

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0489-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:15 pm** on **30 November 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED] hereafter referred to as landlord1, participated in the hearing. (*Affirmed*).
3. The applicant, [REDACTED] hereafter referred to as landlord2, participated in the hearing. (*Affirmed*).
4. The respondent, [REDACTED] hereafter referred to as the tenant, did not participate in the hearing. (*Absent and Not Represented*).
5. The details of the tenancy are a written fixed term tenancy commencing 01 April 2020 and set to expire on 31 August 2020. Rent was set at \$910.00 with utilities extra and a security deposit in the amount of \$600.00 collected on this tenancy on 01 April 2020.
6. In a proceeding under the *Residential Tenancies Act*, 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.

Preliminary Matters

7. The tenant, [REDACTED] was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date* and, 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*.

The affidavit submitted by the landlords show that the tenant was served with the notice of this hearing on the **08 November 2020** by serving the original documents to the tenant to the mobile number [REDACTED] and attaching a copy of the sent message and a copy of the contact list.

The tenant has had **21 days** to provide a response.

A phone call was placed to the tenant at the number [REDACTED] and someone answered and immediately hung up.

8. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicants, I proceeded in the tenant's absence.
9. The landlords amended the application to remove the request for Vacant Possession as the tenant had vacated the property.

Issues before the Tribunal

10. The landlords are seeking the following:
 - a) Payment of rent owing **\$2275.00**;
 - b) Payment of late fees **\$75.00**
 - c) Compensation for Damages **\$4986.14**;
 - d) Hearing expenses.
 - e) Application of Security Deposit

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. Also relevant and considered in this case are Sections 19, 24, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rent Owing - \$2275.00

Relevant Submissions

Landlord Position

13. The landlords stated that they had entered into a fixed term rental agreement with the tenant set to expire on 31 August 2021. The agreed rent is set at \$910.00 per month and due on the 1st day of each month with a security deposit in the amount of \$600.00 collected on this tenancy on or about 01 April 2020. The landlords demonstrated the arrears with rental records (**Exhibit L # 1**) as total rent outstanding is \$1365.00 up to and including 31 August 2020.
14. The landlords are further claiming rent for the month of September 2020 as lost rent due to the damages created by the tenant and required to be repaired before it could be re-rented. The landlords are claiming \$910.00 for September 2020.
15. The landlords stated as of the hearing date 30 November 2020 the tenant remained in arrears and rent is outstanding for a total amount of \$2275.00 up to and including 30 September 2020.
16. The landlords also submitted into evidence a copy of the rental agreement (**Exhibit L # 1**) and a copy of the termination notice issued to the tenant (**Exhibit L # 3**).

Analysis

17. I have reviewed the testimony and evidence of the landlords in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlords actually owed by the tenant.
18. With respect to the arrears being claimed, I agree with the landlords that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the written rental agreement established when the tenancy began. Records are clear that rent for the period ending 31 August 2020 has not been paid leaving a balance of **\$1365.00**.

19. Further, the rent claimed for September 2020 is a valid claim as the tenant left the property in a condition that would require the landlords to complete extensive renovations and cleaning. I find the tenant responsible for rent for the period of 01 July 2020 to 30 September 2020 in the amount of **\$2275.00**.

Decision

20. The landlords' total claim for rent succeeds as follows:

a) Rent owing up to 31 August 2020	\$1365.00
b) Rent owing for September 1 - 30, 2020	<u>910.00</u>
c) Total Arrears	\$2275.00

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

21. The landlords are seeking payment of late fees as a result of the tenant's failure to pay rent on time.

22. The landlords testified that the tenant has been in arrears on an ongoing basis since 01 July 2020. The landlords indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

23. Established by undisputed fact above, the tenant was in arrears since 01 July 2020. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.

24. The issue of rental arrears has been determined above confirming that the tenant has been in arrears since 01 July 2020.

