

## Residential Tenancies Tribunal

Application 2024-0611-NL

Michael Reddy  
Adjudicator

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### Introduction

1. The hearing was called at 2:00 PM on 17 September 2024 via teleconference.
2. [REDACTED] and [REDACTED], hereinafter referred to as "the landlords", attended the hearing.
3. [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", did not attend the hearing and I was unsuccessful in establishing contact with both by telephone prior to the start of the hearing.

### Preliminary Matters

4. The landlords submitted an affidavit of service indicating [REDACTED] was served via registered mail ([REDACTED]) and [REDACTED] was served via registered mail ([REDACTED]) on 20 June 2024 (LL#1). In accordance with Section 35(5) of the *Residential Tenancies Act, 2018* where the notice is sent by registered mail, it shall be considered to have been served on the fifth day after mailing.
5. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states the hearing may proceed in the respondent's absence so long as they have been properly served. As the tenants were properly served, service was properly executed, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.
6. There was a written fixed term rental agreement that commenced on 1 July 2023 (LL#2). The tenants vacated by 7 June 2024. Rent was \$1,000.00 per month, due on the 1<sup>st</sup> of each month. A security deposit of \$500.00 was paid on 27 May 2023 (LL#3) and is still in the landlords' possession.
7. The landlords amended their application and were seeking the hearing expenses.

8. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

### **Issues before the Tribunal**

9. The landlords are seeking the following:
  - An Order for compensation for damages in the amount of \$3,139.00
  - An Order for compensation for inconveniences in the amount of \$633.33
  - An Order for the security deposit to be used against monies owing
  - An Order for compensation of hearing expenses.

### **Legislation and Policy**

10. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act*, 2018 (the *Act*).
11. Also, relevant and considered in this case is Section 14 of the *Act*, along with *Policy Number 09-003: Claims for Damages to Rental Premises*, *09-005: Life Expectancy of Property*, and *12-001: Costs*.

### **Issue 1: Damages**

12. The landlords claim \$3,139.00 in damages, divided amongst 9 items (LL#4). Each item will be dealt with individually below. As stated in the Residential Tenancies Program Policy and Procedure Guide Policy 09-003, applicants seeking damages must provide sufficient evidence to establish the cost of repairing or replacing the damages items and to establish the extent of the damages.
13. The landlords claim \$500.00 for cleaning of the three-bedroom trailer, as they testified the tenants left the premises in an unclean state. The landlords stated the cleaning required after the tenants vacated the rental premises included having to replace some of the vinyl plank flooring in the bathroom which had been previously installed in 2022. A cleaning company was hired to clean the rental premises and the landlords were unsure of the amount of time for the cleaning to be completed. Along with their application, the landlords supplied pictorial evidence of the rental premises after the tenants vacated (LL#5).
14. Viewing the evidence in its totality, the need for cleaning the rental premises has been identified. I am unable however to assess the timeframe to clean the property as the landlord did not offer any receipts of payment to the cleaning company or offer insight into how long the company cleaned. I am of the opinion one able bodied individual could clean a three-bedroom trailer within one day. As the landlords did not provide a receipt for the costs of cleaning, I will review the *Residential Tenancies Program* breakdown of self labour costs. That calculation is minimum wage (\$15.60) + \$8.00 = \$23.60 X 8 hours = \$188.80. The landlords claim for cleaning succeeds in the amount of **\$188.00**.

