. Compensation for damages in the amount of \$412.84;
 - c. Hearing expenses.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
8. Also relevant and considered in this case are Sections 10, 14, 18 and 19 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Payment of rent - \$800.00

Landlord Position

9. The landlord testified that the tenants moved into the unit on August 3, 2014 for a one year term with rent set at \$1050.00 per month due on the 1st of each month. The agreement was renewed each year. In 2016 the rent was reduced to \$850.00 per month. The last agreement was for the period July 1, 2018 – June 30, 2019 with rent set at \$800.00 per month. In March 2019 the tenants gave a verbal notice that they would be moving out on June 2nd or 3rd because they were moving out of province for work. She agreed. The tenants moved out on June 2, 2019. She started advertising the unit for rent on Kijiji around the middle of June 2019. The unit has not been re-rented as of the day of the hearing. She testified that after the tenants moved out she discovered that they did not move out of province. She is seeking rent for the month of June 2019. The landlord submitted a copy of the rental agreement dated June 2, 2018 (LL #1).

Tenant Position

10. Tenant1 testified that in early March 2019 she had a conversation with the landlord and the landlord agreed that they could give a verbal 3 month notice to move out on May 31, 2019. They moved out on May 31, 2019. On June 3, 2019 an inspection was carried out with the landlord. At that time the landlord was not satisfied with the cleaning. The tenants acknowledge that a term agreement was in place until the end of June 2019.

Analysis

11. I have reviewed the testimony and evidence of the landlord and tenant1. I have determined that there is one issue that needs to be addressed; are the tenants responsible for rent for the month of June 2019. The term agreement signed on June 2, 2018 did not expire until June 30, 2019. The tenants gave a verbal notice on March 1, 2019 that they were moving out on May 31, 2019 because they were moving out of the province. They moved out of the unit on May 31, 2019. Section 18.(1)(c) requires that a tenant give a termination notice not less than 2 months before the end of the fixed term. Under section 34(a) the termination notice must be in writing. The termination notice given on March 1, 2019 is not a valid notice because it was not in writing and the effective date of the notice was not the last day of the term agreement. Section 10.(1)4 requires that a landlord is required to mitigate his losses when a tenant abandons the unit. A tenant is considered to have abandoned a unit when the rental agreement is not terminated in accordance with this Act or the rental agreement as per section 31.(2). I find that the landlord's testimony is credible in that she advertised the unit for rent on Kijiji around the middle of June 2019 but the unit was not re-rented as of the day of the hearing. The claim for the payment of rent for the month of June 2019 succeeds in the amount of \$800.00.

Decision

12. The landlord's claim for the payment of rent for the month of June 2019 succeeds in the amount of \$800.00.

Issue 2: Compensation for cleaning and damages - \$412.84

Landlord Position

13. The landlord testified that when she did the inspection with the tenants on June 3, 2019, the unit was not cleaned. In the kitchen the stove, behind the stove and fridge, the cupboards, walls, floor, range hood, dishwasher door and the door from the kitchen to the porch were dirty. In the bathroom there was mildew and mould on the walls and on the bathtub and the light fixture was loaded with dust. Also the master bedroom was dirty. At that time the tenants said they would hire a cleaning company. The next day the tenants informed her that they would not be getting someone to clean the unit. The landlord hired [REDACTED] to clean the unit. She was charged \$350.00 plus tax but she is not claiming the tax.
14. The landlord testified that the blind in the master bedroom was destroyed when the tenancy ended. The blind was installed since the tenants moved in. The cost to replace the blind based on a quote from The Home Depot website is \$62.84. The landlord submitted into evidence photographs of the unit (LL #3),

the receipt from [REDACTED] (LL #2); and a quote from The Home Depot website for the replacement blind (LL #4).

Witness Position

15. [REDACTED], witness for the landlord and owner of [REDACTED] testified that the unit was one of the dirtiest units she has seen. On June 11, 2019 she and 3 other people cleaned the upstairs of the unit for 1½ hours. They had to clean the floor, window ledge, the walls, and the tub in the bathroom. There was a pinkish colour along the end of the tub and there was soap scum and marks on the walls. Also the ceiling vent was covered in dust. In the bedrooms they had to clean the window ledges, walls, floors, and baseboards as they were dirty and there was scum on some of the walls and baseboards. She further testified that the 4 of them went back on June 15, 2019 for two hours. At that time they had to clean the kitchen. Behind the stove and fridge, the floor, two sides of the stove, the walls, baseboards, window ledges, inside and outside of the cupboards, the sink and the both sides of the door going to the porch were very dirty and needed to be cleaned. They had to use brushes and magic erasers and the floors had to be scrubbed. Also the floor, the baseboards and the windows in the porch had to be cleaned.

Tenant Position

16. Tenant1 testified that some cleaning was required in the kitchen and there were marks on the walls in the bedroom and the bathroom. She called a cleaning company and received a verbal quote of \$100.00 to clean the unit. Tenant1 also testified that the blind was there when they moved in and it was not damaged. The tenants presented photographs of the unit (T #1).

Analysis

17. I have reviewed the testimony and the evidence of the landlord, tenant1 and the witness. As far as I can see there are 3 issues that need to be addressed; (i) did the unit need to be cleaned; (ii) is the amount for cleaning reasonable; and (iii) was the blind damaged. I find that the tenants acknowledge that some cleaning was required. However, based on the photographs presented by the landlord and the witness's testimony the unit was very dirty. As the unit was very dirty and the amount the landlord is claiming is reasonable, the claim for compensation for cleaning succeeds in the amount of \$350.00.
18. With respect to the replacement of the blind, I find that the blind was damaged when the tenancy ended. However, the landlord failed to establish when the blind was installed. A blind is a depreciable item with a life expectancy of 10 years. As the landlord could not determine the age of the blind and tenant1 said the blind was there when they moved in. I will calculate the depreciated

value based on the age of the blind to be 5 years old, the start of the tenancy. The claim for replacement of the blind succeeds in the amount of \$31.40 ($\$62.84 \div 10 \text{ years} = \$6.28 \text{ per year} \times 5 \text{ years remaining} = \31.40).

Decision

19. The landlord's claim for damages succeeds as per the following

- a) Cleaning.....\$350.00
- b) Replacement of the blind\$31.40
- c) Total owing to the landlord.....\$381.40

Issue 3: Application for Security Deposit

20. 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.

Tenant Position

21. The tenants testified they paid a \$650.00 security deposit in August 2014 and the landlord returned \$132.16 to them.

Landlord Position

22. The landlord acknowledges a \$650.00 security deposit was paid and she returned \$132.16 to them.

Analysis

23. A \$650.00 security deposit was paid in August 2014 and the landlord returned \$132.16 to them. The landlord shall retain the balance of the security deposit in the amount of \$517.84 ($\$650.00 - \$132.16 = \517.84) towards the claim.

Decision

24. The landlord shall retain the balance of the security deposit in the amount of \$517.84 as outlined in this decision and attached order.

Issue 4: Hearing Expenses

25. 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

26. The tenants are claiming \$17.25 for the cost of the XpressPost.

Landlord Position

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

Analysis

28. The cost the tenants incurred to send the application and the cost the landlord incurred to make the application are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the tenants' claim has been unsuccessful and the landlord's claim has been successful, the tenants shall pay the landlord's hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

30. The landlord is entitled to the following:

- a) Payment of rent..... \$800.00
- b) Compensation for cleaning/damages..... \$381.40
- c) Hearing expenses \$20.00
- d) **Less the balance of the security deposit.....(517.84)**
- e) **Total owing to the landlord\$683.56**

December 13, 2019
Date


Residential Tenancies Section