

## Residential Tenancies Tribunal

Decision 20-0107-05

Denise O'Brien  
Adjudicator

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### Introduction

1. The hearing was called at 11:20 a.m. on August 13, 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 discontinued the claim for damages in the amount of \$132.23.
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 original hearing was scheduled for March 18, 2020. The landlord has had 33 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 \$2717.51;
  - b. Compensation for inconveniences/miscellaneous items in the amount of \$795.40;
  - c. Payment of utilities in the amount of \$40.00;
  - 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 - \$2717.51**

#### Tenant Position

11. The tenant testified that she moved into the unit on July 1, 2016 for a one year term with rent set at \$1600.00 per month due on the 1<sup>st</sup> of each month. When the term ended, the tenancy converted month to month. The current rate of rent is \$1685.00 per month. She said one of the issues is that the landlord did not give her notification that they would be carrying out repairs to the unit. If she had been treated in a respectful fashion she might not have filed an application. She was without the use of a portion of the unit due to repairs.
12. The tenant testified that the balcony was removed on August 2, 2019. It was reinstalled by November 14, 2019 but she did not have access until December 10, 2019 because the door knob was not installed until December 9, 2019. There was no way to open the door. The balcony is 48 sq. ft. She is claiming \$346.90 for the loss of the balcony for that period.

13. The tenant said that she didn't have full use of the living room from the day the balcony was removed. When they removed the balcony on August 2, 2019 they had to store the panels in the living room. Her furniture had to be moved 3' from the window. On October 3, 2019 when they removed the window and the door she lost the use of  $\frac{1}{3}$  of the living room until November 14, 2019 as the repairs were being carried out. She couldn't enjoy the typical use of the living room. She said she went on vacation for 2½ weeks. When she returned in the early hours on November 14, 2019 the work was completed in the living room. But when she entered the unit the place was a mess. That same day the landlord had cleaners clean the unit. She is seeking return of rent in the amount of \$1575.63 for the period August 2 – November 14, 2019 as she lost the use of the living room. The living room is 272 sq. ft.
14. The tenant testified that she could not use the second bedroom for the period August 2 – December 10, 2019 because she had to store her balcony furniture. The balcony was re-installed by November 14, 2019 but it was not until December 10, 2019 she gained access to the balcony. They installed the door knob on December 9, 2019. She said when her friends came into town they couldn't stay with her because her furniture was stored in the second bedroom. She is claiming \$794.99 in return of rent as she could not use the second bedroom. The bedroom is 110 sq. ft.

### **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 tenant's testimony is believable in that the balcony was removed on August 2, 2019. The balcony was replaced by November 14, 2019 but the tenant did not have use of it until December 10, 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 August 2 – December 10, 2019 (131 days) the claim for refund of rent for the loss of the use of the balcony would be \$377.28 (48 sq. ft. x .06¢ per sq. ft. = \$2.88 per day x 131 days = \$377.28). However as the tenant is seeking \$346.90 for the loss of the use of the balcony, the claim succeeds in the amount of \$346.90.
16. With regard to the refund of rent for the living room. I find that the tenant could not use  $\frac{1}{3}$  of the living room for the period October 3 – November 14, 2019. The furniture was moved to one area while the repairs were being carried out. The tenant could not enjoy the full use as she did not have full access to the

living room. As the tenant could not enjoy the full use of the living room, I award a refund of rent for the period October 3 – November 14, 2019 (43 days) in the amount of \$233.92 (272 sq. ft. ÷ 3 = 90.7 sq. ft. x .06¢ per sq. ft. = \$5.44 per day x 43 days = \$233.92).

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 in the second bedroom while the work was being carried out. As the balcony's furniture was stored in the second bedroom, the room could not be used 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 for the period August 2 – December 10, 2019 (131 days) in the amount of \$846.60 (110 sq. ft. x .06¢ per sq. ft. = \$6.60 per day x 131 days = \$846.60. As the tenant is claiming \$749.99, the claim for refund of rent for the loss of the use of the bedroom succeeds in the amount of \$794.99.

**Decision**

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

a. Balcony .....	\$346.90
b. Living room.....	\$233.92
c. Second bedroom.....	<u>\$794.99</u>
d. <b>Total owing</b> .....	<b>\$1375.81</b>

**Issue 2: Compensation for inconvenience/Miscellaneous items - \$795.40**

Tenant Position

19. The tenant testified that when the workers would leave for the day she had to clean the dust. She spent about 5 hours doing the extra cleaning. The cost for the cleaning is \$97.00 (5 hours x \$19.40 per hour = \$97.00). The landlord hired cleaners on November 14, 2019 to clean the unit after the work in the living room was completed.
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 to let them into the unit. Sometimes they would not show up even though they would have told her they would be there at a certain time.
21. The tenant said she is claiming 20 hours (for a total of \$388.00) for meetings with other tenants in the building and for her time preparing the application for the hearing. Meetings would be held with other tenants in the building

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 for the extra cleaning is reasonable.
- 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 wait for the workers 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.....\$97.00

**Issue 3: Heat loss - \$40.00**

Tenant Position

- 25. The tenant is seeking \$40.00 for loss of heat. She said that she loss heat as there was no door knob on the new door. There was tape over the hole for the door knob.

**Analysis**

- 26. 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 heat loss. I find that the tenant did not submit any power bill for 2018 or 2019 to show that there was an increase in use of the power. Therefore, the claim for compensation for heat loss fails.

**Decision**

- 27. The tenant’s claim for compensation for heat loss fails.

**Issue 4: Hearing expenses - \$163.48**

28. 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

29. The tenant paid an application filing fee in the amount of \$20.00; \$11.25 to send the original application by registered mail and \$132.23 for cartridge for the printer. The tenant is seeking these costs.

**Analysis**

30. The cost the tenant incurred to make the application and to have the application delivered are considered reasonable expenses as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. The amount the tenant is claiming for the printing is excessive. The tenant presented one document; a breakdown of the claim. As the tenant's claim is partially successful, the claim for hearing expenses succeeds in the amount of \$31.25; \$20.00 for the filing fee and \$11.25 for the registered mail.

**Decision**


31. The tenant's claim for hearing expenses succeeds in the amount of \$31.25.

**Summary of Decision**

The tenant is entitled to the following:

a) Refund of rent .....	\$1375.81
b) Compensation for inconveniences .....	\$97.00
c) Hearing expenses .....	<u>\$31.25</u>
d) <b>Total owing to the tenant</b> .....	<b>\$1504.06</b>

August 28, 2020  
Date

  
Residential Tenancies Section