

Residential Tenancies Tribunal

Application 2024-0694-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 24-September-2024.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference. [REDACTED] also attended as a support person.

Preliminary Matters

4. The applicant testified that she served the respondent with the notice of hearing electronically by email on 12-August-2024. The respondent confirmed receipt of the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written term rental agreement which commenced on 7-August-2023. The tenant vacated the unit on 9-June-2024. Rent was \$1000.00 per month, due on the seventh day of each month. A security deposit of \$750.00 was paid on 7-August-2023 and was dealt with in a previous decision dated 23-July-2024 (file # 2024-0438-NL).
6. The landlord amended the application to include *hearing expenses*.

Issues before the Tribunal

7. The landlord is seeking:
 - a. Compensation paid for damages \$2169.64
 - b. Rent paid \$1633.00
 - c. Hearing expenses \$20.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

9. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*: Section 6-3: Mitigation on abandonment of residential premises, Section 9-3: Claims for damages to rented premises, Section 9-5: Life expectancy of property and Section 12-1: Recovery of Costs.

Issue # 1: Compensation paid for Damages \$2169.64

Relevant Submission

10. The landlord testified that there were damages / losses to the rental unit in the amount of \$2169.65 and she submitted a damages ledger to support the claim (LL#1). See breakdown of damages below:

Damages Ledger 2024-0694-NL		
Damages / losses	Amount	Total
4 Window trims replaced, primed and painted		
Entrance door box replaced		
Baseboard heater replaced		
5 interior doors repaired		
Plaster and paint unit		
Replace blinds		
Labor for above work	\$1,350.00	\$1,350.00
Paint materias	\$273.04	\$1,623.04
Baseboard and window / door materials	\$546.60	\$2,169.64

Landlord's Position

11. The landlord testified that the tenant caused damage to the unit as a result of a lack of heat to the unit during the winter months and nonuse of the HVAC unit. The landlord testified that the tenant contacted her on 21-April-2024 stating that the front door would not open. The landlord stated that she sent a worker of hers to the unit to inspect the problem with the door and she stated that the worker informed her that the unit had a lot of damage due to a buildup of dampness and mold. The landlord stated that 4 of the windowsills needed to be replaced, primed and painted, the door to the entrance of the premises would not open as the dampness in the wood caused the door frame to swell and warp. The landlord also stated that 5 interior doors in the house had to be repaired as they were warped as well. The landlord stated that a baseboard heater was covered in rust to the point where it had to be replaced. In addition to the damage caused due to the dampness and mold issue, the landlord stated that 14 walls had damage that needed plaster work and paint. The landlord testified that she hired 2 men to complete all the work and the total labor costs was \$1350.00. The landlord submitted photographs of the unit prior to the tenancy and photographs of the unit at the end of the tenancy to show the damage (LL#2), invoices from the workers who completed all the necessary work (LL#3) and receipts for the cost of materials (LL#4).

Tenant's Position

12. The tenant did not dispute that there was a buildup of mold on the windowsills, however she disputed that the unit was damp, and she disputed the landlord's claim that the heat and the HVAC unit were turned off during the winter months. The tenant testified that she kept the heat on at least 21 degrees celsius during the winter and she stated that she cleaned the mold of the windowsills and she stated that it never returned. The

landlord also stated that the door was damaged as a result of an uneven expansion due to the cold temperatures outside.

Analysis

13. In accordance with *Residential Tenancies Policy 9-3*, the applicant is required to show:

- *That the damage exists;*
- *That the respondent is responsible for the damage, through a willful or negligent act;*
- *The value to repair or replace the damaged item(s)*

14. In accordance with Section 9-3 of the *Policy* as stated above and based on the before and after photographs of the unit, I accept that the landlord was able to show that some of the damage exists and the landlord was also able to show the value to repair or replace the damaged items. The only question is if the tenant was responsible for the damage through a willful or negligent act.