15. The landlords claim \$550.00 for plastering and painting the rental premises. The landlords testified it was last painted in 2023 and, along with their application, supplied pictorial evidence after the tenants vacated the rental premises (LL#5). The landlords testified the tenants had multiple screws and anchors in the walls, and there was mold and mildew throughout the trailer.
16. Upon review of the pictorial evidence in its totality, the need for plastering and painting of the rental premises is identified. According to *Policy 09-005: Life Expectancy of Property of the Residential Tenancies Program*, life expectancy of good grade interior paint is 15 years. As the landlords testified the rental premises was last completed in 2023, deterioration is not considered in this portion of the claim. The landlords claim for **\$550.00** for plastering and painting succeeds.
17. The landlords claim \$152.00 for an electrical outlet. The landlords testified while they could not indicate the age of the plaster cover, it had been installed within the last five years. A break down of the costs included one hour labour, a service call for an electrician of \$75.00, travel costs and cost of the item. Along with their application, the landlords supplied pictorial evidence of the plastic electrical outlet. They did not supply any receipts from the electrician who was hired, nor did they offer testimony the outlet was not functioning.
18. Upon review of the pictorial evidence, the damage to the electrical outlet cover is identified. There was no evidence offered that the electrical outlet had to be replaced. According to *Policy 09-005: Life Expectancy of Property of the Residential Tenancies Program*, the life expectancy of a receptacle outlet is lifetime. In this province, electricians charge between \$64.00 to \$120.00. Furthermore, the distance between Gander and Glenwood is 23.4 kilometers. Any local hardware company charges under \$1.00 for a plastic receptacle cover. In totality, the evidence identifies a damaged plastic receptacle cover. It does not identify the need for replacement of the receptacle, the need to hire an electrician for replacement of this item or that an electrician was hired. This portion of the landlords claim fails.
19. The landlords claim \$799.00 for a clothes washer. The landlords testified the washer was less than five years old and it had to be replaced as it was not draining or spinning. There was no pictorial evidence supplied of this appliance, nor was there a receipt of the old or new clothes washer or any indication if the appliance could be repaired. The landlords stated the damages to this appliance were caused by the tenants.
20. Upon review of the evidence in totality, I am unable to assess if the tenants are liable for the damages to the appliance, and therefore am not in a position to evaluate whether the level of compensation is legitimate. The landlords have failed to meet the evidentiary onus, and this portion of their claim therefore fails.
21. The landlords claim \$138.00 for replacement costs related to replace the shelving in the shed. The landlords testified the tenants damaged the shelving unit in place and it had to be replaced. They stated this portion of the claim did not include the labour costs. Along with their application, the landlords supplied pictorial evidence after the tenants vacated the rental premises (LL#5).

22. Upon review of the evidence in its totality, I see pictorial evidence of the shed. The pictorial evidence identifies no shelf in place. I do not see any receipts supplied with costs of materials used, nor do I observe any pictures of the shelf unit in place prior to the occupancy. In its totality, I am unable to assess the extent of the damaged shelf unit, and therefore am not able to evaluate whether the level of damage and compensation claimed is legitimate. The landlords have failed to meet the evidentiary onus, and this portion of their claim fails.

23. The landlords claim \$100.00 for damage caused by the tenants to the wood stove in the shed. The landlords testified they worked a “couple of hours” with the sanding, removal and painting of the wood stove. Along with their application, the landlords supplied pictorial evidence (LL#5) of the wood stove. There were no receipts supplied in relation to materials used (i.e. sandpaper, paint).

24. Upon review of the pictorial evidence (LL#5), the damages to the wood stove is identified. As the landlords did not supply costs associated with supplies for this repair to damages to the wood stove, I will only review compensation for self-labour costs. I will review the *Residential Tenancies Program* breakdown of self labour costs. That calculation is minimum wage (\$15.60) + \$8.00 = \$23.60 X 2 hours = \$47.20. The landlords claim for damages to the wood stove succeeds in the amount of **\$47.20**.

25. The landlords claim \$200.00 for the mowing, raking and maintenance to the rental property. The landlords testified 5 hours of self-labour by landlord1 was completed on the 60 foot by 100 foot property after the tenants vacated the rental premises. Along with their application, the landlords supplied pictorial evidence of the outside of the rental premises (LL#5).

26. Upon review of the written rental agreement supplied by the landlords (LL#2) and signed by the tenant on 27 May 2023, part 11 of that piece of evidence identifies lawn care was one of the additional obligations of the tenants. The pictorial evidence (LL#5) identifies the need for lawn maintenance. As the landlords testified 5 hours of self labour was required, I will review the *Residential Tenancies Program* breakdown of self labour costs. That calculation is minimum wage (\$15.60) + \$8.00 = \$23.60 X 5 hours = \$118.00. The landlords claim for upkeep to the lawn succeeds in the amount of **\$118.00**.

27. The landlords claim \$600.00 for damages caused by the tenants to cedar trees near the front entrance of the rental premises. The landlords testified this involved cutting/pruning of two trees. There was no identified time identified for these repairs.

28. Upon review of the pictorial evidence (LL#5) supplied by the landlords of the cedar trees, along with their application, I see one picture of this tree. Viewing the evidence in its totality, I am unable to assess the extent of the damages to the cedar tree, and therefore am not in a position to evaluate where the tenants are responsible for the damages or whether the level of compensation claimed is legitimate. The landlord have failed to meet the evidentiary onus, and this portion of their claim therefore fails.

