

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0550-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **26 May 2021** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED] hereafter referred to as the landlord participated in the hearing and was represented by [REDACTED] (*Affirmed*)
3. The respondent, [REDACTED] hereafter referred to as the tenant did not participate in the hearing. (*Absent and Not Represented*)
4. 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 applicants have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

5. 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 landlord shows that the tenant was served with the notice of this hearing on the **17 February 2021** by serving the original documents to the tenant via registered mail (███████████) and being considered served as per section 42(6) of the RTA, 2018. The hearing was postponed and recalled on 26 May 2021 and the tenant was not entitled to any further service, however, a courtesy service was provided by Residential Tenancies on 28 March 2021 for the 26 May 2021 hearing.

A phone call was placed to the tenant to the number on file ██████████. There was no answer and a message was left.

6. 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 applicant, I proceeded in the tenant's absence.
7. The landlord called a witness in this matter:
 - a. ██████████

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Damages **\$1851.00**;
 - b) 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 are:
 - a. *Policy 12-1: Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
 - b. *Policy 9-2 Claims and Counter Claims*, and;
 - c. *Policy 9-3 Claims for Damage to Rental premises*.

Issue 1: Compensation for Damages - \$1851.00

Relevant Submissions

Landlord Position

11. The landlord testified that when the property was recovered it was noticed that the following items were damaged as outlined (**Exhibit L # 1**):
 - a. Repair holes in walls
 - i. Bedroom hallway
 - ii. Basement bedroom
 - iii. Main entrance stairwell
 - iv. Basement hallway
 - v. Main entrance
 - b. Removal & disposal of items left by tenant & other waste
 - c. Paint front bedroom (Purple)
 - d. Clean unit prior to commencing work
 - e. Replace missing light shades
 - i. Basement hall & bedroom
 - ii. Kitchen (6)
 - iii. Front bedroom
 - iv. Rear bedroom
 - f. Replace baseboard heater (Front Bedroom)
 - g. Replace two smoke detectors
 - h. Replace Doors & passage sets
 - i. Upstairs hallway
 - ii. Basement bedroom
12. The landlord testified that the tenant moved from the property on 16 September 2020 and an inspection walk through was completed on 17 September 2020 (**Exhibit L # 6**). The landlord testified that the property was left in a state of disrepair and uncleanliness. There was a mess everywhere, the oven was a mess, multiple holes in the walls throughout the property, doors, light shades, and smoke detectors were missing, etc.
13. The landlord testified that an extensive cleaning was required prior to any work being completed as it was determined to be unsafe for the workers to commence work. The landlord referred to photos of the property taken after the tenant vacated (**Exhibit L# 4**). The landlord indicated that the photos showed the need for cleaning, the damaged walls, etc. The landlord testified that the front bedroom was painted a purple color by the tenant and was not returned to the original color prior to the tenant vacating the property.
14. The landlord submitted into evidence an invoice from the maintenance department of [REDACTED] (**Exhibit L # 1**) in the amount of \$1851.00 for the cleaning and other repairs. The landlord further added that the property was in a rentable condition as demonstrated by the incoming inspection report (**Exhibit L # 3**).

15. The landlord witness testified that there were three truckloads of items including garbage removed from the property to the landfill. There was no affidavit of abandoned property completed or presented into evidence.

Analysis

16. I have reviewed the testimony and evidence of the landlord in this portion of the claim. The applicant is required to establish three criteria for a successful claim as follows:
 - a. Show that the damage exists
 - b. Show that the respondent is liable
 - c. Show a valuation for the repair or replacement
17. The evidence presented in this claim has been clear in that the property was left destroyed by the tenant. The photos depict a significant amount of personal belongings left in the unit by the tenant and there has been no agreement of disposal between the parties or a formal Affidavit of Abandoned Personal Property submitted as evidence. Instead the landlord has disposed of the items and charged the tenant.
18. There is a process to deal with the abandonment of personal items in place under section 32 of the RTA, 2018. As the landlord has opted not to follow this process which protects both parties and ensures due diligence is done, these actions cannot be rewarded by an award of compensation to remove the property to the landfill. The landlord's claim for removal and disposal of items fails.
19. The balance of the landlord's claim I accept and is supported in evidence. The tenant has left the property virtually destroyed and the landlord's claim is well within what can be considered reasonable market pricing for similar repairs.
20. The landlord has demonstrated that the property was not in this condition prior to the tenant taking possession and the photos taken after the tenant vacated are self-explanatory.
21. Based on the evidence, this tribunal can reasonably assess that the damages as described are the responsibility of the tenant and the amount claimed is well within a reasonable depreciated value for the property. The landlord's claim for damages succeeds in the amount of \$1551.00.

Decision

22. The landlord's claim for damages succeeds in the amount of \$1551.00.

Issue 2: Hearing Expenses

Landlord Position

23. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (Exhibit L # 5). The landlord is seeking this cost.

Analysis

24. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred are considered a reasonable expense and are provided for within Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*. As the landlord's claim has been successful, the tenant shall cover the expenses of the landlord.

Decision

25. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Summary of Decision

26. The landlord is entitled to the following:

a)	Damages	\$1551.00
b)	Hearing Expenses	<u>20.00</u>
b)	Total owing to the landlord	<u>\$1571.00</u>

30 June 2021

Date

Michael Greene
Residential Tenancies Tribunal