

## Residential Tenancies Tribunal

Decision 19-799-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 9:10 a.m. on November 26, 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 respondents, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.

### Preliminary Matter:

4. The tenants called [REDACTED] as a witness.
5. The landlords amended the claim for damages from \$646.47 to \$615.47.

### Issues before the Tribunal

6. The landlords are seeking the following:
  - a. Payment of rent in the amount of \$37.09;
  - b. Payment of late fees in the amount of \$111.00;
  - c. Compensation for damages in the amount of \$615.47;
  - d. 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, 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 – 37.09**

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

#### Landlord Position

10. The landlords testified that the tenants moved into the unit on March 8, 2017 on a written month to month tenancy with rent set at \$1150.00 per month due on the 1<sup>st</sup> of the month. The tenants gave a termination notice that they were vacating on July 31, 2019. They never moved out of the unit until 3:30 p.m. on August 1, 2019. The new tenants were waiting to move into the unit. The landlords are seeking rent for August 1, 2019 in the amount of \$37.09. Landlord1 testified that they received rent from the new tenants for August 1, 2019.

#### Tenant Position

11. Tenant1 acknowledges that they didn't move out of the unit until August 1, 2019.

### **Analysis**

12. I have reviewed the testimony of the landlords and tenant1. I have determined there is one issue that needs to be addressed; are the tenants responsible for the payment of rent. I find that the tenants gave a termination notice that they were vacating on July 31, 2019. The landlords had new tenants move in on August 1, 2019 but the tenants did not vacate until the afternoon of August 1, 2019. I also find that the landlords received rent for August 1, 2019 from the tenants who were moving in on that date. As the landlords received rent for August 1, 2019 from the new tenants and there was no monetary loss of rent, the claim for payment of rent fails.

### **Decision**

13. The landlords' claim for payment of rent fails.

**Issue2: Late fees - \$111.00**

Landlord Position

14. Landlord1 testified that the tenants were late paying their rent 9 times during the tenancy. The following are the dates the tenants were late paying rent and the amount of the late fees:

July 3, 2019	\$7.00
May 2, 2019	\$5.00
April 3, 2019	\$7.00
January 3, 2019	\$7.00
November 2, 2018	\$5.00
September 5, 2018	\$11.00
May 2, 2018	\$5.00
January 2, 2018	\$2.00
August 29, 2017	<u>\$59.00</u>
	\$111.00

Tenant Position

15. Tenant1 testified that they never mentioned late fees. Most of the time they had their rent paid before the 1<sup>st</sup>. In August 2017 the full rent was paid before August 29, 2017.

**Analysis**

16. I have reviewed the testimony and the evidence of landlord1 and tenant1. I find that the tenants were late in August 2017 paying the rent. The landlords never mentioned late fees. Under section 15 of the Act, the landlords can charge a fee if the rent is late. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1<sup>st</sup> day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent had been in arrears for the month of August 2017 and the landlords never collected late fees at that time, the late fees have exceeded the maximum amount of \$75.00.

**Decision**

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

### **Issue 3: Compensation for damages - \$615.47**

18. The landlords testified that the cranks for four windows were broken when the tenancy ended. The cranks were broken in the kitchen, living room, 2<sup>nd</sup> bedroom and the master bathroom windows. The sprockets were stripped out. The windows are 6½ years old. The window cranks were purchased from Newfoundland Glass & Service Inc. at a cost of \$354.66 and they purchased a sealant at a cost of \$7.69. Landlord2 installed the new cranks for the windows on August 2, 2019. It took him 2 hours at a rate of \$19.40 per hour.
19. The landlords testified that the toilet paper holder in the bathroom was off the wall leaving a hole in the wall. The holder was also damaged. They had to repair the wall and they replaced the holder with a standup holder at a cost of \$32.19. Two wall patches and a compound filler were purchased to make the repair. Landlord2 spend 1 hour making the repairs. The materials were purchased at Kent at a cost of \$26.67.
20. The landlords testified that they spent 5 hours helping the tenants clean the unit before they vacated. They gave the tenants until 11:00 a.m. on August 1, 2019 to move out. When they went to the unit around 12:30 p.m. the tenants were not close to moving out. They asked if they could help. Landlord2 spent 3 hours cleaning the 3 bedrooms, hallway, the master bathroom, the stairs going to the basement and he pulled out the fridge. Landlord1 spent 2 hours helping landlord2 and she also cleaned the living room and part of the fridge. They were cleaning while the tenants were moving out.
21. The landlords testified that the tenants left large items such as a bed frame and a propane tank outside underneath the patio. They asked the downstairs tenants if they owned these items. They said they didn't. Landlord2 spent 2 hours between loading up the truck and bringing the items to the dump.
22. The landlords submitted into evidence some photographs of the unit taken in October 2016 by the previous tenant (LL #2), a receipt from Newfoundland Glass & Service Inc. (LL #3), photographs of the windows (LL #4), a receipt from Kent for the purchase of the standup toilet paper holder (LL #5), a receipt from Kent for the purchase of the materials to repair the wall (LL #6) and a photograph of the items left behind.

