

Residential Tenancies Tribunal

Application 2023-0936-NL

Decision 23-0936-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 9:03 AM on 15 November 2023 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, attended the hearing.
3. The respondents, [REDACTED] hereinafter referred to as “tenant1”, and [REDACTED] hereinafter referred to as “tenant2”, both attended the hearing.
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 applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

5. The landlord stated tenant1 was served electronically on 3 November 2023 at [REDACTED] an Application for Dispute Resolution. The landlord informed tenant2 was served electronically on 3 November 2023 at [REDACTED] an Application for Dispute Resolution (**Exhibit L # 1**).
6. Neither tenant contested receipt of the Application for Dispute Resolution on 3 November 2023. The landlord did not call any witnesses during the hearing and did not amend her application. Neither tenant called any witnesses during the hearing.

Issues before the Tribunal

7. The landlord is seeking the following:
 1. Compensation for Damages in the amount of \$1,453.63
 2. Rental arrears in the amount of \$1,050.00
 3. An order for payment of utilities owing of \$47.67
 4. Hearing expenses in the amount of \$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 case is section 19 of the *Residential Tenancies Act, 2018*, policy 9-003 *Claims for Damage to Rental Premises* and policy 9-005, *Life Expectancy of Property of the Residential Tenancies Program*.

Issue 1: Compensation in damages- \$1,453.63

Relevant Submissions

10. The landlord reviewed the details of the rental agreement. She stated that they had a written fixed rental agreement which started on 21 June 2023 and in place until 20 December 2023 with rent set at \$1,150.00, pay own utilities, initially with rent due on the 1st of each month. After being requested by the tenants, the landlord agreed for rent to be paid on the 21st of each month. There was no security deposit collected on this tenancy (**Exhibit L # 2**). The landlord stated the tenants moved out of the rental property at [REDACTED] NL, [REDACTED] on 25 August 2023.
11. The landlord suggested after the tenants exited the rental property, there were damages inside and outside the rental property, along with waste removal of belongings of the tenants (**Exhibit L #3**). There are 7 items in that breakdown, and I've grouped them under the following headers:

Item #1: Broken shower and missing parts

12. The landlord is seeking \$244.93 for the broken shower and missing parts which the tenants caused. She did not offer the age of the shower and did not offer this Tribunal any pictures or receipts for the shower and missing parts. The landlord did offer pictures of the shower with her application (**Exhibit L # 4**).
13. In regards to item # 1, tenant1 suggested since he lived in the rental unit, the "gaskets and knobs" of the bathtub and the taps always leaked water and were damaged. He testified he attempted to find the replacement parts of the taps in both Clarenville and St. John's and was unable to locate the parts to fix the faucet set of the bathtub as he was willing to repair those items.

Item #2: Plumbing fees

14. The landlord is seeking \$377.00 for costs of having a plumber install the new shower and missing parts. She did offer a receipt for the plumbing work which included the

purchase of a new faucet set. The landlord testified tenant1 had offered to complete the plumbing work, however did not complete the work and a plumber was hired.

15. In regards to item # 2, Tenant1 suggested that the costs associated with the plumber should not be the responsibility of the tenants as he advised these costs are often associated with holding rental properties. He testified he attempted to complete the plumbing repairs to prevent continued damages which he had previously notified the landlord about (Exhibit T # 1).

Item # 3: Damaged door trims and moldings

16. The landlord is seeking \$129.35 for damaged door trims and moldings. She did not indicate the age of the door trim and moldings or receipts for these items and did not suggest when those items were last replaced in the rental unit. With her application, the landlord did offer pictures of the door trim and molding (Exhibit L # 4).
17. In relation to item # 3, tenant1 suggested the rental unit was very cold and damp, which he attributed to flooding in the laundry room common area of the rental. He stated dampness of the rental did not help with the upkeep of the moldings as he described the moldings, "coming off" the walls. Furthermore, he stated, "I can take responsibility for the damaged trim".

Item # 4: Damaged baseboards and paint

18. The landlord is seeking \$55.17 for costs of damaged baseboards and paint removed. She did not offer any insight when the items were last replaced and/or painted and did not provide any receipts for the costs associated with replacement and painting of the items. With her application, the landlord offered pictures of the baseboards and paint in the rental unit (Exhibit L # 4 and Exhibit L # 5).
19. Tenant2 testified that "part of the damages" to item # 4 (the baseboards and paint on the walls) were caused by their dog.

Item # 5: Circular hole in wall

20. The landlord is seeking \$17.18 for costs of a hole in the wall which she attributed to being caused by a door handle. She offered this Tribunal, along with her application, a picture of the hole a wall of the rental unit (Exhibit L # 6). There was no additional evidence or information provided by the landlord in regards to item # 5.
21. Regarding issue # 5 and a circular hole in wall which appeared to be caused by a door handle, tenant1 stated this hole was present when they first moved into the rental.

Item # 6: Cleaning fees

22. The landlord is seeking \$400.00 for costs of cleaning the rental unit after the tenants had existed. She provided pictures of the rental unit (Exhibit L # 4 and Exhibit L # 5) a signed receipt dated 8 September 2023 from [REDACTED] (Exhibit L # 7).

