

Residential Tenancies Tribunal

Decision 19-0578-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:25 a.m. on October 7, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing by conference call.
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Issues before the Tribunal

4. The tenant is seeking the following:
 - a. Return of the security deposit.
5. The landlord is seeking the following:
 - a. Compensation for damages in the amount of \$761.88;
 - b. 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 are Sections 10 and 14 of the Act.

Issue 1: Compensation for damages - \$761.88

Landlord Position

8. The landlord testified that the tenant moved into a room in the unit on April 1, 2018 with rent set at \$500.00 per month due on the 1st of each month. In September 2018 she moved to another room with rent set at the same amount. On June 29, 2019 she gave the tenant a termination notice to vacate the unit that same day and the tenant vacated on July 3, 2019. She testified that in March 2019 the tenant mentioned to her that a branch from the tree broke the window in her room. At the same time the tenant mentioned to her about the window being broken another tenant in the unit was sending the landlord texts messages stating that there were violent incidents between the tenant and her boyfriend.
9. The landlord testified that the window is about 20 years old. There is a wooden window on the inside and a metal storm window outside. The wooden window looks like it was broken from the inside and is broken in 2 places close to the frame of the window. In early July she had a representative from the Window Shop inspect the window and a new vinyl window was ordered. The wooden window was replaced with a vinyl window in early August 2019. The cost of the window was \$761.88. She testified that she never received a quote on just having the glass replaced. In support of the claim, the landlord submitted photographs of the window taken in August 2018 and July 2019 and a photograph of the tree next to the house (LL #1), an invoice from the Window Shop dated August 5, 2019 in the amount of \$761.88 (LL #2) and copy of an e-mail from the tenant dated March 18, 2019 stating that there is a crack in the window (LL #3).

Tenant Position

10. The tenant testified that one night around March 18, 2019 she heard something hit the window. It looked like it was a rock that hit the window. She notified the landlord but the landlord did not do anything about it until she was moving out. Just before she moved out 2 gentlemen came to measure the window because the landlord was replacing all of the windows on the second floor of the house.

Analysis

11. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there is 1 issue that needs to be addressed; (i) is the tenant responsible for the replacement of the window. Based on the evidence presented I find that the photograph the landlord presented of the window, the cracks in the window look like they started near the inside frame of the window. The photograph of the tree presented, the branch of the tree is not near the window. I also find that the landlord failed to establish the damage to the window was the result of a willful or negligent act by the tenant. As a result, the claim for replacement of the window fails.

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12. The landlord's claim for compensation for replacement of the window is unsuccessful.

Issue 2: Application for Security Deposit

13. 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

14. The tenant testified that a \$372.00 security deposit was paid in April 2018.

Landlord Position

15. The landlord acknowledges the tenant paid a security deposit in the amount of \$372.00.

Analysis

16. A \$372.00 security deposit was paid in April 2018. The landlord's claim for compensation for damages was unsuccessful. The landlord shall return the security deposit to the tenant.

Decision

17. The landlord shall return the security as outlined in this decision and attached order.

Issue 3: Hearing expenses - \$20.00

18. 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

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

Analysis

20. The cost the landlord incurred to make 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 unsuccessful, the landlord is responsible for her own hearing expenses.

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21. The landlord is responsible for her own hearing expenses.

Summary of Decision

22. The tenant is entitled to the following:

- a) Return of the security deposit\$372.00

February 24, 2020
Date


Residential Tenancies Section