Decision

25. The landlords' claim for late fees succeeds in the amount of the maximum allowable of \$75.00.

Issue 3: Compensation for Damages \$4986.14

Landlord Position

26. The landlords are seeking to recover compensation for damages of the rented premises located at [REDACTED]
27. The landlord testified that they have been landlords for 20 years and this has been the worst experience. They testified that the property was rented furnished and when the property was recovered, it was a disaster with syringes and methadone all over the property, rotting food and candies, the furniture was destroyed and there was juice and coffee spilled everywhere.
28. The landlords submitted photos of the property to demonstrate the damages (**Exhibit L # 4**), a copy of the condition report (**Exhibit L # 5**) along with a breakdown of the claimed damages (**Exhibit L # 6**).
29. The landlords started to describe the property by stating that the main entrance was kicked in and had to be replaced. They added that the door was at least 19 years old and had a window in the door. The landlords testified that they replaced the door with a solid door as it was cheaper. For tenant safety reasons, the landlords installed a door viewer (peep hole) and is claiming for the viewer and the drill to install (**Exhibit L # 18**) in the amount of \$46.66 from [REDACTED] [REDACTED]. The landlords testified that the new door cost \$463.07 (**Exhibit L # 11**) plus \$200.00 labor to install (**Exhibit L # 13**) and \$44.26 for the door installation kit at [REDACTED] (**Exhibit L # 10**).
30. The landlords further added that they replaced the lock set (**Exhibit L # 7**) at a cost of \$48.62 as the door was kicked in.
31. The landlords testified that the smoke alarms were removed from the unit and had to be replaced (**Exhibit L # 12**). They testified that they purchased the new smoke detectors from Costco at a cost of \$43.69.
32. The landlords described the child's bedroom walls as having hundreds of stickers on one wall and spillage of juice and various liquids on the remaining walls in the bedroom and throughout the apartment. The landlords testified that the unit had to be painted and is claiming for supplies in the amount of \$356.99 (**Exhibit L # 9**) and labor in the amount of \$400.00.
33. The landlords testified that the flooring was destroyed and had to be replaced. They testified that the carpet in the unit was at least 19 years old and that they replaced it with what they described as vinyl (**Exhibit L # 15**) at a cost of \$585.36 plus \$150.00 for the removal and \$200.00 for the installation.

34. The landlords additionally testified that the closet door was destroyed and had to be repaired. The landlords submitted an invoice for the repairs (**Exhibit L # 16**) in the amount of \$30.00 along with a receipt for the bi-fold kit in the amount of \$11.26 (**Exhibit L # 17**).
35. The landlords are claiming for the materials to repair the apartment (namely: baseboard, plywood and a door stop) totaling \$36.23. There was a receipt submitted from [REDACTED] (**Exhibit L # 14**) for the baseboard and the door stop.
36. The landlords are claiming for the use of their personal car to pick up materials etc., for a total of \$560.00. The landlords testified that it was used for 28 hours total.
37. The landlords testified that they are claiming \$1200.00 for materials and two people to clean the property for 15 hours.
38. The landlords testified that there was a mattress and box spring in the property that were damaged. They indicated that the items were used when they purchased them approximately 5 years ago. There was no indication of the age of the items.
39. Lastly, the landlords are seeking compensation for items removed from the property as itemized:
 - a. 50" TV (approx. 10 years old) - **\$200.00**
 - b. Double Mattress (approx. 5 years old) - **\$150.00**
 - c. Vacuum Cleaner (4 years old) - **\$100.00**
 - d. Table Lamp (approx. 3 years old) - **\$10.00**

Analysis

40. I have reviewed the evidence of the landlord in its entirety. After considering all the evidence and testimony, it is clear that the tenant did not maintain the property to a reasonable standard as it relates to cleanliness. The landlords are claiming for some significant damages including for the replacement of a door and flooring.
41. The landlords are by their own testimony, experienced landlords, and as such I would expect from experienced landlords a claim file that is complete with details to clearly demonstrate any and all damages claimed. There are some portions of this damage claim that are lacking supporting documentation in their basic form. As such, I will deal with them first.

42. In any damage claim the applicant is required to successfully support three tests as outlined:

- a. show that a damage exists;
- b. show that the respondent is liable for the damages and;
- c. show a cost for the repair or replacement of the damages.

43. The landlords' photographs presented show clearly that the property was not clean by any stretch of the imagination. There was no photos of the doors (interior or exterior) showing any damages, there was nothing to remotely suggest that the flooring was damaged to the point of replacement, there was no photos indicating that a mattress and box spring were damaged and there was no evidence to suggest that the items being claimed as missing were in the property or there condition as a starting point.