29. The landlords claim \$100.00 for a garbage box. On the Compensation for Damages form (LL#9) supplied along with their application, this item is identified as missing wooden garbage box. The landlords testified this garbage box was four years old and part of this claim was for materials and stain used for repair. There was no testimony offered by the landlords about how much time this required. Along with their application, the landlords supplied pictorial evidence (LL#5) which included one picture of a wooden garbage box.
30. Upon review of the pictorial evidence (LL#5) supplied by the landlords of the garbage box, along with their application, I see one picture of this item. What is identified is a portion of the top rim of the garbage box is missing. There were no receipts supplied by the landlords of the costs associated with materials used for repair. Furthermore, the Compensation for Damages form identified the item as missing whereas the pictorial evidence reveals the item. The other question applicable is if the tenants are liable for the damages to garbage box. The landlords have failed to meet the evidentiary onus, and this portion of their claim therefore fails.

### **Decision**

31. The landlords claim for compensation for damages succeeds in the amount of **\$903.20** as follows:

• Cleaning of the Rental Premises.....	\$188.00
• Painting.....	\$550.00
• Wood Stove Damage.....	\$47.20
• Lawn Care.....	\$118.00
• Total.....	<b><u>\$903.20</u></b>

### **Issue 2: Inconveniences**

32. The landlords claim \$633.33 for inconveniences which they experienced due to the actions of the tenants. Along with their application, the landlords supplied a Compensation for Costs of Inconveniences worksheet (LL#6) divided amongst three items. Each item will be addressed individually below.
33. The landlords claim \$100.00 for dump runs for having to remove belongings damaged or left behind by the tenants. Along with their application, the landlords did not supply receipts for the costs associated with any dump runs. There was no breakdown of the items which had to be brought to the local landfill.
33. Viewing the evidence in its totality, I am unable to access the extent of the trips to the dump, and therefore am not in a position to evaluate whether the level of compensation claimed is legitimate. The landlords have failed to meet the evidentiary onus, and this portion of their claim fails.
34. The landlords claim \$300.00 for the costs associated with finding a painter/plasterer, electrician, cleaner, yard person and loan of a truck for removal of debris. During the

hearing, the landlords testified the yard work was completed by them. Having to secure a painter/plasterer, electrician and cleaner would be considered “the costs of doing business”. This portion of the landlords claim fails.

35. The landlords claim \$233.33 for the costs associated with the keys not being returned at the end of the tenancy and having to change the locks of the rental premises. No receipts were supplied along with their application.
36. Locks should be changed between tenancies to protect the landlords from liability and the well-being and safety of new tenants. This would be considered a “cost of doing business”. This portion of the landlords claim fails.

#### **Decision**

37. The landlords claim for compensation for inconveniences fails.

#### **Issue 3: Security Deposit**

38. The landlords are seeking to retain the security deposit of \$500.00. The landlords submitted evidence to support the claim the tenants paid the security deposit in this amount (LL#3). As the landlords claim for compensation has partially succeeded, the security deposit, plus applicable interest at the rate prescribed by the *Security Deposit Interest Calculator* shall be applied against the monies owed (\$500.00 + \$3.58) and reveals the landlords shall retain \$503.58.

#### **Decision**

29. The landlords shall retain the security deposit of **\$503.58** to be applied to monies owed.

#### **Issue 4: Hearing Expenses**

30. The landlords claim \$20.00 hearing expenses. Along with their application, the landlords supplied a hearing expense receipt (LL#6).

#### **Analysis**

31. As the landlord's claim partially succeeds, the tenants shall be responsible for the **\$20.00** hearing expenses.

#### **Summary of Decision**

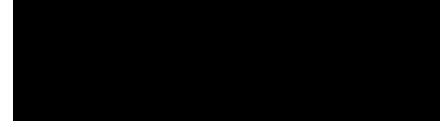
32. The landlords are entitled to a payment of **\$419.62** as determined as follows:

- Damages.....\$903.20
- **Less Security Deposit + Interest.....\$503.58**

- Hearing Expenses..... \$20.00
- Total..... **\$419.62**

23 October 2024

Date



Michael Reddy, Adjudicator  
Residential Tenancies Office