15. I do not accept the tenant's testimony that she cleaned the windowsills once and the mold never came back. The photographs show major damage to the windowsills which is indicative of a severe dampness / mold problem within the unit. I asked the landlord if she had any proof that the HVAC was turned off and she testified that it was turned off in May during the inspection of the unit and she submitted a photograph showing that it was turned off (LL#5). I asked the landlord the age of the home and she responded that the house is 9 years old and was built according to code. I find that although the tenant was not willful in causing the mold problem, she is still negligent as she turned off the HVAC unit and did not keep enough heat to the unit, ultimately causing the dampness and mold problem. The tenant also failed to comply with her obligation to notify the landlord of the problems within the unit. The tenant did not inform the landlord until she could no longer access the main door to the entrance of the premises.

16. With regards to the damage to the walls, the landlord did not submit any photographs to support the claim. The landlord stated that 14 walls needed repair work however she failed to show that the damage exists. I asked the landlord when the last time the unit was painted and she responded that the unit was painted in 2020, which was 3 years prior to the tenancy. Without evidence to show the extent of the damage to the walls, I am unable to award any compensation for this item. I find that the tenant is not responsible for the cost to plaster and paint the walls nor is she responsible for the cost of labor or materials required to complete that portion of the work.

17. The invoices for the cost of labor have all items grouped together and I asked the landlord if she could provide a breakdown of the labor costs for each item, and she responded that she could not. As I do not know how much of the labor costs is associated with plastering and painting the unit and how much is associated with the windows and doors repairs, I will award a nominal amount as this tribunal has an obligation to be fair and equitable to all parties involved.

18. The total labor costs claimed by the landlord is \$1350.00. I do not know how many hours this is for or how much an hour the workers charged. Based on the average hourly wage for a carpenter in *Newfoundland and Labrador* in 2024 (\$22.50), I calculate that it took 2 workers approximately 30 hours to complete all the work. I accept that the plastering and painting of the entire unit took up most of the hours and as such, I will award $\frac{1}{4}$ of the cost of labor to repairing the windowsills and fixing the doors in the amount of \$337.50. I

also accept that the windowsills and door frame needed to be primed and painted and as such, I will award \$50.00 to cover the cost of materials to complete this work. All other costs for materials from *Kent* will be awarded in the amount of \$546.60.

Decision

19. The landlord's claim for *compensation paid for damages* succeeds in the amount of \$934.10.

Issue # 2: Rent paid \$1633.00

Landlord's Position

20. The landlord testified that the tenant vacated the unit on 9-June-2024 and the unit was not ready to re-rent until the repair work was completed. The landlord testified that the unit went back on the market on 26-July-2024. The landlord is seeking a prorated amount of rent to be paid for the period of 7-June (beginning of rental period) to 25-July in the amount of \$1633.00.

Tenant's Position

21. The tenant disputed that she should have to pay rent for a period when she did not reside at the unit. The tenant stated that she was given a termination notice to vacate the premises and should not be held responsible for rent when she was asked to leave.

Analysis

22. Landlords should not incur any financial loss of income due to negligence on the part of a tenant(s). I accept the landlord's testimony that she made every effort to mitigate her losses and she had the property ready to re-rent on 26-July-2024. Based on the above decision (paragraphs 18-19) whereby the tenant is found to be responsible for a portion of the damages claimed by the landlord, I find that the tenant shall be responsible for the loss of rental income to the landlord for the time she remained in the unit without paying rent (3 days) and for $\frac{1}{4}$ of the remainder of the time claimed ($\frac{1}{4} \times 46$ days). A daily rate of rent is used to determine the amount of lost rental income ($\$1000 \times 12 \text{ mths} = \$12,000 / 366 \text{ days} = \32.79 per day). I find that the tenant is responsible for rent paid in the amount of \$475.46.

Decision

23. The landlord's claim for *rent paid* succeeds in the amount of \$475.46.

Issue # 3: Hearing expenses \$20.00

24. The landlord paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt (LL#6).
25. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. As the landlord's claim has been successful, the tenant shall pay the \$20.00.

Decision

26. The landlord's claim for *hearing expenses* succeeds in the amount of \$20.00.

Summary of Decision

27. The tenant shall pay the landlord \$1429.56 as follows:

Compensation for damages	\$934.10
Rent paid	475.46
Hearing expenses	20.00
Total	\$1429.56

October 2, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office