44. I further add that the carpets in the property were identified by the landlords as being 19 years old and from the photos appear to be a commercial type carpet. These carpets have a life span in a rental unit of up to 6 years and at 19 years of age would be fully depreciated.

45. The landlords mentioned that there were syringes and methadone around the property. There was no evidence of this in the limited photos presented as evidence. Regarding the paint, the landlords indicates that it was last painted 5 years ago and that there were hundreds of stickers on the child's bedroom wall. Again there were no photos of this bedroom. There was an indication in the photos of some spillage on the walls in the photos which would be a cleaning issue.

46. As the painted surface was at least 5 years old and the life expectancy of a painted surface is 5 years, the paint is also fully depreciated and it would be reasonably expected to require new paint at this point.

47. The discussion above has indicated that the landlords have not supported most of the claim with evidence to support the claim or the portions being claimed have fully depreciated. As such I find that the only portion of the damage portion of the application that an award can be made is in respect of the cleaning. As mentioned above, the tenant did not clean the property. The landlords are claiming \$40 per hour per person for 15 hours inclusive of materials for a total of \$1200.00. This is not a normal calculation as materials should be receipted. Labor rates for self-labor at the time were set at \$19.65 per hour. The labor would calculate as follows:

- i. Person 1: 15 Hours @ \$19.65 = \$294.75
- ii. Person 2: 15 Hours @ \$19.65 = \$294.75

iii. Total Labor = \$589.50

48. There are no receipts of the purchase of cleaning materials however it is clear from the photos that an extensive cleaning would be required and for that cleaning materials would have to be used. As such, I will allow \$75.00 for the purchase of cleaners or for cleaners to be taken from personal stock and replaced later.
49. The landlords claim for cleaning the property is successful in the total amount of **\$664.50**.
50. The landlords are claiming for gas and the use of their personal car to pick-up items for the apartment without any receipts for gas. The landlords are claiming for an hourly rate calculated as \$20.00 per hour ($\$560.00 \div 28 \text{ hours} = \20.00 per hour).
51. As indicated above, the majority of the damage claim has not succeeded. Because the claim has not succeeded for the most part, it would be unfair to award for the use of the landlords' personal vehicle to pick up materials. As such, the landlords' claim for use of personal vehicle fails.

Decision

52. The landlord's claim for damages succeeds in the amount of **\$664.50**.

Issue 4: Hearing Expenses

Landlord Position

53. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 8**). The landlords are seeking this cost.

Analysis

54. I have reviewed the testimony and evidence of the landlords in this matter. The expenses incurred by the landlord are considered a reasonable expense and are provided for with in *Policy 12-1 Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As such, I find the tenant is responsible to cover these reasonable expenses.

Decision

55. The tenant shall pay the reasonable expenses of the landlords in the amount of \$20.00.

Issue 5: Application/Refund of Security Deposit

Landlord Position

56. The landlords testified that a security deposit in the amount of \$600.00 was paid on the property on or about 01 April 2020. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.
57. The landlords acknowledges holding the security deposit in the amount of \$600.00.

Analysis

58. Established by undisputed fact above, the tenant did pay a security deposit to the landlords in the amount of \$600.00.
59. The landlords' claim has been partially successful as indicated above. The security deposit plus accrued interest is \$600.00 as the interest rate for 2020 is set at 0%.
60. The landlords' claim is partially successful. The security deposit is an asset of the tenant to be held against any loss incurred by the landlords attributed to the tenancy. In this matter it has been determined that there was minimal attributable loss and as such, the tenant is entitled to a refund of the balance of the security deposit as outlined in the attached order.

Decision

61. As the landlords' claim above has been mostly unsuccessful, the landlords shall refund the security deposit being held to the tenant as outlined in the attached order.

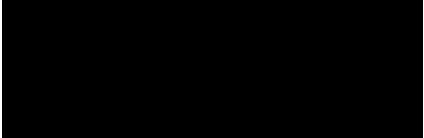
Summary of Decision

62. The landlords are entitled to the following:

a)	Rent Owing	\$2275.00
b)	Late Fees.....	75.00
c)	Damages	664.50
d)	Hearing Expenses	\$20.00
e)	Sub-total	\$3034.50
f)	LESS: Security Deposit.....	<u>(\$600.00)</u>
g)	Total Owing to Landlords.....	<u>\$2434.50</u>

14 January 2021

Date


Michael Greene
Residential Tenancies Tribunal