

Residential Tenancies Tribunal

Decision 20-069-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:05 a.m. on March 9, 2020 and reconvened on March 11, 2020 at 11:30 a.m. at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing. The landlord was represented by his legal counsel, [REDACTED].

Preliminary Matter:

4. The application was amended to reflect the tenant's name as [REDACTED] not [REDACTED]. The claim was amended to seek rebate of rent in the amount of \$7100.00 and compensation for inconvenience in the amount of \$4850.00

Issues before the Tribunal

5. The tenant is seeking the following:
 - a. Rebate of rent in the amount of \$7100.00;
 - b. Compensation for inconvenience in the amount of \$4850.00;
 - c. Validity of the termination notice;
 - d. Hearing expenses.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
7. Also relevant and considered in this case are Sections 10, 29 and 42 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rebate of rent - \$7100.00

8. The tenant testified that she moved into the unit the last week of November 2018 for a one year term to begin on December 1, 2018 with rent set at \$950.00 per month due on the 1st of each month. The rent would be reduced by \$75.00 for the months of June – September. She is seeking the rebate of rent because the landlord did not carry out repairs that were required. When she viewed the unit there was evidence of mould in the unit and the landlord agreed to make the repairs. There was mould around the exterior basement door and the door was taped up. Her friend [REDACTED] viewed the unit with her and she observed the mould. Then on December 5, 2018 the tenant sent a letter to the landlord requesting the following repairs:

Remove mold & water leaks:

- A. Basement door mold & area leaks
- B. Dryer leaking water/not drying (vent)
- C. Front door/porch seal & tile gaps
- D. Big window in living room (& wall)
- E. Ceiling in kitchen peeling (roof leak)
- F. Dining rm (wall paint peeling)
- G. Bathroom (paint peeling)

Seal/caulk cutouts in floors:

- A. Basement doors (2 seal properly)
- B. Front porch (stone tile)
- C. Kitchen (stone tile)
- D. Master Bdrm – squares (hardwood)
- E. Bathroom (vinyl – easier to replace?)
- F. Bathroom caulk around tub
- G. Third Bdrm closet exposed insulation

Misc

- A. Repair Fence Gaps (back corner)
- B. Remove fridge, etc in basement
- C. Reposition door on kitchen fridge
- D. Closet door in 3rd bdrm stuck
- E. Lights above basement exterior door
- F. Debris in oven?
- G. Smoke detectors working?
- H. Tools for landscaping (snow shovel, rake, branch clippers, bio waste bags)

Keys

- A. Mailbox (what box #?)
- B. Patio door
- C. Back door

9. The tenant testified that none of the repairs were carried out in December 2018. Belfor a restoration company started the work the end of January 2019 and they finished around the end of February 2019 but they did not carry out all of the work she requested. They replaced the door in the basement and they scoped out the work in the kitchen and living room. The landlord's handyman, [REDACTED], installed a temporary fence outside. No other work was completed until sometime in July, when the fence was replaced. She said that during the tenancy she sent numerous e-mails and text messages to the landlord requesting repairs.
10. The tenant testified that in early September 2019 she notified the landlord by e-mail that the dishwasher was not working. At the start of the tenancy she tried using the dishwasher but it did not work properly. The dishwasher was not replaced until the end of October 2019. In November 2019 the mould in the kitchen ceiling was getting worse. She contacted the landlord. The landlord's handyman, came to the unit to inspect. The handyman said he is not qualified to do the work. The landlord did not send someone else to repair the ceiling so she contacted the [REDACTED]. An employee of the [REDACTED] carried out an inspection on the unit on December 13, 2019. The repairs to the ceiling have not been completed as of the day of the hearing. Later in the hearing the tenant acknowledges that since the end of January 2020 the landlord has requested that she let his handyman in to do the work but she has refused.
11. The tenant testified that she is seeking a rebate of rent in the amount of \$450.00 ($\$450.00 \times 2 \text{ months} = \900.00) for each month for the months of December 2018 and January 2019 because none of the repairs were carried out. \$350.00 for each month for the months of March 2019 – January 2020 ($\$350.00 \times 11 \text{ months} = \3850.00) because the remainder of the repairs have

not been completed. She is seeking a rebate of \$100.00 (\$100.00 x 2 months = \$200.00) for each month for the months of September and October 2019 because the dishwasher was not working and \$600.00 (3 months x \$600.00 = \$1800.00) for each month for the months of November 2019 – January 2020 because the ceiling in the kitchen has not been repaired. She cannot use about a 1/3 of the kitchen because of the drippings from the ceiling.

