

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0582-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:15 pm** on **02 June 2021** 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 the landlord, participated in the hearing and was represented by [REDACTED] – Property Manager. (*Affirmed*).
3. The respondent, [REDACTED] hereafter referred to as the tenant, participated in the hearing. (*Absent and Not Represented*).
4. The details of the claim were presented as a written monthly agreement with rent set at \$1200.00 per month and due on the 1st of each month and a security deposit in the amount of \$600.00 was collected on or about 22 January 2019. The landlord issued a termination notice on 01 January 2021 for the intended termination date of 12 January 2021 under section 19 of the Act.
5. 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

6. 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 **07 May 2021** by serving the original documents to the tenant to the email address [REDACTED] with email and verification attached.

A phone call was placed to the tenants to the numbers on file:

[REDACTED] There was no answer and no availability to leave a message.

7. 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.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$4673.42**;
 - b) Payment of late fees **\$75.00**
 - c) Compensation for Damages **\$4031.24**
 - d) Application of Security Deposit **\$600.00**
 - e) 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 Sections 19, 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 - \$4673.42

Relevant Submissions

Landlord Position

11. The landlord representative testified that they had taken over this rental account recently and the tenant was an already established tenant. The landlord stated that there was a written monthly rental agreement in place with the tenant and rent set at \$1200.00 per month. Rent is 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 22 January 2019.
12. The landlord representative testified that the tenant had agreed to replace the fridge and use the money from June 2020 to fund the purchase. The landlord indicated that the fridge was never replaced and is seeking the rent from June 2020 that was never paid. Further, the landlord testified that the tenant failed to pay rent from October onward and presented rental records (**Exhibit L # 1&2**) to support the claim for rent owing. The landlord stated as of the hearing date 02 June 2021 rent is outstanding in the amount of **\$4673.42** for the period ending 13 January 2021.
13. The landlord representative submitted into evidence a copy of the test communications between the tenant and owner (**Exhibit L # 3**) to verify the arrears and the agreement on the fridge which was never fulfilled by the tenant.

Analysis

14. I have reviewed the testimony and evidence of the landlord representative 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 landlord actually owed by the tenant.
15. With respect to the arrears being claimed, I agree with the landlord representative that rent is owed. The communications regarding the fridge replacement is clear. The facts are the tenant was to use the funds from June's rent to purchase a new fridge and forward the landlord the receipt for same. Evidence is such that this never happened and the tenant did not pay rent to the landlord for June 2020.
16. Further, it is apparent from the records that the last payment of rent from the tenant was on 20 October 2020 in the amount of \$600.00 and nothing after this payment.
17. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. Records are clear that rent for the period ending 31 December 2020 have not been paid leaving a balance of **\$4200.00**.

18. The landlord has terminated the tenancy (**Exhibit L # 4**) and testimony is such that the tenant vacated on or about 13 January 2021. As such, rent for January 2021 can only be calculated up to and including the day the tenant vacates (13 January 2021). That calculation is $(\$1200.00 \times 12 \text{ months} = \$14,400.00.00 \div 365 \text{ days} = \$39.45 \text{ per day} \times 13 \text{ days} = \$512.85)$. Rent for January 1 - 13, 2021 is **\$512.85**.

Decision

19. The landlord's total claim for rent succeeds as follows:

a) Rent owing up to 31 December 2020	\$4200.00
b) Rent owing for January 1 – 13, 2021	<u>512.85</u>
c) Total due to Landlord.....	<u>\$4712.85</u>

20. As the landlord's claim is only for the amount of \$4673.42, the claim shall succeed at this amount of **\$4673.42**.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

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

22. The landlord testified that the tenant has been in arrears since they became before October 2020. The landlord 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 January 2021. 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 owes rent to the landlord.

Decision

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

Issue 3: Compensation for Damages - \$4031.24

Relevant Submissions

Landlord Position

26. The landlord testified that when the property was recovered it was noticed that the following items were damaged as outlined (**Exhibit L # 5**):

- a. Repair Kitchen
 - i. Repair large hole (replace gyproc, plaster, paint)
 - ii. Labor
- b. Replace toilet seat in main bathroom
 - i. Toilet Seat
 - ii. Labor
- c. Repair downstairs bathroom
 - i. Replace toilet
 - ii. Replace flooring
 - iii. Replace Baseboards
 - iv. Paint Bathroom
 - v. Chaulk the shower
 - vi. Labor
- d. Repair various doors
 - i. Door Jam
 - ii. Door Stop
 - iii. Trim
 - iv. Labor
- e. Replace flooring in main floor bedrooms
 - i. Flooring
 - ii. Underlay
 - iii. Labor
- f. Clean the unit
 - i. Materials
 - ii. Labor

27. The landlord representative testified that there was a significant amount of damages done to the property. The landlord representative indicated that there were holes in walls, door knobs missing, broken doors and the carpets were disgusting. The landlord representative presented into evidence photos of the property (**Exhibit L # 6**) taken after the tenant vacated the property.

28. The landlord representative testified that the smell in the property was unbelievable with dog feces everywhere. Further, she added that the tenant left personal items in the property to deal with.

