

## Residential Tenancies Tribunal

Decision 19-0645-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:10 a.m. on October 16, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], represented by [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.

### Preliminary Matters

4. The landlords called the following witnesses:
  - a. [REDACTED] – owner of the unit
  - b. [REDACTED] – owner of the unit
  - c. [REDACTED] – owner of [REDACTED]. [REDACTED] attended by conference call.
5. The tenants called the following witnesses:
  - a. [REDACTED]
  - b. [REDACTED]
  - c. [REDACTED]
  - d. [REDACTED]
  - e. [REDACTED]
  - f. [REDACTED]

## Issues before the Tribunal

6. The landlords are seeking the following:
  - a. Compensation for cleaning in the amount of \$391.00;
  - b. Compensation for damages in the amount of \$6421.50;
  - 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 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 - \$391.40

### Landlord Position

9. The landlords testified that the tenants moved into the unit on May 26, 2016 for a one year term with rent set at \$1250.00 per month due on the 1<sup>st</sup> of each month. When the term expired it converted to a month to month tenancy. The tenants moved out on May 31, 2019. Landlord2 testified that on May 31, 2019 at approximately 3:00 p.m. when she did the outgoing walk through with the tenants the unit required cleaning. The cupboards, fridge, floors and the bathroom needed to be cleaned. Also the carpets throughout the unit had stains on them and there was a smell of cat urine. The smell was mostly in the basement. The smell was of urine, not a dirty litter box. She said she can tell the difference between the smell of urine and the litter box because she has two cats of her own. She testified that after the tenants vacated that evening, they hired [REDACTED] cleaning company to clean the unit. The owner and another person came to the unit that same evening and cleaned the unit. They were charged \$140.00 for cleaning the carpets; \$70.00 for the treatment for the carpets and \$130.00 for cleaning the unit for a total of \$391.00 (\$340.00 + \$51.00 tax = \$391.00).
10. After the tenants gave their testimony landlord2 testified that the tenants agreed on the time for the inspection. The landlords presented a copy of the ingoing and outgoing inspection report (LL #2) and a copy of the invoice from [REDACTED] (LL #3). At the hearing the landlords showed photographs of the unit. The photographs were sent by e-mail to my e-mail work account. After the hearing I was unable to open the photographs as they were sent by

google drive and our department does not allow access to photographs this way.

11. [REDACTED], owner of the unit and witness for the landlords, testified that when he was at the unit on May 31, 2019, the unit was a mess. Also there was a smell of cat urine. Two people came and cleaned the unit. The cleaners cleaned the carpets with a solution and they were told by the cleaners that the smell would be gone in a few days.
12. [REDACTED], owner of the unit and witness for the landlords, testified that when she was at the unit on May 31, 2019, the smell was overpowering. The tenants were in the process of moving out.
13. [REDACTED], owner of [REDACTED] and witness for the landlords testified that there was a strong smell in the unit and the unit needed to be cleaned. He and his employee cleaned the unit the same day the landlord and the tenants did the inspection. After they cleaned the unit, all of the carpets in the unit and the laminate flooring in the living room and the hallway were treated with a urine contamination treatment. He said that the smell was especially bad in the downstairs area.

#### Tenant Position

14. The tenants testified that they were still in the process of moving out when the outgoing inspection was carried out. The unit was not cleaned and there was a stain on the carpet in one of the small bedrooms. Tenant2 testified that she was of the understanding that they could clean after the inspection was carried out. Tenant1 testified that the smell in the basement was from the garbage bag as he had just dumped the kitty litter in the bag. When they signed the outgoing inspection he was told to hand over the keys. Tenant1 stated that the invoice for the cleaning was dated May 30, 2020.

#### Analysis

15. I have reviewed the testimony and evidence of the landlords, tenants and the witnesses. I have determined that there is one issue that needs to be addressed; did the unit need to be cleaned. Based on the photographs shown at the hearing, the testimony of the landlords, tenants and the witnesses I find that the unit needed to be cleaned and there was a smell of urine in the unit. I also find that the carpets and the laminate flooring needed to be treated with a contamination treatment due to the smell of cat urine. With regard to the date on the invoice, I find it was a mistake as landlord2 and the witness [REDACTED] testified the cleaners were at the unit the same day the inspection was carried out on May 31, 2019. Further, the amount the landlords are

claiming to have the unit cleaned and to have the carpets and laminate flooring treated is reasonable. Therefore, the claim for cleaning succeeds in the amount of \$391.00.