12. The tenant submitted into evidence a list of repairs that were requested in December 2018 (T #2), photographs taken in December 2018 of the exterior door downstairs and the area around the door (T #3), photographs of the kitchen ceiling taken in November 2019 (T #4), a photograph of the new door (T #6), copies of e-mails and text messages between the tenant and the landlord. Most of the e-mails and text messages were written between November 2018 and January 2019 re: moving in and repairs to be carried; and between September – December 2019 re: repairs to the dishwasher and the issue with the kitchen ceiling (T #7). Also presented was a sworn statement from her friend [REDACTED] (T #5). In the witness's statement it states that there was mould in the unit on November 27, 2018. As the statement doesn't specify the area of the mould this will bear no weight to the outcome of the hearing.

Landlord Position

13. The landlord testified that the tenant had access to the unit prior to signing the lease agreement. The only thing they discussed prior to the tenant moving in was the issue of the door in the basement. He said there was no discussion on the mould in the ceiling and carpets, broken window and holes in the floors. On December 5, 2018 he received a message from the tenant requesting repairs. To the best of his knowledge most of the repairs the tenant requested were completed by his handyman, [REDACTED] and his worker, [REDACTED]. The handyman installed a temporary fence and a new fence was installed in the spring. The remainder of the work was carried out by Belfor Property Restoration. The work was completed by the end of February 2019. He paid Belfor Property Restoration \$4830.00 for the repairs and he paid his handyman between \$2000.00 and \$3000.00 for their work. He doesn't have the invoices from his handyman. He said he spent between \$7000.00 and \$8000.00 to keep the tenant happy.
14. The landlord testified that in September 2019 he received a message from the tenant that the dishwasher was not working. He said that she never used the dishwasher. The landlord hired a repairman to look at the dishwasher. On the advice of the repairman, the dishwasher was replaced. He purchased a new dishwasher at Costco at a cost of \$399.99 + tax. The landlord and his stepson dropped off the dishwasher on October 20, 2019. Ace Appliance

Repair and Installation Limited installed the dishwasher on October 28, 2019 at a cost of \$138.00.

15. The landlord testified that on November 5, 2019 he received a message from the tenant stating that there was mould on the kitchen ceiling. A few days after receiving the message his handyman went to check on the issue. The tenant refused his handyman to repair the ceiling because she convinced herself that his handyman was not qualified to do the work. The landlord said when he was at the unit on October 20, 2019 the tenant did not mention anything about mould.
16. The landlord testified that on December 17, 2019 he received a letter from the [REDACTED] concerning issues with his unit. On January 29, 2020 he was in touch with an employee at the [REDACTED] concerning the inspection of the unit. The employee was in agreement with him on how to address the mould issue. On January 29, 2020 he sent a letter to the tenant requesting a time for his handyman to view the unit. The tenant replied on February 3, 2020 stating that his handyman is not qualified to do the work. She set up a time for February 5, 2020 but she had to cancel. On February 5, 2020 another letter was sent to the tenant requesting a time that his handyman can attend the unit but the tenant had not provided any dates or times. A third letter was sent on February 14, 2020 requesting times and dates that his handyman can attend to these matters. As of the date of the hearing the tenant has not allowed his handyman into the unit.
17. The landlord submitted into evidence a copy of the letter sent to the [REDACTED] dated January 29, 2020 (LL #2); a copy of the letter from the [REDACTED] dated December 13, 2019 re: inspection (LL #3); a copy of the letter sent to the tenant dated January 29, 2020 (LL #4); copies of the letters sent to the [REDACTED] and the tenant dated February 5, 2020 (LL #5); a copy of the letter sent to the tenant dated February 14, 2020 (LL #6); and copies of e-mail between the [REDACTED] and the landlord's legal counsel dated February 26, 2020 re: update on work (LL #15). Also presented into evidence was a copy of an invoice from Belfor Property Restoration dated March 27, 2019, a receipt from ACE Appliance Repair and Installations Ltd dated October 28, 2019, and a note dated December 18, 2018 stating \$250.00 was paid to Appliance Guy for repairs to the dryer and fridge (LL #10) and copies of e-mails between the tenant and the landlord concerning the replacement of the dishwasher and a photograph showing the price tag of a dishwasher in the amount of \$399.99 (LL #13).

