

Residential Tenancies Tribunal

Decision 19-0778-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:20 a.m. on November 14, 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 respondent, [REDACTED], hereafter referred to as the tenant, did not attend the hearing.

Preliminary Matters

4. The landlords amended the application to include the payment of rent in the amount of \$345.95.
5. The tenant was not present or represented at the hearing. Prior to the hearing, I called the tenant but I was unable to reach her. This Tribunal's policy concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) a respondent to an application must be served with the application for dispute resolution 10 clear days prior to the hearing date, and where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he/she has been properly served.

6. The affidavit of service submitted by the landlords show that the notice of the hearing was sent by registered mail and the tenant signed for the mail on October 15, 2019. The tenant has had 29 days to provide a response. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.

Issues before the Tribunal

7. The landlords are seeking the following:
 - a. Payment of rent in the amount of \$345.93;
 - b. Compensation for damages in the amount of \$1161.89;
 - c. Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
9. Also relevant and considered in this case are Sections 10, 14 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 - \$345.93

10. In determining an application for the payment of rent, the landlords are required to establish the rental rate and the payment record.

Landlord Position

11. Landlord1 testified that the tenant moved into the unit on May 30, 2017 with rent set at \$323.00 per month due on the 1st of each month. The rent increased to \$474.00 in July 2018. She testified that the tenant fell into arrears in November 2017 and she has carried a balance all through the tenancy. A termination notice was served on the tenant on January 22, 2019 to vacate on January 28, 2019. The tenant vacated on January 28, 2019. When the termination notice was given the rent was in arrears \$1223.00 up to January 31, 2019. The tenant made a payment of \$877.07 on February 8, 2019 leaving a balance of \$345.93. Landlord1 submitted into evidence a copy of the statement of account (LL #1). The statement shows that there was a balance at the end of each month starting November 2017.

Analysis

12. I have reviewed the testimony and evidence of landlord1. I have determined that there is one issue that needs to be addressed; is rent owing. I find based on the statement of rent account the tenant had a balance at the end of each month starting November 2017. The tenant was served a termination notice on January 22, 2019 to vacate on January 28, 2019. She vacated on that date. When the tenant vacated the unit on January 28, 2019 she had a balance of \$749.00 up to December 31, 2018 + \$436.24 ($\$474.00 \times 12 \text{ months} = \$5688.00 \div 365 \text{ days} = \$15.58 \text{ per day} \times 28 \text{ days} = \436.24) for the period January 1 – 28, 2019 for a total of \$1185.24 ($\$749.00 + \$436.24 = \1185.24). She made a payment of \$877.07 on February 8, 2019 leaving \$308.17 ($\$1185.24 - \$877.07 = \308.17) owing.

Decision

13. The landlords' claim for rent succeeds as per the following:
- a. Rent owing for January 1 – 28, 2019.....\$308.17

Issue 2: Payment of damages - \$1161.89

Landlord Position

14. Landlord2 testified that when the tenant moved out there were some damages and the unit was not cleaned. There was graffiti on two interior doors and on the walls in the kitchen. They had to purchase a quart of stain block to cover the markings before they could paint the doors and the walls. The tenant changed the color of the walls in one bedroom, the upstairs hallway and the laundry room. Two gallons of paint was used to paint these rooms. The unit was painted a neutral colour just prior to the start of the tenancy. The towel bar in the bathroom and the weather stripping for the patio door were missing. There was a hole in the bathroom door. The entrance door and the bi-fold door in the bigger bedroom were damaged beyond repair. The doors are the original doors. The house was built in 1992. In the same bedroom the door knob and the hinges for the door had to be replaced and there was an outlet plate missing.
15. Landlord2 testified that 3½ hours were spent painting the unit; 2 hours were spent installing the doors and the doorknob and 1 hour was spent repairing the hole in the bathroom door and installing the towel bar and the outlet cover. The cost of the labour was charged at a rate \$32.50 per hour. He testified that the cost of the stain block was \$15.51 and the paint was \$47.47 as per the quote from Dulux Paint (LL #3). The cost to replace the towel bar was \$16.99; the weather stripping was \$11.60, the outlet plate was .25¢ and the door knob was \$41.99. These costs are based on their Inventory Control Lists (LL # 6 & 8).

The costs to replace the bedroom door, hinges and the bi-fold door are \$57.49 for the bedroom door; \$4.01 for the hinges and \$80.44 for the bi-fold as per the quote from Power Brothers Inc. (LL #9).

