

Residential Tenancies Tribunal

Decision 19-0590-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on September 10, 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, participated in the hearing.

Preliminary Matters

4. The landlords discontinued the claim for vacant possession and the return of possessions. They amended the claim for payment of damages from \$377.00 to \$256.26; the claim for late fees from \$37.00 to \$75.00 and the claim for utilities from \$117.35 to \$118.00.

Issues before the Tribunal

5. The landlords are seeking the following:
 - a. Payment of rent in the amount of \$700.00;
 - b. Late fees in the amount of \$75.00;
 - c. Payment of utilities in the amount of \$118.00;
 - d. Compensation for damages in the amount of \$256.26;
 - 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 are Sections 10, 14, 15, 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 - \$700.00

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

Landlord Position

9. The landlords testified that the tenant moved into the unit in July 2018 with another tenant. The rent was set at \$700.00 per month due on the 1st of each month. The second tenant moved out and the tenant signed a new rental agreement for a month to month tenancy to begin on March 1, 2019. The tenant paid the rent through interac e-transfer for the months of March – June 2019. Rent was not received for July 2019 by July 7, 2019 so they gave the tenant a termination notice under section 19 to vacate by July 18, 2019. The tenant did not pay July's rent and he vacated on July 17, 2019. The landlords submitted a copy of the termination notice (LL #1) and a copy of the rental agreement (LL #2).

Tenant Position

10. The tenant acknowledges that he did not pay rent for the month of July 2019 and he vacated on July 17, 2019.

Analysis

11. I have reviewed the testimony and the evidence of the landlords and the tenant. I have determined that there is one issue that needs to be addressed; is rent owing. I find that the landlords served a termination notice on July 7, 2019 to vacate on July 18, 2019 because the rent had not been paid. The tenant acknowledges he didn't pay the rent and he vacated the unit on July 17, 2019. As the rent had not been paid for the month of July and the landlords gave the tenant a termination notice to vacate on July 18, 2019, the claim for payment of rent succeeds up July 18, 2019, the date of the termination notice, in the

amount of \$414.18 ($\$700.00 \times 12 \text{ months} = \$8400.00 \div 365 \text{ days} = \$23.01 \times 18 \text{ days} = \414.18).

Decision

12. The claim for the payment of rent succeeds in the amount of \$414.18 for the period July 1 – 18, 2019.

Issue 2: Payment of late fees - \$75.00

Landlord Position

13. The landlords testified they are seeking payment of late fees in the amount of \$75.00 as the rent has been in arrears since July 2019.

Tenant Position

14. The tenant said he is not disputing the claim for late fees.

Analysis

15. The rental arrears has been established in paragraph 12 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent has been in arrears since July 2019 the late fees have exceeded the maximum amount of \$75.00.

Decision

16. The claim for late fees succeeds in the amount of \$75.00.

Issue 3: Payment of utilities - \$118.00

Landlord Position

17. Landlord1 testified that when the other tenant who was living in the unit with the tenant took the power bill out of her name, the tenant did not have it converted to his name. He agreed to pay the utilities as per the rental agreement. The cost of the power for the middle of May – the middle of June 2019 is \$68.64 and for the period middle of June – the middle of July 2019 is \$49.36 for a total of \$118.00. The landlord submitted a copy of the summary of the power bills (LL #3) for the two months.

Tenant Position

18. The tenant is acknowledging the cost of the power for the period the middle of May – middle of July 2019.

Analysis

19. The tenant acknowledges he owes for the power for the 2 months. The landlords submitted copies of the summary of the power usage for the two months. The tenant shall pay the cost of the power bills for the period the middle of May – middle of July 2019 in the amount of \$118.00 (\$68.64 + \$49.36 = \$118.00).

