

Residential Tenancies Tribunal

Decision 19-0943-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:10 a.m. on February 12, 2020, recalled at 9:05 a.m. on August 10, 2020 and again at 9:30 a.m. on August 19, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED] represented by [REDACTED], hereafter referred to as the landlord, attended the hearing on February 12, 2020 and participated in the hearing through a conference call on August 10, 2020 and August 19, 2020.
3. The respondents, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the three hearings through a conference call.

Preliminary Matters

4. The landlord amended the application to reflect the tenants' names as [REDACTED] and [REDACTED] not [REDACTED] and [REDACTED].
5. The landlord also amended the claim for late fee from \$31.00 to \$21.00 and the claim for damages from \$1061.77 to \$851.77.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a. Payment of late fees in the amount of \$21.00;
 - b. Compensation for damages in the amount of \$851.77;
 - c. Application of the security deposit in the amount of \$525.00;
 - 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, and 15 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Payment of late fees - \$21.00

Landlord Position

9. The landlord testified that the tenants moved into the unit on August 1, 2013 with rent set at \$700.00 per month due on the 1st of each month. During the tenancy the tenants were late paying their rent on three or four occasions. She is claiming \$21.00 for late fees.

Tenant Position

10. The tenants stated they accept responsibility for the late fees in the amount of \$21.00

Analysis

11. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the tenants accept responsibility for the late fees in the amount of \$21.00, the claim succeeds.

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12. The landlord's claim for late fees succeeds in the amount of \$21.00.

Issue 2: Compensation for damages - \$851.77

Landlord Position

13. The landlord testified that when the tenants moved out the unit needed to be cleaned and there were some damages. She hired ██████████ to do the work. ██████████ cleaned the unit during the period December 28 – 31, 2019 at a cost of \$250.00. He cleaned the stove, refrigerator, walls, ceilings, doors, doorways, mouldings, floors and lamp shades. She said that a walk through

was not carried out at the beginning of the tenancy but there was one completed before the tenants moved out.

14. The landlord testified that the blind in the master bedroom was damaged. She had to replace the blind with two smaller blinds. The blinds were purchased at Kent at a cost of \$35.67. She could not remember the age of the blinds.
15. The landlord testified that there were gouges in the ledges underneath the windows in the two bedrooms and marks on the walls in the living room and the hallway that needed to be plastered. ██████████ plastered and painted the walls but she is not claiming for the cost of the painting. ██████████ charged \$287.50 for the plastering. The plaster/drywall compound was purchased at Kent at a cost of \$28.60.
16. The landlord testified that the backyard had to be reseeded. When the tenants removed the shed they had installed there was a square with no grass. There was also another square with no grass where the tenants had a large doll house stored on the property. Another portion of the backyard was damaged as the tenants were going back and forth using a 4 x 4 bike. She purchased the grass seed at Home Hardware at a cost of \$20.11 and the topsoil was purchased from Hennessey's at a cost of \$150.00. The landlord does not have a receipt for the topsoil. The landlord said she is claiming \$80.00 for labour. This includes the time she spent spreading the topsoil and going back and forth to water the backyard.
17. The landlord submitted into evidence an invoice from ██████████ for the cleaning and the plastering and an e-mail from TD Canada Trust dated January 20, 2020 stating that the money sent to ██████████ was accepted (LL #1); a receipt from Kent dated December 5, 2019 in the amount of \$35.67 for the purchase of the blinds (LL #2); a copy of the outgoing inspection report (LL #3). The inspection report was signed by both the landlord and the tenants. The landlord also submitted photographs of the blinds, floors and door (LL #4); a receipt from Kent in the amount of \$28.60 for the purchase of the plaster/drywall compound (LL #5); a receipt from Home Hardware in the amount of \$20.11 for the purchase of the grass seed (LL #6); and photographs of the inside and outside of the unit (LL #7 & #8). The photographs show that the fridge, stove, cupboards and blinds were dirty and there were markings and pencil markings on the walls.

Tenant Position

18. Tenant1 testified that they did not sign a condition report prior to moving into the unit. There was no work done on the unit for the six years they lived in the unit. She said that you would normally clean and do touchups before you would paint.

19. Tenant2 testified that there was mould in the unit. He said the amount the landlord is claiming for cleaning is over the top. They are disputing the charges.
20. Tenant2 testified that the blind in the master bedroom was not damaged. The window is larger than the two blinds that she purchased. The blinds in the smaller bedroom were damaged when they moved into the unit.
21. Tenant2 testified that when they moved into the unit there was no grass in the backyard. There was an abundance of weeds, moss, fireweed and other vegetation. There were also trees in the backyard that shaded the area causing the soil to be wet and muddy. During the tenancy there was no lawn maintenance. He said when they moved into the unit they did not have access to the backyard. It was part of the upstairs tenant's agreement. The upstairs tenants gave them permission to use the backyard.

Analysis

22. I have reviewed the testimony and evidence of the landlord and the tenants in this matter. I have determined that there is one issue that needs to be addressed; were there damages to the unit. Based on the photographs presented I find the unit needed to be cleaned when the tenants vacated. The amount the landlord is claiming is reasonable.
23. With regard to the replacement of the blind, the plastering of the walls and the reseeding of the backyard. I find that there was a blind broken, marks on the walls and the backyard was muddy. The landlord did not present any evidence to show the condition of these items at the start of the tenancy. Nor did the landlord present any evidence to show that the backyard was a part of the tenants' agreement. Therefore, the claim for the compensation for repairs to these items fail.

Decision

24. The landlord's claim for damages succeeds as per the following:
 - a) Compensation for cleaning.....\$250.00

Issue 3: 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.

Landlord Position

26. The landlord testified a \$525.00 security deposit was paid on June 2, 2013.

Tenant Position

27 The tenants acknowledges that they paid a \$525.00 security deposit in June 2013.

Analysis

28. A security deposit was paid in June 2013. As the landlord has been partially successful in the claim for compensation for damages, the landlord shall retain a portion of the security deposit in the amount of \$291.00 as outlined in this decision and order.

Decision

29. The landlord shall retain \$291.00 from the security deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

30. 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

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

Analysis

32. 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 the landlord's claim is partially successful, the claim for hearing expenses succeeds in the amount of \$20.00.

Decision


33. The landlord’s claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

34. The tenants are entitled to the following:

- a) Refund of the security deposit.....\$525.00
- b) **Less late fees** (21.00)
- c) **Less compensation for damages**(250.00)
- d) **Less hearing expenses** (20.00)
- e) **Total owing to tenants** **\$234.00**

August 20, 2020
Date


Residential Tenancies Section