

Residential Tenancies Tribunal

Decision 19-0074-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 1:15 p.m. on March 28, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing.
3. The landlords, [REDACTED] and [REDACTED], hereafter referred to as landlord1 and landlord2, respectively, participated in the hearing.

Issues before the Tribunal

4. The tenant is seeking the following:
 - a. Return of the balance of the security deposit - \$332.69.
5. The landlords are seeking the following:
 - a. Compensation for damages - \$332.69;
 - b. Payment of rent - \$800.00;
 - c. Hearing expenses - \$20.00.

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, 14, 18, and 19 of the Act.

Issue 1: Compensation for damages - \$332.69

Landlord Position

8. Landlord1 stated that the tenant moved into the unit on November 26, 2017 for a one year term (LL #1) to start on December 1, 2017. The rent was set at \$800.00 per month due on the 1st of each month. Landlord1 testified that the tenant gave a termination notice in October that she was vacating the end of December 2018. The weekend of December 7, 2018 they were showing the unit to perspective tenants. After showing the unit they discovered the bathtub was not clean. It was filthy. The unit including the bathtub were clean when the tenant moved in as per the Rental Premises Condition Report dated November 26, 2017 (LL 8). On December 10, 2018 they gave a notice to the tenant to clean the bathtub. When landlord1 went back to the unit on December 14, 2018 she discovered the tenant was in the process of refinishing the bathtub. She didn't clean the tub before she started to refinish it. Landlord1 said the tenant assured her she would finish the bathtub by painting it with the enamel base paint.
9. Landlord1 further testified that when they went to the unit on December 30, 2018 after the tenant had vacated, the bathtub was not finished. There were bubbles in the paint and the paint was peeling off. The bathtub was like stucco to touch. She called a company that refinishes bathtubs and she was given a quote of \$1500.00 to have the tub refinished. Instead of hiring that company, they did the work themselves.
10. Landlord1 testified that when she gave the notice to the tenant to clean the bathtub she gave her a list of cleaners that she could use to try and clean the bathtub. She said she never gave the tenant permission to paint the tub nor did she tell the tenant she could paint the tub. She did not realize on the list of the cleaning products it stated that she could paint the tub. Landlord1 presented copies of text messages between herself and the tenant (LL #10). Landlord1 also testified that she had to bring cleaning supplies from her house to clean the unit as some cleaning was required. The amount she is claiming for the cleaning products is \$20.00 (LL #6).
11. Later in the hearing landlord1 testified that they live in the same area and there are no red marks on their bathtub from the water.
12. The landlords presented photographs of the unit prior to the start of the tenancy (LL #2), photographs of the bathtub taken on January 5, 2019 (LL #3), photographs of the bathtub taken on February 6, 2019 (LL #9) and photographs of the bathtub in the landlords' house (LL #11).

13. Landlord2 testified that he was talking to a gentleman by the name of [REDACTED] who was looking for work. The landlord told him about the bathtub and [REDACTED] was familiar with refinishing bathtubs. He hired [REDACTED] to do the work and [REDACTED] told him what materials were needed to make the repairs. The landlords purchased the materials from Kent in the amount of \$134.82 (LL #4) and materials from Home Hardware in the amount of \$6.87 (LL #5) totaling \$141.69. The materials included a prep kit, paint, mask, scrappers and blades. Landlord1 said [REDACTED] spent 9 hours removing the paint from the bathtub but he did not refinish the tub. They paid him \$171.00 for the work (LL #7). Landlord1 had to refinish the tub and the work was completed on/or about January 10, 2019.

Tenant Position

14. The tenant testified that when the landlords gave her notice to clean the bathtub the bathtub was not clean. She tried to clean the bathtub as she used at least 3 different cleaners but she could not remove the stains. She said the landlord told her to put tub paint over the stains to bring the bathtub to its original condition. She couldn't find any tub paint so she purchased an enamel paint. Before she sprayed the paint on the bathtub she had to sand the bathtub. After she painted the bathtub, the bathtub looked clean. She said the bathtub was old and the condition of the bathtub was normal wear and tear.
15. The tenant later testified that when you turn on the tap for the bathtub the water is red. She said there must be some type of bacteria in the piping.

Analysis

16. I have reviewed the testimony and evidence of the landlords and the tenant and I find the landlords gave the tenant a notice to clean the bathtub. The tenant refinished the bathtub without the landlords' permission but the landlords had to redo the bathtub themselves. They also had to bring cleaning supplies from their house to clean the bathroom. I also find the amount the landlords are claiming for the materials and labour to carry out the repairs is reasonable.

Decision

17. The claim to have the bathtub refinished succeeds in the amount of \$332.69 (\$171.00 for labour + \$141.69 for materials + \$20.00 for cleaning supplies = \$332.69).

Issue 2 – Payment of rent - \$800.00

Landlord Position

18. Landlord1 testified that the tenant gave them notice in October 2018 that she was vacating the end of December 2018. When they received the notice, they posted ads on Kijiji, NL Classifieds, The Telegram, MUN and on facebook. She said they are out rent for the month of January 2019 because when they showed the unit to a number of perspective tenants on the weekend of December 7, 2018 the bathtub was not clean and the tenants would not rent the unit for that reason. She also testified that they spent a week or so in January 2019 refinishing the bathtub.

Tenant Position

19. The tenant testified that she left the keys at the unit on December 30, 2018 and before she vacated the landlords were showing the unit to other tenants.

Analysis

20. I have reviewed the testimony of the landlords and the tenant and I find that the tenant refinished the bathtub without the landlords' permission and the landlords had to refinish the bathtub. They had the work completed by January 10, 2019. I also find the tenant gave a termination notice, as required by Section 18.(1), in October 2018 she was vacating on December 31, 2018. As the landlords had to refinish the bathtub in January and it took them until January 10, 2019 to have the work completed, the tenant would be responsible for the rent up to the date the work was completed.

Decision

21. The landlords claim for rent succeeds for the period January 1 – 10, 2019 in the amount of \$263.00 ($\$800.00 \times 12 \text{ months} = \$9600.00 \div 365 \text{ days} = \$26.30 \text{ per day} \times 10 \text{ days} = \263.00).

Issue 3 – Payment of the balance of security deposit - \$332.69

22. 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.

Landlord Position

23. The landlords testified a \$600.00 security deposit was paid on November 16, 2017. They refunded \$267.31.

Tenant Position

24. The tenant is seeking return of the balance of the security deposit in the amount of \$332.69.

Analysis

25. A security deposit was paid on November 16, 2017. The landlords refunded \$267.31 of the security deposit to the tenant. As the landlords have been successful in the claim for damages, the landlord shall retain the balance of the security deposit in the amount of \$332.69.

Decision

26. The landlords shall retain the balance of the security deposit in the amount of \$332.69 as outlined in this decision and attached order.

Issue 4: Hearing Expenses - \$20.00

27. 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

28. The landlords paid an application filing fee in the amount of \$20.00. The landlords are seeking this cost.

Analysis

29. The cost the landlords 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*. Therefore, I find the tenant is responsible to cover the cost of the hearing expenses in the amount of \$20.00 as the landlords were partially successful in their claim.

Decision

30. The tenant shall pay the landlords' hearing costs in the amount of \$20.00.

Summary of Decision

31. The landlords are entitled to the following:

a) Compensation for damages.....	\$332.69
b) Payment of rent	\$263.00
c) Hearing expenses	\$20.00
d) Less the balance of the security deposit	(\$332.69)
e) Total Owing to Landlord.....	<u>\$283.00</u>

June 21, 2019
Date


Residential Tenancies Section