23. Both tenant1 and tenant2 both disputed the cleaning fees associated with item # 6 and expressed their displeasure with the reliability of the claims of the cleaning person which the landlord hired. Both stated this individual was "biased" against tenant1. They also disputed that much cleaning was required upon the exit of the rental property.

Item #7: Waste removal from personal items in backyard

24. The landlord is seeking \$230.00 for costs of removal of waste from the backyard of the property which was identified as personal belongings of the tenants. Along with her application, the landlord offered this Tribunal pictures of materials left on the property of the rental unit (**Exhibit L # 8**).

25. In relation to item # 7, tenant1 stated some of the materials left in the back yard of the rental were not left by them rather prior tenants of the property; yet, did testify some of the materials left behind were his children's toys.

Analysis

26. Section 10(1)1 and 2 of the *Residential Tenancies Act, 2018*, offers clear insight of the expectations and responsibilities of both landlords and tenants, and states:

1. Obligation of the Landlord- (a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.

(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.

2. Obligation of the Tenant-The tenant shall keep the residential premises clean, and shall repair damage caused by a willful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

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

27. With regards to item #1, Policy 9-003, Claims for Damages to Rental Premises of the Residential Tenancies Program is applicable to the landlord's application. As stated within that policy, "*When making a claim for damages, the applicant shall indicate the total amount of the claim and a detailed breakdown of the damages, with each item valued. In most circumstances, the Adjudicator must consider depreciation when determining the value of damaged property. The responsibility to prove the claim and to value each item of the claim lies with the applicant*". The landlord did not supply with her

application any evidence or testimony a breakdown of the damages. There was no evidence offered on the age of the bathroom shower or if there was a need for full replacement of the item.

28. *Policy 9-005, Life Expectancy of Property of the Residential Tenancies Program* also applies to the landlord's request for compensation for damages. As indicated within that policy, the life expectancy of a shower is 20 years. The life expectancy of piping is 20 years. Life expectancy of a high quality faucet set is 12 years. Low quality is 8 years. The landlord did not offer if the shower only required cleaning and replacement of parts. The landlord's claim for damages in the amount of \$244.93 fails.
29. In relation to item # 2, the landlord did not offer the specific age of the plumbing and bathtub faucet set. She did offer a receipt for installation by a contractor. *Policy 9-005* clearly identifies life expectancy for bathtub being 25 years, faucet of high quality of 12 years, faucet of low quality of 8 years, and pipes of 15 to 20 years. Based on review of the testimony and evidence offered in relation to item # 2, I do not observe any indication of the ages, description of the items which required replacement or time of last repairs on those items. The landlord's claim for damages related to this issue fails.
30. Regarding items # 3 and 4, both tenants testified that their pet contributed to the damages of the moldings, baseboards and need for new paint. Also worth consideration in the matter is *Policy 9-005* which reveals that interior paint life expectancy is between 3-5 years. Although the landlord did not suggest when the walls were last painted within the rental unit, I do accept the tenants testimony that their pet did have an impact on the interior paint. The landlord's claim for damages related to this issue succeeds **\$129.35 and \$55.17**.
31. Upon review of the evidence and testimony related to item # 5, the hole in the wall which the landlord attributed to the door handle; what I observe is a picture of the wall after the tenants had vacated the rental. Tenant1 testified this damage was done prior to their occupancy. Furthermore, I do not observe any pictures prior to their tenancy, or breakdown of the costs associated with repair of this. The landlord's claim for damages related to this issue fails.
32. Regarding item #6, the landlord is requesting reimbursement in the amount of \$400.00 for cleaning which she testified was required after the tenants vacated the rental property (**Exhibit L # 7**). Along with her application, the landlord provided pictures of the unit, along with provided a receipt of the cost associated with cleaning. While the tenants both expressed concerns with a personality conflict between tenant1 and the cleaner, I have no evidence to support this claim. Furthermore, what I do have are pictures indicating the requirement for cleaning and a specific cost associated with this item. As is the case with all rental agreements, either written or verbal, tenants are required to leave the rental in a clean condition. The landlord's claim for **\$400.00** succeeds.
33. Regarding item #7, the landlord was seeking \$230.00 in relation to removal of garbage of the rental unit. During the hearing, tenant1 testified, "some" of his children's toys remained at the unit. The landlord did not provide any breakdown of the costs of garbage cleanup. There were pictures which reveal garbage at the rental unit, however

no receipts. Based on the fact there were no receipts offered in relation to this, *Policy 9-005* reveals that self-labour is set at minimum wage + \$8.00 per hour ($\$15.60 + \$8.00 = \23.60). The amount offered by the landlord to clean the outside of the rental of \$230.00, suggests 8 hours of work was required to clean the outside.

34. Based on the evidence (i.e. pictures and tenant admitting that garbage was left) provided by the landlord, along with her application, I do not observe garbage that would require 8 hours of work to remove, rather three hours of work. Following policy of self-labour, this equates to \$15.60 minimum wage + \$8.00 = $\$23.60 \times 3 \text{ hours} = \70.80 . I find the landlord's claim for \$230.00 will be awarded in the amount of **\$70.80**.
35. The landlord's claim for compensation for damages partially succeeds in the amount of **\$655.32**.

