

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0570-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **29 April 2020** 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 tenant, participated in the hearing. (*Affirmed*)
3. The respondent, [REDACTED] hereafter referred to as the landlord, participated in the hearing and was represented by [REDACTED] (*Affirmed*)
4. The details of the claim were presented as a written monthly agreement with rent set at \$575.00 per month and due on the 1st of each month and a security deposit in the amount of \$187.50 was collected on the tenancy on 04 December 2004.
5. 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.

Preliminary Matters

6. The affidavit submitted by the tenant shows that the landlord representative, █ was served with the notice of this hearing on the **16 April 2021** by serving the application for dispute resolution document to the landlord by personal service at the rented premises.
7. The landlord representative amended the claim to allow the company name to be added to the application.

Issues before the Tribunal

8. The tenant is seeking the following:
 - a) Compensation for Inconvenience **\$650.00**;
 - 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 9-4 Claims for Damages to a Tenant's Personal Belongings*.

Issue 1: Compensation for Inconvenience - \$650.00

Relevant Submissions

Tenant Position

11. The tenant testified that he is seeking **\$650.00** as compensation for inconvenience due to the work he was not adequately paid for as the result of a leak in his apartment.
12. The tenant testified that he completed repairs for the landlord in the property and was paid \$100.00 cash by the landlord. He testified that he gyproced and plastered the ceiling area and cleaned up the mess (water, gyproc, etc.,) for the landlord.

13. The tenant submitted photos of the damages repaired (**Exhibit T # 1**) along with a breakdown of the claim (**Exhibit T # 2**).
14. The tenant testified that he feels he was under paid for the work and is seeking compensation for the difference. The tenant testified that he paid his rent as normal and the landlord paid him cash for the work. There was no agreement on the scope of the work nor the compensation for the work prior to beginning.

Landlord Position

15. The landlord disputes the claim stating that the tenant has two separate jobs mixed up. The landlord consulted with his daily log entries (**Exhibit L # 1**) and indicated that the compensation he paid the tenant for was a job he completed on 20 May 2020. The photos presented by the tenant was a much bigger job from a leak in the kitchen in September 2019 (**Exhibit L # 2**). The landlord testified that this was a much bigger job and beyond the scope for the tenant to do the work.
16. The landlord testified that he estimated the work at \$100.00 and paid the tenant accordingly.

Analysis

17. I have reviewed the testimony and evidence of the landlord and tenant in this portion of the claim. In this claim, the first thing that has to be determined is if this claim falls under the jurisdiction of the *Residential Tenancies Act, 2018*. I will first examine the claim from this perspective first and foremost.
18. It must first be stated that there is no doubt that there is a relationship of a landlord and tenant for this tenancy; that much is clear. However, this situation within the tenancy is not so clear. My first thought that this situation of the tenant completing work was a case of a tenant working in lieu of rent being paid. Section 11 of the *Residential Tenancies Act, 2018* covers this and reads:

Rent paid in other than money

11. (1) Where rent is payable in part or in whole in other than money, a landlord shall give to the tenant a written document, signed by the landlord, specifying the payment in other than money and valuing in money each item contained in the payment.

(2) The written document referred to in subsection (1) may form part of a written rental agreement.

(3) Subsection (1) applies whether rent is payable in other than money on one or more occasions or on a regular basis.

(4) Where a landlord fails to value in money each item contained in the payment under subsection (1), the director may, upon hearing an application under section 42, value each item contained in the payment.

(5) Where there is no written document which provides for payment of rent in whole or in part in other than money, the director may, upon hearing an application under section 42, determine whether an agreement exists between the parties and may value in money each item contained in the payment.

19. It is clear from this claim, that it's not a work in lieu of rent as indicated in the section above. The tenant has acknowledged that he had paid his rent as normal and had received a payment of cash from the landlord for the work completed.
20. It is readily apparent that the arrangement between the landlord and tenant resembles more of an employer/employee or a contractual work arrangement than anything associated with a matter of Residential Tenancies. I find that this tribunal does not have the jurisdiction to rule on the claim before it as it is a matter for an employer/employee concern and therefore would fall under the *Labor Standards Act* and not the *Residential Tenancies Act, 2018*. As such, this tribunal relinquishes jurisdiction for this claim.

Decision

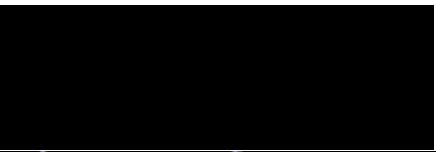
21. The tribunal relinquishes jurisdiction for this claim.

Summary of Decision

22. The tribunal does not have jurisdiction to adjudicate this claim

07 May 2020

Date



Michael Greene
Residential Tenancies Tribunal