Analysis

18. I have reviewed the testimony and the evidence presented of the tenant and the landlord. I have determined that there is one issue that needs to be

addressed; is the tenant entitled to a rebate of rent. I find that the tenant and the landlord had an agreement before the start of the tenancy that there was an issue with the exterior basement door. The landlord agreed to repair the door. The door was replaced the end of January 2019. As there was a problem with the exterior door and the door was not fixed until the end of January 2019, I award a rebate of rent in the amount of \$50.00 per month for the months of December 2018 and January 2019. With regard to the list of repairs, the tenant did not present any photographs to show the condition of these items at the start of the tenancy or during the tenancy. Therefore for the claim for rebate of rent for each month for repairs not carried out fails.

19. With respect to the dishwasher not working. I find that the tenant sent an e-mail to the landlord on September 4, 2019 regarding the dishwasher not working. The landlord had the Appliance Guy look at the washer. It was recommended to replace the dishwasher. The dishwasher was replaced on October 28, 2019. As the tenant was without the use of the dishwasher for the months of September and October 2019, I award a rebate of rent in the amount of \$50.00 for each month for a total of \$100.00.

20. With respect to the issue of mould on the kitchen ceiling. I find that there was some mould on the kitchen ceiling in November 2019 as the tenant presented photographs of the kitchen ceiling taken in November 2019. The tenant contacted the landlord and the landlord sent his handyman to check out the issue. The tenant refused his handyman to do the work because she said that the handyman said he was not qualified to do the work. The tenant did not present any evidence to substantiate that the handyman was not qualified to do the work. The tenant contacted the [REDACTED]. An inspector carried out an inspection and ordered that the repair be carried out. The landlord contacted the tenant again in late January 2020 on making arrangements to have the problem rectified but the tenant has refused. As the landlord tried to correct the problem by having his handyman make the repair and the tenant refuses, the claim for a rebate of rent due to mould in the kitchen fails.

Decision

21. The tenant's claim for a rebate of rent succeeds as per the following:
 - a) Rebate of rent for December 2018.....\$50.00
 - b) Rebate of rent for January 2019.....\$50.00
 - c) Rebate of rent for September 2019.....\$50.00
 - d) Rebate of rent for October 2019.....\$50.00
 - e) **Total owing to the tenant.....\$200.00**