Decision

20. The claim for the payment of the power bills succeeds in the amount of \$118.00.

Issue 4: Compensation for cleaning and damages - \$256.26

Landlord Position

21. The landlords testified that when the tenant moved out the unit needed to be cleaned, some plastering and painting was required and the tenant did not return the key to the unit. They paid Dust Bunnies \$125.00 to clean the unit. The cleaning consisted of the stove, oven, microwave, fridge, floors, windows, closets, the bathroom, and some spot cleaning on the walls. They said the enclosed stairwell also had to be washed because of the smell of smoke as the tenant smoked in the stairwell. The landlords submitted a copy of the invoice from Dust Bunnies dated July 29, 2019 in the amount of \$125.00 (LL #8) and photographs of the unit (LL #9). A couple of photographs show cigarette butts in the stairwell.
22. The landlords testified that they spent about 3½ hours plastering and painting. They had to plaster and paint the walls in the entrance and the wall between the kitchen and living room due to the damages. They also had to paint the steps in the stairwell because there was still a smell of smoke after they were washed. They are claiming \$70.00 (\$20.00 per hour x 3½ = \$70.00) for labour and \$54.38 for paint and supplies for a total of \$124.38. They had to purchase paint at a cost of \$43.52; rollers at a cost of \$8.34 and \$2.52 for the replacement of a wall plate in the living room. The unit was painted in June 2018. They received a verbal quote of \$6.88 to have the keys cut.
23. Later in the hearing landlord2 stated that he believes the damage to the wall in the entrance was caused when they removed the fridge from the unit. The

landlords submitted a receipt from Kent for the purchase of the paint rollers and the wall plate for a total of \$10.86 (LL #5), photographs of the unit (LL #6) and a copy of the inspection report (LL #7). The ingoing report dated for March 1, 2019 was signed by the landlords and the tenant. The outgoing report dated July 19, 2019 was signed by the landlords.

Tenant Position

- 24. The tenant testified that he is not disputing the claim for cleaning. The damage to the wall between the kitchen and the living room occurred when he was moving out furniture. The damage to the wall in the entrance way was caused when the landlord had removed the fridge from the unit. He stated he smoked outside.

Analysis

- 25. I have reviewed the testimony and the evidence of the landlords and the tenant. I have determined that there are 2 issues that need to be addressed; (i) are there damages to the unit; and (ii) is the tenant responsible for the damages. The tenant is not disputing that the unit needed to be cleaned. The amount the landlords are claiming is reasonable. Therefore, the claim for cleaning succeeds in the amount of \$125.00. With regard to the cost to have the keys cut. The changing of exterior locks is considered an expense that a landlord would incur to secure the premises after a tenant vacates. The claim for the cost to have the keys cut fails.
- 26. With regard to the plastering and painting. Landlord2 acknowledges the damage to the walls in the entrance was caused when they were removing the fridge. The tenant acknowledges that the wall between the kitchen and living room was damaged when he was moving out his furniture. Based on the photographs presented the tenant smoked in the stairwell. As the landlord did not give a breakdown on the cost of each repair, I award \$75.00 to plaster and paint the wall between the kitchen and the living room and to paint the stairs in the stairwell.

Decision

- 27. The claim for damages succeeds as per the following:

a) Compensation for cleaning	\$125.00
b) Compensation for plastering and painting.....	<u>\$75.00</u>
c) Total owing to the landlord	\$200.00

Issue 4: Application for Security Deposit

28. 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

29. The landlords testified that the tenant paid a \$350.00 security deposit in March 2019.

Tenant Position

30. The tenant acknowledges he paid a \$350.00 security deposit.

Analysis

31. A \$350.00 security deposit was paid in March 2019. As the landlords have been successful in the claim for the payment of rent, late fees, utilities and damages, the landlords shall retain the security deposit.

Decision

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

Issue 5: Hearing Expenses - \$20.00

33. 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

34. The landlords paid the \$20.00 application filing fee. The landlords are seeking this cost.

Analysis

35. The cost the landlords incurred for the application fee 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 landlords' claim was successful, the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision


36. The tenant shall pay the landlords' hearing expenses in the amount of \$20.00.

Summary of Decision

37. The landlords are entitled to the following:

a) Payment of rent	\$414.18
b) Late fees	\$75.00
c) Payment of utilities.....	\$118.00
d) Compensation for damages.....	\$200.00
e) Hearing expenses.....	<u>\$20.00</u>
f) <i>Less the security deposit</i>	<i>(350.00)</i>
g) Total owing to the landlord	\$477.18

January 31, 2020
Date


Residential Tenancies Section