16. Landlord2 testified that the fridge and stove were dirty and there were miscellaneous items scattered throughout the unit. There is a standard charge of \$51.75 to clean the stove and \$37.50 to clean the fridge (LL #11). Urban Contracting J.J. Walsh Limited was hired to remove and dispose of these items. The company picked up all of the miscellaneous items and bagged them. They removed the washer, chair and head board and brought all of the items to the dump. They were charged \$575.00 (LL #16). Landlord1 testified that the tenant gave them permission to dispose of the items left behind (LL #15). The landlords submitted photographs of the entire unit; walls, doors, bedrooms, bathroom, laundry room, fridge, stove (LL #s 2, 4, 5, 7, 10, 12 and 18) as well as a copy of the move-in inspection report (LL #13).

Analysis

17. I have reviewed the testimony and the evidence presented of the landlords. I have determined that there is one issue that needs to be addressed; (i) are there damages to the unit. Based on the photographs presented and the move-in inspection report, I find there were some damages to the unit. I find there was graffiti on the doors and walls; the walls in the bedroom, hallway and laundry room were a different colour than a neutral colour; the towel bar, weather stripping and outlet plate were missing; the bedroom and bi-fold doors, the door knob and hinges were damaged; the fridge and stove were dirty and there were a lot of miscellaneous items and some furniture left behind.
18. Painting is a depreciable item with a life expectancy of 3 – 5 years. As the unit was painted in 2017 and the tenant vacated in January 2019, the claim for painting succeeds in the amount of \$96.72 (\$47.47 for the paint + $3\frac{1}{2}$ hours x \$32.50 = \$113.75 for labour for a total of \$161.22 ÷ 5 years = \$32.24 per year x 3 years remaining = \$96.72) for painting plus \$15.51 for the purchase of the stain block for a total of \$112.23 (\$96.72 + \$15.51 = \$112.23). With regard to the towel bar, weather stripping and outlet plate missing. As these items were missing, the cost of replacement succeeds in the amount of \$27.84 (\$15.99 + \$11.60 + .25¢ = \$27.84) for the materials and \$32.50 for labour to install these items. The \$32.50 also includes the time to repair the hole in the bathroom door.
19. With regard to the replacement of the bedroom door, the bi-fold door, the door knob and the hinges. The cost of these items are \$183.93 (\$57.49 + \$80.44 + \$41.99 + \$4.01 = \$183.93) and \$65.00 (32.50×2 hours = \$65.00) for labour for a total of \$248.93 (\$183.93 + \$65.00 = \$248.93). These items are depreciable items with a life expectancy of 20 years. As these items are more than 20 years old and the damages are the result of a willful or negligent act, I award an arbitrary amount of \$150.00 to replace these items.

20. With regard to the cleaning of the fridge and stove; the rate that they charge to clean these items is a reasonable amount; \$89.25 (\$51.75 for the stove and \$37.50 for the fridge). In regard to the claim for removing and disposing of the items left behind. Based on the photographs of the unit, the amount of \$575.00 the landlords were charged was reasonable.

Decision

21. The landlords' claim for compensation for damages succeeds as per the following:

- a) Painting\$112.23
- b) Replacement of the towel bar, weather stripping, Outlet plate and repairs to the bathroom door\$60.34
- c) Replacement of the bedroom door, bi-fold door, Door knob and hinges\$150.00
- d) Cleaning of the stove and fridge.....\$89.25
- e) Removing and disposing of items left behind\$575.00
- f) **Total owing to the Landlords\$986.82**

Issue 3: Application for Security Deposit

22. 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

23. Landlord1 testified that a \$300.00 security deposit was paid on April 25, 2017.

Analysis

24. A \$300.00 security deposit was paid in April 2017. The landlords shall retain the security deposit as they have been successful in their claim for the payment of rent and compensation for damages.

Decision

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

Issue 4: Hearing Expenses - \$47.88

26. 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

27. The landlords paid an application filing fee in the amount of \$20.00 and \$27.88 to send the application by express post. The landlords are seeking these costs.

Analysis

28. The cost the landlords incurred to make the application 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 the landlords' claim has been successful, the tenant is responsible to pay the landlords' hearing expenses in the amount of \$47.88.

Decision

29. The tenant shall pay the landlords' hearing expenses in the amount of \$47.88.

Summary of Decision

30. The landlords are entitled to the following:

- a) Payment of rent up to and including January 28, 2019 \$308.17
- b) Compensation for damages \$986.82
- c) Hearing expenses \$47.88
- d) **Less the security deposit** **(300.00)**
- e) **Total owing to the landlords** **\$1042.87**

April 6, 2020
Date


Residential Tenancies Section