Issue 2: Compensation for inconvenience - \$4850.00

22. The tenant testified that she had to spend time each month for the months of December 2018 – February 2019 sourcing people to do the work. She spent an average of 4 hours a week for 3 weeks for the month of December 2018 and 4 weeks for the months of January and February 2019 for a total of \$950.00 (\$250.00 for December 2018 + \$350.00 for January + \$350.00 for February 2019 = \$950.00). She is seeking \$200.00 for the months of December 2018 – February 2019 for time spend waiting for the contractors to arrive and then meeting with them about the work to be carried out. She is also seeking \$100.00 for each month for the months of December 2018 and January 2019 because of the visible black mold with a foul odour throughout the property; and \$100.00 for the work she completed in February 2019. She said she had to caulk and seal gaps throughout the house that the repairmen didn't finish. She is seeking \$50.00 for the construction debris left by the workers.
23. The tenant testified that she is seeking \$50.00 per month for the months of December 2018 – July 2019 for the garbage and debris left by the previous tenant; a non-working barbecue, bags of garbage and a couple of large items. She removed the barbecue in August 2019. She is also seeking \$25.00 per month for the months of August 2019 – January 2020 for the garbage left by previous tenants. Further, she is looking for \$50.00 per month for the months of December 2018 – February 2019 because the landlord did not provide a key to the side and back doors. \$25.00 per month for the months of March 2019 – January 2020 for not providing a key to the back door. She testified that she is seeking \$15.00 per months for the months of December 2018 – July 2018 for not providing rent receipts; and \$25.00 per month for the months of August 2019 – January 2020 for not providing rent receipts.
24. The tenant testified that she is seeking \$550.00 for the month of May because of the living room window. \$250.00 for failure to complete known repairs to the window. She said she nearly lost her left thumb trying to catch the window from falling. \$300.00 for her time to contact and project manage multiple repairmen to fix the window. She contacted the landlord about the problem but the landlord did not respond. She then had to call [REDACTED] from Belfor Property Restoration.
25. The tenant is seeking \$50.00 for each month for the months of June – August 2019 for the failure to remove construction debris left by workers; \$50.00 for removing the barbecue in July 2019; and \$75.00 to complete unfinished work by the repairmen. In August 2019 she had to seal the living room window shut.
26. The tenant testified that in September 2019 she had to remove large construction debris, 8 – 10 rotting fence planks 4'-5' long. She is seeking \$50.00 for this work and \$25.00 for failure to remove construction debris left by

workers. For October 2019 she is seeking \$100.00 because the new dishwasher was left in the middle of the floor for 7 weeks and \$100.00 for failure to remove the old dishwasher from the property. She is also seeking \$100.00 for November 2019 because the dishwasher was not removed and \$200.00 for her time to contact and meet with several repairmen about the mould issue.

27. For December 2019 the tenant is seeking compensation in the amount of \$200.00 to contact and meet with several repairman about the mould issue. \$100.00 for failure to remove the old dishwasher and \$25.00 as the termination notice was duct taped to the front door. Also \$25.00 for January 2020 for the termination notice taped to the door.
28. The tenant submitted into evidence a copy of the text messages between herself and [REDACTED], with Belfor Property Restoration (T #7), photographs of the dishwasher in the box, a sheet of paper taped to the door and photographs of garbage outside (T #10). The photographs of the garbage show a couple of bags of garbage and a couple of small items. Also presented into evidence were photographs of the living room window and a detailed usage for mobile phone (T #14). Highlighted is a call to the number [REDACTED] on May 25, 2019 at 12:49.

Landlord Position

29. The landlord testified that he had all of the items that were on her list repaired by February. The tenant did not source the workers for the repairs. Everyone that was at the unit, he hired those people. With the tenant's permission he would give her telephone number to the workers to arrange a time to do the work. With regard to the window; he had the window repaired. The only time he heard from the tenant after the window was repaired was in April 2019. She was looking for tabs to keep the screens in place.
30. The landlord said he contacted the previous tenants about the barbecue that was left behind. They advised him the barbecue was working. It only needed a tank. He told that to the tenant and she was fine with it.
31. The landlord said that the tenant did not need receipts as the rent was paid electronically. She only requested copies of receipts when the termination notice was served. He presented copies of rent receipts for December 2018, January, February and March 2019. He thought he had sent receipts for July and November 2019 but it was his mistake. He just replied to the interac e-transfer e-mail.
32. The landlord testified that he provided the key to the front door. He did not have a key for the patio door or the basement door. When the new door was installed the keys were given to the tenant. He said that when the dishwasher

was installed, he thought that the repair person removed the dishwasher from the property.

