

## Residential Tenancies Tribunal

Decision 20-0018-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 1:10 p.m. on February 6, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The originating applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The countering applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing by a conference call.

### Preliminary Matter:

4. The landlord was not served with the application 10 days prior to the hearing. This Tribunal's policy concerning notice requirements 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. The landlord waived his 10 day right and I proceeded with the hearing.
5. The landlord amended the claim for compensation for damages from \$550.00 to 508.20.

### Issues before the Tribunal

6. The landlord is seeking the following:
  - a. Compensation for damages in the amount of \$508.20;
  - b. Hearing expenses.

7. The tenant is seeking the following:
  - a. Return of the balance of the security deposit in the amount of \$280.00.

### **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 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 - \$508.20**

10. The landlord testified that when he purchased the unit in November 2019 the tenant was living in the unit. The tenant vacated on December 20, 2019. When she vacated there were some repairs that needed to be carried out. His wife spent 18 hours cleaning the mold from the windows in one bedroom, the living room and the kitchen and cleaning the mold on the ceiling in bedroom #1 and the closet in bedroom #3. He is claiming \$180.00 for her time.
11. The landlord testified that there was a smell of cat urine in the storage room. He contacted a contractor to get a quote on the cost of cleaning and the procedure on how to get rid of the smell. He was told you would have to use a really strong detergent and you would have to clean it 2 or 3 times. The landlord said he spent 3 hours (@ \$19.40 per hour) cleaning the concrete floor in the storage room.
12. The landlord testified that the tenant left a mattress bag full of garbage at the curb and empty cardboard boxes and wood in the storage room. He spent 2 – 3 hours picking up the wood and the boxes in the storage room and bringing the wood, the cardboard boxes and the bag of garbage to the dump. The City's Garbage Collection employee did not take the bag of garbage. He is claiming \$90.00 for his time.
13. The landlord testified that the tenant patched a hole in the wall in one of the bedrooms. He will have to plaster and paint the wall. He is not sure when the last time the bedroom was painted. He is claiming \$50.00 for the materials and for his time to make the repair.
14. The landlord testified that there is a hole in one wall in the side entrance. It looked like the door knob when through the wall. Also there are a lot of pin holes in a wall in the hallway. It looks like they had a dart board on the wall.

He is claiming \$80.00 to repair the wall in the entrance way and \$50.00 to repair the wall in the hallway.

15. The landlord submitted into evidence photographs of the windows, ceiling and the closet (LL #1), photographs of the bag of garbage and the wood (LL #2), a photograph of the wall in the bedroom (LL #3), a photograph of the side entrance wall (LL #4) and a photograph of the wall in the hallway (LL #5).

### Tenant Position

16. The tenant said that she moved into the unit on February 1, 2018 on a month to month tenancy with rent set at \$1300.00 per month due on the 1<sup>st</sup> of each month. She testified that there was no mold in the unit at the start of the tenancy. She was living there about 4 months when she discovered the mold. The previous landlord gave her cleaning solutions to clean the mold and sometime in November 2019 the previous landlord hired a cleaning company to clean the unit. She said when the landlord saw the mold on the ceiling he told her there might be asbestos in the ceiling. She acknowledges that she did not clean the windows before she vacated.
17. The tenant testified that during the tenancy there was a strong smell of cat urine in the storage room because they had 2 cats and the litter boxes were kept in that room. Once the cats left, there wasn't a strong smell. There was a faint smell of cat urine in the storage room on December 19, 2019, the day she moved out.
18. The tenant acknowledges that she left the big bag of garbage out for garbage collection. She stated that the wood was in the unit when she moved in and she is not aware of any cardboard boxes.
19. The tenant acknowledges that she patched the wall in the bedroom. She plastered, sanded and primed the wall. She did not paint the wall as the paint that was left in the basement was dried up. She testified that the hole in the wall in the side entrance and the pin holes in the wall in the hallway were there when she moved in. There was a picture over the wall with the pinholes when she moved in. She didn't remove the picture from the wall.

### **Analysis**

20. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there is 1 issue that needs to be addressed; (i) is the tenant 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. Based on the photographs presented and the tenant's testimony, I find the tenant did not clean the windows, the ceiling or the closet

before she vacated. The amount of time the landlord is claiming to clean the windows and the ceiling is reasonable. As a result the claim for cleaning of the windows and the ceiling succeeds in the amount of \$180.00.

21. With regard to the cleaning of the storage room floor. The tenant acknowledges that the cat litter boxes were kept in that room and there was a faint smell of urine in that room when she vacated. I find the landlord had to clean the room and the amount of time he is claiming to clean is reasonable. Therefore the claim for cleaning the storage room succeeds in the amount of \$58.20 (3 hours x \$19.40 per hour = \$58.20).
22. With regard to the garbage disposal. The tenant acknowledges that she left the big bag of garbage at the curb. The landlord did not submit any evidence to show what was left in the unit at the start of the tenancy. As the tenant acknowledges she left the large bag of garbage and the City's garbage collectors did not take the bag of garbage, the landlord had to dispose of it. I award one hour (@ \$19.40 per hour) for the landlord's time to bring the bag to the dump. The claim for garbage disposal succeeds in the amount of \$19.40.
23. With regard to the plastering and painting. The tenant acknowledges that she plastered a hole in the wall in the bedroom. The landlord did present any evidence to show the condition of the walls in the hallway or the side entrance at the start of the tenancy. As the tenant acknowledges plastering one wall and the landlord failed to show the conditions of the other walls, the claim for plastering and painting succeeds for the wall in the bedroom. The amount the landlord is claiming to repair the wall is a reasonable amount. Therefore, the claim for plastering and painting succeeds in the amount of \$50.00.

### Decision

24. The landlord's claim for compensation for damages succeeds as per the following:
  - a. Cleaning of the windows, ceiling and closet .....\$180.00
  - b. Cleaning of the storage room floor.....\$58.20
  - c. Garbage disposal.....\$19.40
  - d. Plastering and painting of the second bedroom.....\$50.00
  - e. **Total owing to the Landlord.....\$307.60**

### 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 on January 3, 2018. The landlord returned \$320.00 of the security deposit.

### Landlord Position

27. The landlord acknowledges that a \$600.00 security deposit was paid and he returned \$320.00 of the security deposit to the tenant.

### **Analysis**

28. A \$600.00 security deposit was paid. The landlord returned \$320.00 of the security deposit to the tenant. The landlord shall retain the balance of the security deposit as the landlord has been partially successful in his claim for damages. The interest rate on security deposits for the period 2018 – 2019 is 0%.

### **Decision**

29. The security deposit shall be disposed of as outlined in this decision and attached order.

### **Issue 3: Hearing Expenses**

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.

### Tenant Position

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

**Analysis**

33. The cost the landlord and the tenant incurred to make the applications are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. The tenant's claim has been unsuccessful. As the tenant's claim has been unsuccessful, the claim for hearing expenses fails. As the landlord's claim for damages has been partially successful, the tenant shall pay the landlord's hearing expenses in the amount of \$20.00.

**Decision**


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

**Summary of Decision**

35. The landlord is entitled to the following:

a. Compensation for damages .....	\$307.60
b. Hearing expenses .....	<u>\$20.00</u>
c. <b>Less the balance of the security deposit.....</b>	<b><u>(280.00)</u></b>
d. <b>Total owing to the landlord .....</b>	<b><u>\$47.60</u></b>

May 26, 2020  
Date

  
Residential Tenancies Section