

Residential Tenancies Tribunal

Decision 19-0725-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:05 p.m. on September 30, 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 and was represented by [REDACTED].
3. The respondent, [REDACTED], represented by [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Preliminary Matters

4. [REDACTED] was the interpreter for the Arabic language.
5. [REDACTED] appeared as a witness for the landlord.

Issues before the Tribunal

6. The tenant is seeking the following:
 - a. Repairs to be carried out on the unit;
 - b. Rent to be paid in trust;
 - 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 Section 10 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Repairs to be carried out

Tenant Position

9. The tenant testified that she moved into the unit on May 1, 2019 for a 12 month term with rent set at \$1200.00 per month due on the 1st of each month. When she moved in there was mould in the unit.
10. The representative testified that the tenant gave the landlord a request for repairs. The repairs consist of the bathroom, underneath the kitchen sink, mould in the kitchen and bathroom and water damage on the baseboards. In the bathroom there is no caulking/sealant around the tub enclosure; there is a hole in the floor; the mouldings are warped; and there is water damage which is causing mould. She testified that there is a significant amount of water underneath the kitchen sink. Every time the maintenance staff would go to the unit they said there is nothing wrong. The representative believes that the sink is not sealed. She presented a photograph of a moulding in the bathroom (T#1) and a photograph of underneath the kitchen sink (T #3). The photographs were taken on July 19, 2019. The photograph of underneath the kitchen sink shows that the papers in the cupboard are wet.
11. The representative testified that there is mould and water damage on the mouldings throughout the unit. The mould is near openings and near doorways. She presented photographs which were taken on July 19, 2019 of the mouldings around the entrance door and a moulding in the kitchen (T #4). These photographs show mould on the mouldings.

Landlord Position

12. The landlord stated that the tenant moved into the unit on April 22, 2019 and the term was to begin on May 1, 2019. She testified that there were no damages to the unit when the tenancy began. There is no hole in the bathroom floor and the tub surround does not need a sealant. There is a clear caulking around the tub. She said since the tenant moved in they had repaired a leak

in the bathroom at a cost of \$2064.50. The tenant who lives in the basement unit for the past 4 years said there never had been a leak until this tenant moved into the upstairs unit. The landlord further testified that they had a discussion with the tenant and a representative from the Association for New Canadians concerning the water issue because of some concerns with the plumbing in the wall. The walls were removed and there was no issue with the plumbing in the walls.

13. The landlord testified that there is was no mould in the unit when the tenant moved into the unit. The photograph of the mouldings around the door clearly shows that there was water on the wood and the tenant did not dry it up. It is the tenant's responsibility. The other photograph of the moulding the landlord is not sure where this moulding is located.
14. [REDACTED], witness for the landlord and who is a maintenance employee with the company, testified that there is no hole in the floor in the bathroom. The toilet overflowed after the tenant moved into the unit. He had to replace a transition strip and the bathtub does not need to be sealed. He said there was never an issue with the bathroom prior to the tenant living there. [REDACTED] further testified that there was a small leak underneath the kitchen sink. He fixed the leak. He doesn't remember receiving complaints that the entrance door was leaking nor that there was mould on the mouldings in the kitchen.

Analysis

15. I have reviewed the testimony and evidence of the tenant, the representative, the landlord and the witness. I have determined that there are two issues that need to be addressed; (i) are there repairs that need to be corrected; and (ii) is the landlord required to carry out the repairs. I find that the representative failed to establish that there are problems with the bathroom. With regard to the water underneath the sink, I find the witness acknowledged that he corrected a leak underneath the sink. The photographs presented were taken on July 19, 2019. I further find that there is an issue with mould/water damage on the mouldings around the entrance door and in the kitchen. The landlord shall find the source of the problem and repair or replace the damaged mouldings.

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16. The landlord shall find the source of the mould/water damaged mouldings and repair/replace the mould/water damaged mouldings around the entrance door and in the kitchen. Further, once the landlord has made the repairs to the mouldings, the landlord shall provide the Residential Tenancies Section with an affidavit stating the repairs have been carried out along with date-stamped photographs showing the repairs.

17. The tenant shall forward all rent payable that comes due, beginning December 1, 2019 to the Residential Tenancies Section in the form of a Postal Money Order made payable to the Residential Tenancies Trust Account. That rent will be held in trust until it is determined the landlord has complied with the above order. The tenant shall continue to forward rent to this Section, as it comes due, until she is ordered by this Section to reinstate payments to the landlord or until she vacates the rental unit.

Issue 2: 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*.

Tenant Position

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

Analysis

20. The cost the tenant 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 tenant's claim has been partially successful, the landlord is responsible to cover the cost of the hearing expenses in the amount of \$20.00.

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

Summary of Decision

22. The tenant is entitled to the following:
 - a) Hearing expenses\$20.00
 - b) The landlord shall repair/replace the water/mould damaged mouldings around the entrance door and in the kitchen.
 - c) Once the above noted repairs are carried out, the landlord is to provide the Residential Tenancies Section with an affidavit to that effect along with

date-stamped photographs showing the repairs and any associated invoices, receipts or inspection reports.

- d) The tenant shall forward all rent payable that comes due, beginning December 1, 2019 to the Residential Tenancies Section in the form of a Postal Money Order made payable to the Residential Tenancies Trust Account. That rent will be held in trust until it is determined the landlord has complied with the above order. The tenant shall continue to forward rent to this Section, as it comes due, until she is ordered by this Section to reinstate payments to the landlord or until she vacates the rental unit.

November 6, 2019
Date

Residential Tenancies Section