#### Tenant Position

23. Tenant1 testified that the window cranks were stripped out during the tenancy. They were living there about a year or more before the 1<sup>st</sup> one broke. There were 2 others broke and the 4<sup>th</sup> one was started to break just before they moved out. She didn't notify the landlords when this happened.

24. Tenant1 testified that the toilet paper holder was loose when they moved into the unit. It was hanging of the wall. The day they were moving out it fell off the wall.
25. Tenant1 testified that they didn't ask the landlords to help with the cleaning and they didn't ask them to stop cleaning. The landlords didn't said that they were going to charge them for the cleaning.
26. Tenant1 testified that the items left underneath the patio were there when they moved in. The day they moved out the landlords contacted them later that evening concerning the items underneath the patio. The next day tenant1's son when to the unit and removed what belonged to the tenants.

#### Witness Position

27. The witness testified that he helped move the tenants into the unit. When they were moving in he noticed that the toilet paper holder was coming of the wall. He acknowledges that during the tenancy tenant1 told him that some of the cranks for the windows were stripped out.

#### **Analysis**

28. I have reviewed the testimony and the evidence of the landlords, tenant1 and the witness. I have determined that there is one issue that needs to be addressed; are the tenants responsible for the damages. The burden of proof lies with the landlord to establish, that the damage exists, and that the tenant is responsible for the cost of repairs. I find that the landlords did not present any evidence to show the condition of the unit prior to the start of the tenancy. As the landlords did not show the condition of the wall in the bathroom or if there were items under the patio when the tenants moved in, the claim for these items fails. With regard to the replacement of the cranks for the windows. Tenant1 acknowledges that the cranks for the windows were stripped out during the tenancy. The landlords did not present any evidence to indicate that the cranks were stripped as the result of a willful or negligent act by the tenants. This would be considered normal wear and tear
29. With regard to the cleaning. I find that when the landlords went to the unit on August 1, 2019 while the tenants were in the process of moving out they asked if they could help with the cleaning. The tenants did not refuse their help. There was no agreement about compensation for payment of cleaning discussed or made by both parties. By the landlords offering to help, I find they acted upon good faith by helping to clean the unit so that the new tenants could move in earlier that day. Therefore, the claim for cleaning fails.

## Decision

30. The landlords' claim for damages fails.

### Issue 4: Application for Security Deposit

31. 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

31. The landlords testified that the tenants paid an \$860.00 security deposit on February 24, 2017. They returned \$438.53 to the tenants.

#### Tenant Position

32. The tenants acknowledge that they paid an \$860.00 security deposit and the landlords returned \$438.53.

## Analysis

31. A \$860.00 security deposit was paid in February 2017. The landlords returned \$438.53 to the tenants. The landlords shall retain \$95.00 from the balance of the security deposit as they have been successful in the claim for the payment of late fees. The interest rate on security deposits for the period 2017 - 2019 is 0%.

## Decision

32. The landlords shall retain \$95.00 from the balance of 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 an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

**Analysis**

35. The cost the landlords 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 landlords' claim was partially successful, the tenants are responsible to pay the landlords' hearing expenses in the amount of \$20.00.

**Decision**

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


**Summary of Decision**

37. The tenants are entitled to the following:

a) Refund of the balance of the security .....	\$421.17
a) <b>Less late fees</b> .....	<b>(75.00)</b>
b) <b>Less hearing expenses</b> .....	<b>(20.00)</b>
c) <b>Total owing to the tenants</b> .....	<b><u>\$326.17</u></b>

April 27, 2020

Date

  
Residential Tenancies Section