29. The landlord representative submitted into evidence invoices (**Exhibit L # 9**) for the purchase of materials to effect the repairs.

Analysis

30. 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
31. The old saying goes that a picture paints a thousand words. This could not be truer in this matter. The property, outside of the cleanliness and damages, appears to be a modern style home with modern décor and a well-kept property.
32. The landlord representative has not made any sort of indication on the age of the damaged items in question. The ages are important as all items in a rental property are subject to depreciation. For the purpose of this decision, I will assess the age of the items in the property based on the photos to be within a 5 year period. Further, I will depreciate the award by 15%.
33. There are few specific items I will address separately. The landlord representative has indicated that the landlord hired a contractor to complete the work, but did not provide and invoice from the contractor to address the labor. The labor is claimed at a rate of \$30.00/ hour in the breakdown. There is no question that repairs were required and as such, I will allow a labor rate provided by the Residential Tenancies Section for self-labor. That rate is at \$20.15 per hour for the period in question. There are also questions of the amount of labor (hours claimed) in at least two sections which I will address below.
34. In considering the downstairs bathroom claim, I have reviewed the evidence regarding replacing the flooring. There appears, from the photos, that the flooring was not noticeably damaged and therefore any replacement would be at the discretion and cost of the landlord.
35. Again in review of the evidence there is no doubt that that property was left in a condition that required a complete cleaning. The number of hours claimed to clean the property is 40 hours. I find that this is not a reasonable amount of hours given the evidence. It is likely that the landlord would have been better served to hire a cleaning company to clean the unit. I find that 40 hours is unreasonable and award 30 hours for the self-cleaning labor.
36. The balance of the landlord's claim I accept and is supported in evidence. The tenant has failed to maintain the property as is reasonably required by a tenant. The landlord's claim is well within what can be considered reasonable depreciated market pricing for similar repairs.

37. Based on the evidence, this tribunal can reasonably assess that the damages as described are the responsibility of the tenant and the associated award allowing for any reductions by the tribunal and depreciation are outlined in the table below.

Area	Amt Claimed	Self Labor Assessed	Disallowed	Total claim	Depreciation %	Award Amt
Kitchen						
Materials	\$ 148.63			\$ 372.42	25	\$ 316.56
HST	\$ 22.29					
Labor (10 hrs)	\$ 300.00	\$ 201.50				
Main Bath						
Materials	\$ 19.77			\$ 26.17	25	\$ 22.24
HST	\$ 2.97					
Labor (0.17 hrs)	\$ 7.50	\$ 3.43				
Downstairs Bath						
Materials	\$ 309.04		\$ (69.99)	\$ 758.27	25	\$ 644.53
HST	\$ 46.36		\$ (10.50)			
Labor (24 hrs)	\$ 720.00	\$ 483.36				
Repair Doors						
Materials	\$ 95.22			\$ 192.71	25	\$ 163.80
HST	\$ 16.89					
Labor (4 hrs)	\$ 120.00	\$ 80.60				
Bedrooms						
Materials	\$ 466.67			\$ 939.67	25	\$ 798.72
HST	\$ 70.00					
Labor (20 hrs)	\$ 600.00	\$ 403.00				
Cleaning						
Materials	\$ 44.41			\$ 655.57	25	\$ 557.23
HST	\$ 6.66					
Labor (40 hrs)	\$ 1,200.00	\$ 604.50				
TOTAL AWARD						\$ 2,503.09

Decision

38. The landlords' claim for damages succeeds in the amount of \$2503.09.

Issue 4: Application/Refund of Security Deposit

Landlord Position

39. The landlord testified that a security deposit in the amount of \$600.00 was paid on the property on or about 22 January 2019. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
40. The landlord acknowledges holding the security deposit in the amount of \$600.00.

Analysis

41. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$600.00.
42. The landlord's claim has been successful as indicated above. The security deposit plus accrued interest is \$600.00 as the interest rate for 2019 – 2021 is set at 0%.
43. The security deposit is an asset of the tenant's to be held against any loss incurred by the landlord attributed to the tenancy. In this matter it has been determined that there was attributable loss and as such, the landlord is entitled to offset the security deposit against a demonstrated loss as outlined in the attached order.

Decision

44. As the landlord's claim above has been successful, the landlord shall offset the security deposit as outlined in the attached order.

Issue 5: Hearing Expenses

Landlord Position

45. 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 # 8**). The landlord is seeking this cost.

Analysis

46. I have reviewed the testimony and evidence of the landlord 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

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

Summary of Decision

48. The landlord is entitled to the following:

a)	Rent Owing (Up to and including 13 January 2021).....	\$4673.42
b)	Late Fees.....	75.00
c)	Compensation for Damages	2503.09
d)	Hearing Expenses	<u>\$20.00</u>
e)	Sub-total	\$7271.51
f)	LESS: Security Deposit.....	<u>(\$600.00)</u>
g)	Total owing to Landlord	<u>\$6671.51</u>
h)	Any incurred costs associated with certification of the attached Orders	

07 July 2021

Date

Michael Greene
Residential Tenancies Tribunal