

Residential Tenancies Tribunal

Decision 20-0093-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:15 p.m. on March 4, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing.

Preliminary Matter:

4. The landlord was ordered to return the \$400.00 security deposit to the tenant in order [REDACTED].
5. The claim for damages should read \$3788.99 not \$5194.82.

Issues before the Tribunal

6. The landlord is seeking the following:
 - a. Compensation for damages in the amount of \$3788.99;
 - b. Compensation for replacement of blinds in the amount of \$150.00;
 - c. Payment of utilities in the amount of \$289.98;
 - 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 and 19, 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 - \$3788.99

Landlord Position

9. The landlord testified that he rented the unit in September 2019 to a male tenant. In October 2019 he allowed the tenant to sublet. The male tenant sublet the unit to a female tenant. The female tenant's rent was going to be paid by Advanced Education Skills and Labour (AESL). When she went to AESL they would not pay the rent to the male tenant because he was not the owner. The rent had to be paid to the owner. In early November 2019 the owner had to send a letter to AESL stating that he was renting to the female tenant. The first time the landlord met the tenant was on November 28, 2019 as she was already living in the unit. He received rent directly from AESL on behalf of the female tenant.
10. The landlord testified that on [REDACTED] @ 11:45 a.m. he received a call from the upstairs tenant informing him that an incident took place in the basement unit. The landlord is a contractor and he was working in [REDACTED] at the time. He left [REDACTED] along with his employee to go to the unit. When he arrived at the unit, there were 2 windows in the unit and 1 window in the garage broken. They had to go and buy plywood and install the plywood to secure the property.
11. The landlord is claiming for his and his employee's time and the cost of the gas. \$120.00 (4 hours x \$30.00) for his employee and \$80.00 (4 hours x \$20.00) for his time and \$50.00 for gas. He is also seeking \$50.00 for the plywood and the screws and \$60.00 for his time that he spent meeting with the police concerning the incident that took place. The landlord said the hourly wage for his employee is \$30.00 per hour. The landlord did not present any documents showing the hourly wage of his employee or a receipt for the gas.
12. The landlord testified that the three windows that were broken on [REDACTED] [REDACTED] have to be replaced. There was a window broken in the garage door and two windows broken in the unit. The entrance door was also damaged in December. The door has to be replaced because the door box is damaged. He received a quote from Hickey's in the amount of \$149.44 to replace the window in the garbage door, \$580.41 to replace the two windows in the unit and \$816.26 to replace the entrance door. He estimates that it will take 4 hours to replace each window and 8 hours to replace the door for a total of \$600.00 (4 hours x 3 windows = 12 hours to replace the windows + 8 hours to replace

the door for a total of 20 hours x \$30.00 = \$600.00). The window in the garage is 2 years old and the windows and the door in the unit are 4 years old.

13. The landlord testified that a kitchen cabinet door and a drawer needs to be replaced due to the damage. There is a hole in the door and the face on the drawer is damaged. The cabinets are 4 years old. He received a quote from Stellar Woodworks Inc. in the amount of \$62.89 for the materials and he estimates that it will take 3 hours @ \$30.00 per hour to install.
14. The landlord testified that there is a hole in the wall in the living room and the hand rail going down to the apartment is off the wall. He said to repair the holes in the walls, it will take 2 coats of plaster and paint and it will take 1 person 2 days to do the work. He is claiming \$480.00 to have the repair carried out. The unit was painted in October 2019.
15. The landlord testified that 2 posts for the fence were cracked off. The fence has to be replaced. It will take a day to dig the holes and set the posts and another day to build the fence. He is claiming \$480.00 (16 hours @ \$30.00 per hour) for labour to replace the fence. The fence is about 14 years old.
16. The landlord testified that the hand rail and the closet door were taken down and the track for the closet door was damaged. The light shades and the smoke detector were removed. These items will have to be re-installed. The landlord said it will take 6 hours (\$30.00 per hour) between picking up the brackets for the hand rail and the track for the closet door and installing these items as well as putting up the light shades and reattaching the smoke detector.
17. The landlord testified that when he was at the unit due to the flood on/or about November 28, 2019 there were no damages to the unit. The landlord submitted into evidence photographs of the windows (LL #1), the door (LL #2), and the cupboards (LL #4), a quote from Stellar Woodworks Inc. for the cabinet door and drawer (LL #5), a quote from Hickey's for the purchase of two windows and the door (LL #6), a quote from Hickey's for the purchase of the glass for the patio door (LL #7), photographs of the walls (LL #8), a photograph of the fence (LL #9) and photographs of the closet door (LL #10).