Analysis

36. The tenants shall pay \$659.32 to the landlord for damages as follows:

• Damaged door trims and moldings.....	\$129.35
• Damaged baseboards and paint.....	\$55.17
• Cleaning.....	\$400.00
• Garbage removal.....	\$70.80
• Total.....	<u>\$655.32</u>

Issue 2: Renal arrears- \$1,050.00

Landlord position

37. The landlord testified she was seeking rental arrears for the month of August 2023 in the amount of \$1,050.00. The landlord stated that initially rent was due on the 1st of each month, however the tenants and herself came to a verbal agreement to pay on the 21st of each month. Along with her application, the landlord provided a rental ledger (**Exhibit L # 9**). The landlord testified the tenants did not offer an appropriate termination notice to vacate the rental unit issued to her in August 2023 (**Exhibit L # 10**). She stated she was able to secure a subsequent tenant by 17 September 2023. The landlord stated that the tenants did not pay rent for August 2023 and she was seeking compensation for this.

Tenants position

38. Tenant1 indicated that they had provided the landlord a written request for damages to be repaired related to dampness in August 2023; however, after those repairs were not completed as requested, both chose to exit the occupancy. Tenant1 also disputes that rent for August 2023 was not paid. He stated this rent was paid on 21 July 2023.

39. Tenant2 testified they exited the rental on 25 August 2023 and responded, "I will take ownership of 10 days of rent "as the rental period paid was for between 21 July 2023 until 20 August 2023.

Analysis

40. The landlord and tenants did not dispute that there was a fixed monthly rental agreement for the rental unit. Upon review of the Rental Agreement supplied by the landlord with her application, I review the fixed term agreement was in place for a period of six months up until 20 December 2023 (**Exhibit L # 2**) and indicated monthly rent as \$1,150.00.

41. The landlord provided correspondence which she received from the tenants on 15 August 2023 (**Exhibit L # 10**) with notification that they would be vacating by 1 September 2023.

42. There was testimony by both applicant and respondents during the hearing that rental payment was agreed to be paid on the 21st of each month. Section 18 of the *Residential Tenancies Act*, 2018 is applicable to this situation. As stated in section 18:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises...

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

43. Upon review of the correspondence sent on 15 August 2023 by the tenants, the two-month timeline was not followed as per requirements of the Act.

44. Furthermore, when considering the tenant's correspondence to the landlord indicating they were vacating of the property (**Exhibit L # 10**), consideration must be given to Section 34 of the *Residential Tenancies Act*, 2018 in relation to requirements of notices between landlords and tenants. As defined in Section 34:

Requirements for notices

34. A notice under this Act shall

(a) be in writing in the form prescribed by the minister;

(b) contain the name and address of the recipient;

(c) identify the residential premises for which the notice is given; and,

(d) state the section of this Act under which the notice is given.

45. The notice to vacate of the tenants does not refer to the section of the *Act*, which is a requirement. While the tenants argue that the termination notice provided to the landlord was sufficient due to the landlords' failure to affect requested repairs, the notice itself fails to meet the requirements for notices as per the *Act*.
46. The landlords claim for rental arrears succeeds. However, as the landlord secured a new tenant on 17 September 2023, rental arrears are adjusted to include the period 21 August 2023 to 16 September 2023; or 27 days at a daily rate of \$34.52. (Daily rate calculation: \$1050/month * 12 months = \$12,600 / 365 days = \$34.52 per day)

Decision

46. The landlord's claim for rental arrears succeeds in the amount of **\$932.04** for 21 August to 16 September 2023.

Issue 3: Payment of Utilities- \$47.67

Landlord Position

47. The landlord offered testimony that the tenants did not pay the outstanding utilities after leaving the rental property. Along with her application, the landlord included the rental agreement (**Exhibit L # 2**) which reflects the tenants were responsible for payment of utilities in the rental. A copy of the utilities outstanding was also supplied by the landlord reflecting an amount outstanding of \$47.67 (**Exhibit L # 11**).
48. As clearly defined within the rental agreement, the utilities are the responsibility of the tenants. The landlord's claim for payment of utilities in the amount of **\$47.67** succeeds.

Issue # 4- Hearing expense- \$20.00

49. The tenants submitted a receipt for the hearing expense for the Application for Dispute Resolution (**Exhibit L # 12**) in the amount of \$20.00.

Analysis

50. I find the landlord is entitled to the **\$20.00** hearing expense reimbursement as her application partially succeeds.

Decision

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

Summary of Decision

52. The landlord is entitled to a payment of **\$1,655.03**, determined as follows:

a) Compensation for Damage/Garbage.....	\$655.32
b) Rental arrears.....	\$932.04
c) Utilities outstanding.....	\$47.67
d) Hearing Expenses.....	\$20.00
e) Total owing to Landlord.....	<u>\$1,655.03</u>

07 March 2024

Date

Michael J. Reddy
Residential Tenancies Office