

Residential Tenancies Tribunal

Decision 19-0600-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:15 p.m. on September 10, 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.
3. The respondent, [REDACTED], represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Preliminary Matters

4. The tenant called [REDACTED] as a witness.
5. The landlord called [REDACTED], Resident Manager of the building as a witness.
6. The landlord amended the claim for payment of damages from \$1797.17 to \$1889.20

Issues before the Tribunal

7. The tenant is seeking the following:
 - a. Return of the security deposit.

8. The landlord is seeking the following:
 - a. Compensation for cleaning in the amount of \$265.00;
 - b. Compensation for painting in the amount of \$1624.20;
 - c. Hearing expenses.

Legislation and Policy

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

Issue 1: Compensation for cleaning and painting - \$1889.20

Landlord Position

11. The landlord testified that the tenant moved into the unit on October 28, 2017 for a one year term to begin on November 1, 2017 with rent set at \$795.00 per month due on the 1st of each month. At the end of the term the tenancy converted to month to month. The tenant vacated the unit on July 1, 2019. When she vacated the unit needed to be cleaned and painted. The resident manager of the building had to clean the unit. He had to clean the refrigerator, oven, floors, carpet and the bathroom. They are claiming \$265.00. This amount is based on Schedule B, the itemized list for cleaning that was attached to the rental agreement. He also testified that the unit had to be painted because of the smell of cannabis. He has never been in the unit. The painting was carried out by in house maintenance staff and they used the supplies that were on hand as the supplies are bought in bulk. Six gallons of paint was used for the walls at a cost of \$33.49 per gallon for a total of \$231.08 (6 x \$33.49 = \$200.94 + \$30.14 tax = \$231.08); 5 gallons was used for the ceilings at a cost of \$25.99 per gallon for a total of \$149.49 (5 x \$25.99 = \$129.95 + \$19.49 tax = \$149.44) and ½ a gallon was used on the trim at a cost of \$18.68 (\$32.49 + \$4.87 tax = \$37.36 ÷ 2 = \$18.68). The total amount for the cost of the paint is \$399.20 (\$231.08 + \$149.44 + \$18.68 = \$399.20). The maintenance staff spent 70 hours at the rate of \$17.50 per hour painting the unit for a total of \$1225.00 (70 hours x \$17.50 = \$1225.00). The unit was not painted before the tenant moved in. They only did touch-ups. The landlord submitted a copy of the Schedule B (LL #1) and a breakdown of the claim (LL #2).

Witness Testimony

12. [REDACTED], Resident Manager and witness for the landlord, testified that he spent 10½ hours cleaning the unit. He cleaned the stove, fridge, behind the stove and fridge, floors, carpets and the bathroom. He stated that the stove and fridge were dirty, the carpets didn't appear to have been shampooed and he had to throw out the toilet seat because he couldn't get it clean. He also testified that the unit had to be painted because of the smell of cannabis and cigarettes. The smell was pretty pungent. The smell was in the carpet and on the walls. The walls and the ceilings needed 2 coats of paint because the first coat didn't cover the nicotine on the walls. He said it was the maintenance manager's decision to have the unit painted. The unit was painted just prior to the tenant moving in.
13. [REDACTED] testified that he had never seen the tenant smoke in the unit. In response to the tenant's testimony he said that there was no smell of cannabis throughout the building.

Tenant Position

14. The tenant testified that she had the unit cleaned before she vacated. The unit was ready to rent when she moved out. There was no smell of cannabis in the unit but there was a smell of cannabis throughout the building. She never smoked in the unit. She smoked out on the patio. The unit was not painted before she moved in.

Witness Position

15. [REDACTED], witness for the tenant, testified that she was paid to clean the unit. She cleaned everything in the unit except for cleaning behind the fridge and stove. She testified that there was no smell of cannabis in the unit but there was always a smell in the hallway.

Analysis

16. I have reviewed the testimony and evidence of the landlord, the tenant and the witnesses. I have determined that there are 2 issues that need to be addressed; (i) did the unit need to be cleaned; and (ii) did the unit need to be painted. The landlord did not present any corroborating evidence to show that the unit needed to be cleaned when the tenancy ended. However, the tenant's witness stated she did not clean behind the fridge and stove. I award \$20.00 to clean behind the fridge and stove. With regard to the painting, the landlord and his witness testified that the unit smelled of cannabis but the landlord was never in the unit. The witness also testified that the unit needed 2 coats of paint because of the nicotine on the walls and he had never seen the tenant smoke

in the unit. The landlord did not present any evidence to show that there was nicotine on the walls. Further, the tenant and her witness testified that there was no smell in the unit but there was a smell in the hallway/building. As the landlord failed to establish that there was nicotine on the walls and there was a smell of cannabis in the unit, the claim for painting fails.

Decision

17. The landlord's claim for compensation for cleaning succeeds in the amount of \$20.00 and the claim for painting fails.

Issue 2: Application for Security Deposit

18. 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

19. The tenant testified that she paid a \$618.00 security deposit on September 30, 2017.

Landlord Position

20. The landlord acknowledges that the tenant paid a security deposit in the amount of \$618.00.

Analysis

21. A \$618.00 security deposit was paid in September 2017. As the landlord's claim for compensation for cleaning was partially successful and the claim for painting was unsuccessful, the landlord shall return the security deposit less the compensation for cleaning.

Decision

22. The landlord shall return the security deposit less the compensation for cleaning as outlined in this decision and attached order.

Issue 3: Hearing Expenses - \$70.00

23. 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

24. The landlord paid the \$20.00 application filing fee and he paid \$50.00 to a process server to serve the application. The landlord is seeking these costs.

Analysis

25. The cost the landlord incurred for the application fee and to 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 both claims were partially successful, the landlord shall bear his own hearing expenses.

Decision


26. The landlord shall bear his own hearing expenses.

Summary of Decision

27. The tenant is entitled to the following:

- a) Return of the security deposit\$618.00
- b) **Less compensation for cleaning..... (20.00)**
- c) **Total owing to the tenant\$598.00**

January 31, 2020
Date


Residential Tenancies Section