Tenant Position

18. The tenant acknowledges that when she went to rent the unit she was going to sub-let from the previous tenant at a rate of \$800.00 per month but AESL would not pay him the rent. The rent had to be paid to the owner. She then rented from the landlord. She also acknowledges that there was an incident took place at the unit on [REDACTED] which resulted in two windows being broken; one in the unit and the other in the garage. She testified that there was no plywood put up to the windows. She put cardboard up to one window. After

the incident happened the police arrived. She was taken from the unit by the police for a different reason. When she left the unit the door was working. The next day when she went back to pick up a few things the door was working but the door box was damaged. A few days later when she went to the unit, there was plywood over the door. She never went back to the unit since that day.

19. The tenant testified that her brother removed the hand rail so that he could bring her furniture into the unit and he never re-installed the hand rail. She said the closet door fell on her when she went to open it and she never replaced a light bulb.
20. The tenant testified that the fence could have blown down or it could have been damaged by the upstairs tenants.

Analysis

21. I have reviewed the testimony and the evidence presented of the landlord and the tenant. I have determined that there is one issue that needs to be addressed; (i) are there damages to the unit and 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. I find that there was an incident took place at the unit on [REDACTED]. Based on the photographs presented there were 3 windows broken. The landlord's testimony is more credible in that he and his employee had to go to the unit on [REDACTED] to put plywood over the windows to secure the property. The landlord did not present any evidence to show the employee's wage or the cost of the plywood and the screws. The cost of the gas would be a cost associated with the carrying out of the business. As the landlord did not present any evidence to show his employee's wage or a receipt for the plywood and the screws, I award \$116.40 for labour (3 hours for 2 people at the rate of \$19.40 per hour) + \$50.00 for the sheet of plywood and the screws for a total of \$166.40 ($\$116.40 + \$50.00 = \166.40). \$19.40 is the hourly rate set by Residential Tenancies Section that a landlord can charge for his own labour. The claim succeeds in the amount of \$166.40.
22. With regard to the claim for the landlord's time spent speaking with the police concerning the incident. As the landlord chose to speak to the police concerning the incident, this matter would fall outside the jurisdiction of the Residential Tenancies Act. As a result the claim for speaking with the police fails.
23. With regard to the replacement of the windows and the door. As outlined in No. 21 above there were 3 windows broken during the incident. The tenant acknowledges the door box was damaged during the tenancy. As the door box was damaged, the door would have to be replaced. The amount of time the

landlord is claiming to have the windows and door replaced is reasonable. Windows and doors are depreciable items. The life expectancy of a window is 20 – 50 years and the life expectancy of a door is 15 years. The average life expectancy of the windows would be 35 years. As the windows are 4 years old, the claim for replacement succeeds in the amount of \$852.50 (\$729.85 for the windows + \$232.80 {12 hours x \$19.40 per hour = \$232.80} for labour = \$962.65 ÷ 35 years = \$27.50 per year x 31 years remaining = \$852.50). As the door is 4 years old, the claim for replacement of the door succeeds in the amount of \$712.36 (\$816.26 for the door + \$155.20 {8 hours x \$19.40 per hour = \$155.20} for labour for a total of \$971.46 ÷ 15 years = \$64.76 per year x 11 years remaining = \$712.36). The claim succeeds in the amount of \$852.50 for the windows and \$712.36 for the door for a total of \$1564.86.

24. With regard to the replacement of the kitchen cabinet door and the drawer. Based on the photographs presented, the cabinet door has a hole in it and the drawer is damaged. I find that the landlord's testimony is sincere in that when he visited the unit at the end of November 2019 there were no damages to the unit. Kitchen cabinets are a depreciable item with a life expectancy of 20 years. As the cabinets are 4 years old, the claim for replacement of the cabinet door and the drawer succeeds in the amount of \$98.40 (\$62.89 for the material + \$58.20 {3 hours x \$19.40 = \$58.20} for labour for a total of \$121.09 ÷ 20 years = \$6.05 per year x 16 years remaining = \$98.40).
25. With regard to the plastering and painting. The tenant acknowledges that her brother removed the hand rail. After reviewing the photographs I find that there is some minor damage to the wall after the hand rail was removed and there is a mark on the wall in the living. The unit was just painted in October 2019. The amount the landlord is claiming to repair the walls is excessive. I conclude that \$100.00 would be a reasonable amount to repair the walls. The claim for plastering and painting succeeds in the amount of \$100.00.
26. With respect to replacement of the fence. The landlord has not supported the claim with corroborating evidence that the damage to the fence was caused by the tenant or someone the tenant let on the property. Further, a fence is a depreciable item with a life expectancy of 8 – 10 years. As the fence is approximately 14 years old, it has outlived its life expectancy. The claim for replacement of the fence fails.
27. With respect for the labour to install the hand rail, closet door, light shades and the smoke detector. The tenant acknowledges that her brother removed the hand rail. As the hand rail was removed during the tenancy, I award one hour's labour at \$19.40 per hour to install the hand rail. I find that the landlord did not show that the track for the closet door was damaged and that the light shades and the smoke detector were removed. As the landlord failed to establish that

