

Residential Tenancies Tribunal

Decision 20-0106-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 11:20 a.m. on August 12, 2020 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL via Bell Teleconferencing System
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing through a conference call.
3. The respondent, [REDACTED], hereafter referred to as the landlord, was not represented at the hearing.

Preliminary Matters

4. The tenant amended the claim for miscellaneous items from \$316.76 to \$280.00.
5. The tenant stated the entire rental unit is 1006 sq. ft. The balcony is 48 sq. ft. The living room is 272 sq. ft. and the bedroom is 110 sq. ft. She is claiming \$0.06¢ per sq. ft.
6. The landlord was not present or represented at the hearing. I called the number on file for the landlord but I was unable to reach a representative. This Tribunal's policy concerning notice requirements and hearing attendance 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, and where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he/she has been properly served.

7. The notice of the rescheduled hearing was sent by e-mail on July 10, 2020 from Residential Tenancies Section. The landlord has had 32 days to provide a response. As the landlord was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

8. The tenant is seeking the following:
 - a. Refund of rent in the amount of \$1488.61;
 - b. Compensation for inconveniences in the amount of \$853.60;
 - c. Compensation for miscellaneous items in the amount of \$280.00;
 - d. Hearing expenses.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
10. Also relevant and considered in this case is Section 16, of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF.*

Issue 1: Refund of rent - \$1488.61

Tenant Position

11. The tenant testified that she moved into the unit on June 3, 2017 for a one year term to begin on July 1, 2017 with rent set at \$1645.00 per month due on the 1st of each month. The current rate of rent is \$1670.00 per month. She said she was without the use of a portion of the unit due to repairs. The balcony had to be replaced because it was rendered unusable for safety reasons. The window and door in the living room/eating area were also replaced. The balcony was removed on July 23, 2019. She never received notification from the landlord that they were removing the balcony. The balcony was re-installed sometime in November 2019. But she could not use it until November 20, 2019. She is claiming \$316.57 for the loss of the balcony for that period. The size of the balcony was 48 sq. ft.
12. The tenant alleged that it was impossible to use the living room/dining area for the period of October 3 – November 2, 2019 for its normal purpose as the door and the window were replaced. On October 3, 2019 she had to push the furniture to one side and on October 4, 2019 the window and door were removed. Plywood was put up for a week. The new door and window were

installed by October 11, 2019. After the window and door were installed, plastering and painting had to be carried out. The workers were coming back and forth until the work was completed on November 2, 2019. They would not be there every day. She is seeking a refund of rent in the amount of \$554.48 for the loss of the use of the room. The size of the living room/dining area is 272 sq. ft. She testified that the blind for the living room/dining area was not replaced until May 2020.

13. The tenant said that she could not use the second bedroom for the period July 23 – November 2, 2019 because she used the room to store her balcony furniture. In October 2019 she had to store some items from the living room. The amount she is claiming is \$617.56 as the room is 110 sq. ft.
14. The tenant submitted photographs of the outside of the building taken between August 6, 2019 – October 1, 2019 (T #1) and photographs of the living room/dining area taken between October 4 – 28, 2019 (T #2).

Analysis

15. I have reviewed the testimony and evidence of the tenant and I have determined that there is one issue that needs to be addressed; is the tenant entitled to refund of rent. I find that the balcony was removed on July 23, 2019. The balcony was replaced sometime in November but she did not have use of it until November 20, 2019. Under section 16(5) of the Act where a landlord discontinues a service, privilege, accommodation or benefit for a period of time, and the unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, this would be considered an increase in the amount of rent payable. As the tenant was without the use of the balcony for the period July 23 – November 20, 2019 (120 days) the claim for refund of rent for the loss of the use of the balcony would be \$345.60 (48 sq. ft. x 0.6¢ per sq. ft. = \$2.88 per day x 120 days = \$345.60). However, as the tenant is only seeking \$316.57 for the loss of the use of the balcony, the claim succeeds in the amount of \$316.57.
16. With regard to the refund of rent for the living room/eating area. I find that the tenant could not use the entire living room/eating area while the repairs were being carried out as the furniture was moved to one area. The tenant was inconvenienced as she did not have full access to the living room/eating area for the period October 3 – November 2, 2019. Based on the photographs presented the tenant had access to about 1/3 of the living room/dining area during this time. As the tenant could not enjoy the full use of the living room/dining area, I award a refund of rent for the loss of $\frac{2}{3}$ of the living room/dining area for the period October 3 – November 2, 2019 in the amount

of \$337.28 (272 sq. ft. ÷ 3 = 90.7 sq. ft. x .06¢ per sq. ft. = \$5.44 per day x 31 days = \$168.64 x 2 = \$337.28).