Analysis

33. I have reviewed the testimony and the evidence of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; is the tenant entitled to compensation for inconvenience. I find that the tenant requested repairs and the landlord had the repairs carried out. The landlord made the contact with the workers and gave the workers the tenant's telephone number so that it would be easier to arrange a time to carry out the work. The tenant was unable to provide the times, dates and the amount of time she spent resourcing workers. The only time the tenant made contact with a worker for repairs was in May 2019 when she had a problem with the window. She was unable to reach the landlord.
34. I also find that the tenant failed to demonstrate how a few items left outside, some rent receipts and a key to the patio door were not provided, and tape on a door window interfered with her peaceful enjoyment. Further, with regard to the smell of foul odour in the property during the month of December 2018 and January 2019, the tenant did not present any photographs to show the condition of the ceiling at that time. Also she did not show what work she carried out on the property or that the landlord agreed to pay her for the work. Therefore, the claim for compensation for inconveniences fails.

Decision

35. The tenant's claim for compensation for inconveniences fails.

Issue 3: Validity of the termination notice – Was the application filed in time.

Tenant Position

36. The tenant testified that she was served with a termination notice on December 18, 2019 under section 18 of the Act. She believes she was served with the notice as the result of her contacting the [REDACTED] and the [REDACTED] issuing a citation on December 13, 2019 citing the Residential Property Standards and By-Laws. On January 17, 2020, the day of the storm she sent an application seeking validity of the notice by e-mail to our office. She did not send her money because the office was closed. In her e-mail she said she could not see where to pay this fee, can someone contact her right away. She received a call from an employee from Residential Tenancies Office the same day she paid her fee as the employee gave her the address to pay on-line. The employee informed her that the office was closed between January 17 and January 26, 2020. The tenant said that she did not try to contact the office prior

to receiving a call from the employee concerning the payment fee. Her experience with calling the office is that they are weeks before they reply.

Landlord Position

37. The landlord testified that the date the application was filed was on February 10, 2020. He received an e-mail from a Residential Tenancies Officer, stating that the application was processed on February 10, 2020 but was received on January 17, 2020 without the payment. The landlord then stated that the tenant could have paid on-line.
38. The landlord testified that he did not give the tenant a termination notice in retribution. He was at the end of his limit with the tenant. The first time he wanted to end the tenancy was on December 5, 2018 but he was into a term agreement for one year. He said that every time a worker would go to the unit the worker would complain that the tenant would not keep the dog away from them. The tenant is calling and telling us what to do or complaining about the way the work is being carried out.
39. The landlord testified that the relationship between himself and the tenant is not good. He has spent a lot of money trying to make this a good relationship.

Analysis

40. The tenant was served with a termination notice on December 18, 2019. She believes the termination notice was served in retaliation. Under section 29(2) if a tenant believes that the termination notice was issued because the landlord contravened section 29(1), the tenant not later than one month after receiving the notice apply to the director under section 42 for an order declaring that the rental agreement is not terminated. Under Section 42(2) an application under subsection (1) shall be submitted to the director in the form and with the fee set by the minister. I find that when the tenant filed her application on January 17, 2020 she was aware that there was a fee but she could not find the site to pay her fee. The tenant was also aware that the office was closed as the result of a snow storm and the following week there was a State of Emergency. Regardless of the St. John's Office being closed the phone numbers for Residential Tenancies allows a person to contact other offices that were opened to answer such questions. The tenant did not try to contact the office when the office reopened. She waited to hear from an employee from the office. As the tenant failed to try and make contact with a Residential Tenancies Office to pay her fee, the tenant is outside the one month to file an application for the purpose of retaliation. The tenant's claim for validity of the termination notice fails.

Decision

41. The tenant’s claim for validity of the termination notice fails.

Issue: Hearing Expenses - \$40.55

42. 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.*

Tenant Position

43. The tenant paid an application filing fee in the amount of \$20.00 and \$20.55 for photocopying. The tenant is seeking these costs.

Analysis

44. The cost the tenant 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 tenant’s claim has been partially successful, the landlord is responsible to pay the tenant’s hearing expenses in the amount of \$40.55.

Decision


45. The landlord shall pay the tenant’s hearing expenses in the amount of \$40.55.

Summary of Decision

46. The tenant is entitled to the following:

a) Rebate of rent	\$200.00
b) Hearing expenses	<u>\$40.55</u>
c) Total owing to the tenant	<u>\$240.55</u>

April 16, 2020
Date


Residential Tenancies Section