the track for the closet door was damaged and the light shades and the smoke detector were removed, the claim for labour fails.

Decision

28. The landlord's claim for compensation for damages succeeds as per the following:

a. Labour & material to secure property.....	\$166.40
b. Replacement of the windows	\$852.50
c. Replacement of the door	\$712.36
d. Replacement of the cabinet door & drawer	\$98.40
e. Plastering and painting	\$100.00
f. Labour to install the hand rail	<u>\$19.40</u>
g. Total owing to the landlord	\$1949.06

Issue 2: Replacement of blinds - \$150.00

Landlord Position

29. The landlord testified that the blinds in the hallway, the bathroom, and the back room were destroyed. He purchased the 3 blinds in October 2019. He does not have the receipt for the blinds but he estimates \$150.00 would cover the cost of the blinds and the installation.

30 The landlord submitted photographs of 2 blinds (LL #1).

Tenant Position

31. The tenant is accepting responsibility for the replacement of 2 blinds.

Analysis

32. 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; is the tenant responsible for the replacement of the blinds. I find that the tenant is accepting responsibility for the replacement of 2 blinds. The landlord did not submit any evidence to show the condition of the third blind and the cost of replacement. As the tenant is accepting responsibility for replacement of 2 blinds and the landlord did not submit a receipt or an estimate on the cost of replacement, I award an arbitrary amount of \$80.00 for the replacement and installation of the blinds. The claim for replacement of the blinds succeeds in the amount of \$80.00.

Decision

33. The landlord’s claim for replacement of the blinds succeeds as per the following:

a. Replacement of the blinds\$80.00

Issue 3: Payment of utilities - \$288.33

Landlord Position

34. The landlord testified that the tenant agreed to have the power in her name. The power was never converted to her name. The cost of the power for the period November 18, 2019 – January 22, 2020 is \$288.33. The breakdown for the power bill is \$11.53 for November 18 – 22, 2019; \$149.14 for November 22 – December 20, 2019; and \$124.25 for December 20, 2019 – January 22, 2020. The landlord submitted into evidence the 3 Newfoundland Power bills (LL #3).

Tenant Position

35. The tenant testified that she never had a discussion with the landlord on the payment of the power bill. When she agreed to move in she thought that the power was included in the rent but she agrees to pay for the power bill for the period she lived there. She testified that she left the unit on [REDACTED]. She went back to the unit on [REDACTED] to pick up a couple of items and a few days later when she went to the unit, there was plywood over the door.

Analysis

36. 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; is the tenant responsible for the payment of utilities. I find that the landlord failed to establish that there was an agreement in place that the tenant would be responsible for the power bill. However, the tenant agrees to pay for the power bill for the period she lived in the unit. When the tenant went back to the unit on/or about December 20, 2019 there was plywood to the door. As there was plywood to the door on/or about December 20, 2019, the claim for the payment of the power bills succeeds for the period November 22 – December 20, 2019 in the amount of \$160.81 (\$11.68 for November 18 – 22, 2019 + \$149.13 for the period November 22 – December 20, 2019 for a total of \$160.81).

Decision

37. The landlord’s claim for payment of the power bill succeeds as per the following:

- a. November 18 – 22, 2019.....\$11.68
- b. November 22 – December 20, 2019\$149.13
- c. Total owing to the landlord\$160.81

Issue 4: Hearing Expenses - \$20.00

38. 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

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

Analysis

40. 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 has been partially successful, the tenant shall pay the landlord’s hearing expenses in the amount of \$20.00.

Decision

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

Summary of Decision

42. The landlord is entitled to the following:

- a. Compensation for damages\$1949.06
- b. Replacement of blinds\$80.00
- c. Payment of utilities\$160.81
- d. Hearing expenses.....\$20.00
- e. **Total owing to the landlord.....\$2209.87**

June 2, 2020
Date

Residential Tenancies Section