## **Decision**

16. The landlords' claim for cleaning succeeds in the amount of \$391.00

## **Issue 2: Replacement of flooring - \$6421.60**

### Landlord Position

17. The landlords testified that the carpets did smell of urine before the carpets were treated by the cleaning company. The carpets in one bedroom and on the stairs were damaged when the tenancy ended. The homeowners moved into the unit after the tenants vacated and they replaced the carpets and the laminate flooring. The landlords presented a quote from Award Flooring in the amount of \$6421.60 to replace the flooring (LL #5) and a copy of the ingoing and outgoing inspection report (LL #2).
18. ██████████ testified that when the cleaning company cleaned the carpets they were told the smell would be gone in a few days. A few days had passed and you could still smell the urine so they removed the carpets. When the carpets were removed there were stains on the underlay in the rec room and the small bedroom. After the carpets were removed you could still smell the urine. They then removed the laminate flooring. The flooring was 4 years old.
19. ██████████ testified the flooring was replaced because of the smell of urine and the carpet in the basement had stains on it. When the carpets were removed you could still smell the urine. They then removed the laminate flooring. The flooring was replaced to make sure the smell was gone.
20. ██████████ testified that he treated the carpet and the laminate flooring with a urine contamination treatment. It usually takes a few days for the treatment to work. Sometimes the urine smell comes back. If the smell comes back the carpets would need another treatment. He was not called back to the unit.

### Tenant Position

21. The tenants testified that there was no smell of urine in the unit. The smell was from the garbage bag in the basement as tenant1 had just dumped the litter into the bag. The laminate flooring in the living room was not damaged by urine as the floor was covered with interlocking foam blocks. The blocks are hitched

but there are no urine stains on them. The tenants acknowledge the carpet in one of the small bedrooms was damaged. When they moved into the unit there were a couple of hitches in the carpet in that bedroom and the vacuum hooked the hitches. The tenants presented into evidence some of the foam blocks (T #1) and photographs of the foam blocks on the floor (T #2).

22. [REDACTED], witness for the tenants testified that he was their previous landlord. When the tenants vacated there was no cat damage to his home and there were no issues with cats while the tenants lived in the unit.
23. [REDACTED] witness for the tenants testified that he was present when the tenants were moving in and when they were moving out of the unit. He visited the unit on a regular basis. He had never detected a smell of cat urine while he was at the unit. He also testified that the interlocking blocks were on the floor in the living room the entire time.
24. [REDACTED] witness for the tenants testified that he visited the unit every week or week and half. While he was at the unit he never detected a smell of urine. He confirmed that the interlocking blocks were on the floor. The last time he was at the unit was sometime within the month of May 2019 and there was no smell of cat urine.
25. The witnesses, [REDACTED], [REDACTED] and [REDACTED] testified that they visited the unit on a regular basis and they never detected the smell of urine at the unit.

## **Analysis**

26. I have reviewed the testimony and the evidence presented of the landlords, tenants and the witnesses. I have determined that there is 1 issue that needs to be addressed; (i) are the tenants responsible for the replacement of the flooring. I find that there was a smell of cat urine in the unit when the tenants moved out. The cleaners treated the flooring with a urine contamination treatment. Sometimes a second treatment is required. The cleaners were not called back to do a second treatment. The homeowners moved back into the house and they replaced the flooring. The landlords have not supported the claim with substantiating evidence that there was still a smell of urine in the unit after it was cleaned and that the flooring needed to be replaced. I also find based on the ingoing and outgoing inspection report the carpet was damaged on the stairs and in one bedroom. The tenants acknowledge that there were some hitches in the carpet in one of the small bedrooms. However, the landlords did not give a breakdown on the replacement cost of the flooring for each room. Therefore, the claim for replacement of the flooring fails.

## **Decision**

27. The landlords' claim for compensation for replacement of the flooring fails.

### **Issue 4: Application for Security Deposit**

28. Under the authority of Section 41.(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 acknowledges a \$937.50 security deposit was paid in May 2016.

#### Tenant Position

30. The tenants testified that a \$937.50 security deposit was paid in May 2016.

## **Analysis**

31. A \$937.50 security deposit was paid in May 2016. The landlord shall retain a portion of the security deposit as they have been successful in their claim for compensation for cleaning. The interest rate on security deposits for the period 2016 – 2019 is 0%.

## **Decision**

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

### **Issue 4: 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 an application filing fee in the amount of \$20.00 and \$50.00 to a process server to serve the application. The landlords are seeking these costs.

**Analysis**

35. 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 tenants are responsible to pay the landlords' hearing expenses in the amount of \$70.00.

**Decision**

36. The tenants shall pay the landlords' hearing expenses in the amount of \$70.00.

**Summary of Decision**

37. The tenants are entitled to the following:

- a) Return of the security deposit ..... \$937.50
- b) Less Compensation for cleaning..... \$391.00
- c) Less Hearing expenses ..... \$70.00
- d) **Total owing to the tenants** ..... **\$476.50**

March 30, 2020  
Date

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Residential Tenancies Section