17. With regard to the refund of rent for the second bedroom. I find the testimony of the tenant to be credible in that she had to store her balcony furniture and some items from the living room/dining room in the bedroom. As she had to store her furniture in the second bedroom while the work was being carried out, she could not use the room as a bedroom. As the room could not be used as a bedroom, the tenant is entitled to a refund of rent as compensation for the loss of the use of the bedroom. The amount of the refund would be \$673.20 (110 sq. ft. x 0.06¢ = \$6.60 per day x 102 days = \$673.20). As the tenant is seeking \$617.56, the claim succeeds in the amount of \$617.56 for the loss of the use of the bedroom.

Decision

18. The tenant's claim for refund of rent succeeds for the following:

a. Balcony	\$316.57
b. Living room/eating area.....	\$337.28
c. Second bedroom.....	<u>\$617.56</u>
d. Total owing	\$1271.41

Issue 2: Compensation for inconvenience

Tenant Position

19. The tenant testified that she spent various times cleaning the unit after the workers were finished for the day due to the dust. In total she spent 8 hours cleaning at a cost of \$155.20 (8 hours x \$19.40 = \$155.20). She also spent 3 hours on November 2, 2019 with the cleaners the landlord hired to clean after the work was completed. Before the work started she had to remove her precious items from the cabinets because of the jack hammering. She had the cleaners put these items back in the cabinets. She is claiming 3 hours at a cost of \$58.20 (3 hours x \$19.40 per hour = \$58.20). The total claim for cleaning is \$213.40 (\$155.20 + \$58.20 = \$213.40).
20. The tenant stated she is claiming 16 hours (@ \$19.40 per hour) for a total of \$310.40 for her time spent waiting for the workers to show up. She stayed at the unit while they were working at the unit. She preferred to be there while the workers were at the unit. She is also claiming 4 hours (for a total of \$77.60) for her time spent securing her personal items before the workers arrived.

21. The tenant said she is claiming 13 hours (for a total of \$252.20) for meetings with other tenants in the building. They would meet concerning the work being carried out on their units. After the work was completed they would meet to discuss the procedure to file a claim.

Analysis

22. After reviewing the testimony of the tenant, I find that some cleaning would be needed after the workers were at the unit. The amount she is claiming to clean the extra dust is reasonable. With regard to the 3 hours on November 2, 2019. When repairs are being carried out in a property it would be normal to store breakable items. The claim succeeds in the amount of \$58.20 for her time spent with the cleaners putting her breakables back in place.
23. With regard to the tenant’s time for waiting on workers and meeting with other tenants in the building. As the tenant chose to be at the unit while work was being carried out and to meet with other tenants in the building, the claim for compensation for inconvenience for these items fails.

Decision

24. The tenant’s claim for compensation for inconveniences succeeds as per the following:
 - a. Cleaning.....\$213.40

Issue 3: Miscellaneous items - \$280.00

Tenant Position

25. The tenant testified that she paid \$230.00 to A Little Magic to clean the couch, loveseat, 2 chairs and the rug in the living room/eating area. The furniture was covered while the work was being carried out. She had the furniture cleaned because she didn’t feel the same about the furniture. The tenant submitted a copy of the receipt from A Little Magic (T #3).
26. The tenant is seeking \$50.00 for the loss of heat. She said that she loss heat when the plywood was put up to the door and window and when door and window were being installed.

Analysis

27. After reviewing the testimony and the evidence of the tenant, I find that there is one issue that needs to be addressed; is the tenant entitled to compensation

for the miscellaneous items. I find that the tenant did not submit any evidence to show why the furniture needed to be cleaned. With regard to the compensation for the heat loss the tenant did not submit the power bill for the month of October 2018 and October 2019 to show that there was an increase in use of the power. Therefore, the claim for miscellaneous items fail.

Decision

28. The tenant's claim for compensation for miscellaneous items fails.

Issue 4: Hearing expenses - \$36.76

29. 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

30. The tenant paid an application filing fee in the amount of \$20.00 and \$16.76 to have photographs developed. The tenant is seeking these costs.

Analysis

31. The costs the tenant incurred to make the application and to have the photographs developed are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. As the tenant's claim is partially successful, the claim for hearing expenses succeeds in the amount of \$36.76.

Decision


32. The tenant's claim for hearing expenses succeeds in the amount of \$36.76.

Summary of Decision

The tenant is entitled to the following:

- a) Refund of rent \$1271.41
- b) Compensation for inconveniences \$213.40
- c) Hearing expenses \$36.76
- d) **Total owing to the tenant**..... **\$1521.57**

August 27, 2020
Date


Residential Tenancies Section