

Residential Tenancies Tribunal

Decision 19-0859-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 9:25 a.m. on December 4, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The originating applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The countering applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.

Preliminary Matter

4. The address of the rental unit should read [REDACTED], not [REDACTED].

Issues before the Tribunal

5. The tenant is seeking the following:
 - a. Refund of the security deposit in the amount of \$600.00.
6. The landlord is seeking the following:
 - a. Compensation for damages in the amount of \$833.34.

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 damages - \$833.34

Landlord Position

9. The landlord testified that the tenant moved into the unit on February 6, 2016 for a one year term with rent set at \$800.00 per month due on the 1st of each month. When the term ended the tenancy converted to month to month. The tenant vacated on August 1, 2019. When the tenancy ended there were some damages to the unit. The vinyl flooring going into the kitchen was curled up. Instead of replacing the flooring she put a metal strip on the flooring to keep it down. The cost of the metal strip was \$22.99.
10. The landlord testified that the walls in the 3 bedrooms needed to be painted. In one bedroom the walls were clawed up. It looked like something a cat would do. She said the tenant did not have a cat. In the second bedroom the walls were clawed up and there was mildew and mold on the walls. In the third bedroom there was mildew and mold on the walls as well as holes from the tacks for the posters and photographs that were on the walls. The unit was painted just prior to the tenant moving in. A walk through was not carried out at the start of the tenancy. She is claiming \$141.96 for the materials.
11. The landlord testified that she had to purchase a tin of spray paint to paint the light fixture, towel rack, toilet paper holder and hooks in the bathroom. These items were ruined from the moisture in the bathroom. She had to sand them down and then spray paint them. The cost of the paint was \$18.39.
12. The landlord testified that the tenant left behind a couch, microwave and stand, a bed frame, mattress and a small table. She allowed the tenant to leave the couch behind. She is claiming \$150.00 for her time, gas and use of a truck. She said she did not get permission from Residential Tenancies to dispose of these items.
13. The landlord testified that when the tenant moved out the unit needed to be cleaned. There were 5 of them cleaning the unit. It took about 25 hours to clean the unit. They had to clean the mold and mildew from the walls, baseboards, floors and windows. The fridge, stove and the bathroom also had to be cleaned.
14. After the tenant gave her testimony, the landlord testified that the tenant's sister and another person came to the unit after the tenant moved out to clean the unit.

15. The landlord submitted into evidence, a receipt from Power Brothers Inc. in the amount of \$22.99 for the purchase of the metal trim (LL #1), a receipt from The Home Depot in the amount of \$141.96 for the purchase of the paint and supplies (LL #2), a receipt from Canadian Tire in the amount of \$18.39 for the purchase of the spray paint (LL #3) and photographs of the walls, floors and windows in the bedrooms and one photograph of the bathroom (LL #4).

Tenant Position

16. The tenant testified that some of the flooring in the kitchen was rolled up when she moved out. When the landlord showed the photographs of the walls in her bedroom the tenant said that the walls were not in that condition when she moved into the unit. She doesn't know the condition of the walls of the other bedrooms at the start of the tenancy.
17. The tenant testified that she complained to the landlord that the fan in the bathroom was not working. She also testified that the landlord gave her permission to leave the couch and the bed. She left the other items behind because the landlord told her that she would get rid of them.
18. The tenant testified that she cleaned the unit before she moved out. She said that she could not get some of the marks of the walls in her room.

Analysis

19. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there are 2 issues that need to be addressed; (i) is the tenant responsible for the damages; and (ii) did the unit need to be cleaned when the tenancy ended. 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 landlord did not present any evidence to show the condition of the unit at the start of the tenancy. As the tenant acknowledges the flooring in the kitchen was rolled up when she moved out, I award the cost of the metal strip in the amount of \$22.99.
20. With regard to the purchase of the paint supplies. Based on the photographs of the tenant's bedroom, the tenant acknowledges her room was not in that condition at the start of the tenancy. The landlord did not show the condition of the other 2 bedrooms at the start of the tenancy. Paint is a depreciable item with a life expectancy of 3 – 5 years. The landlord purchased paint for 3 bedrooms. As the landlord did not show the condition of the other 2 bedrooms at the start of the tenancy and the last time the unit was painted was in February 2019, the claim for the purchase of the paint supplies succeeds in the amount

of \$14.19 ($\$141.96 \div 3 \text{ rooms} = \$47.32 \text{ per room} \div 5 \text{ years} = \$9.46 \text{ per year} \times 1.5 \text{ years remaining} = \14.19).

21. With regard to the spray paint for the items in the bathroom, the landlord did not show the condition of these items at the start or at the end of the tenancy. The claim for the cost of the spray paint fails.
22. With regard to disposal of the items left behind. Under section 32, the landlord is required to make an application to the director to seek permission to dispose of the items left behind. The landlord did not apply for permission to dispose of the items. As the landlord did not get permission to dispose of the items, the claim fails.
23. With regard to the cleaning. Based on the photographs presented, I find that the walls, windows and floors needed to be cleaned. The landlord did not present any evidence to show the cost she incurred to have these items cleaned. As the landlord did not present any evidence to show the cost of the cleaning and these items needed to be cleaned, I award an arbitrary amount of \$250.00 to clean the walls, floors and the widows.

Decision

24. The landlord's claim for compensation for damages succeeds as per the following:
 - a) Purchase of the metal strip\$22.99
 - b) Purchase of paint.....\$14.19
 - c) Cleaning.....\$250.00
 - d) Total owing to landlord.....\$287.18

Issue 2: Application for Security Deposit

25. 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

26. The tenant testified that she paid a \$600.00 security deposit. She paid \$300.00 through interac e-transfer and a few days later she paid \$300.00 cash.

Landlord Position

27. The landlord testified that the tenant paid a \$400.00 security deposit. She does not have any recollection that a \$600.00 security deposit was paid. When she rents out her units she always ask for a half month's rent for the security deposit.

Analysis

28. I have reviewed the testimony of the tenant and the landlord. I have determined that there is one issue that needs to be addressed; what was the amount of the security deposit. I find that the tenant did not present any evidence to substantiate that a \$600.00 security deposit was paid. The landlord acknowledges that a \$400.00 security deposit was paid. As the tenant did not show any evidence that she paid a \$600.00 security deposit, I find a \$400.00 security deposit was paid.
29. A \$400.00 security deposit was paid. The security deposit shall be disposed of as both parties have been partially successful in their claim. The interest rate on security deposits for the period 2016 - 2019 is 0%.

Decision

30. The security deposit in the amount of \$400.00 shall be disposed of as outlined in this decision and attached order.

Issue 3: Hearing Expenses - \$20.00

31. 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

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

Analysis

33. The cost the landlord 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 both the tenant's and

the landlord's claim have been partially successful, the landlord shall bear her own hearing expenses.

Decision


34. The landlord's claim for hearing expenses fails.

Summary of Decision

35. The tenant is entitled to the following:

- a) Refund of the security deposit.....\$400.00
- b) **Less compensation for damages****(287.18)**
- c) **Total owing to the tenant**.....**\$112.82**

May 5, 2020
Date


Residential Tenancies Section