

Residential Tenancies Tribunal

Decision 19-0092-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on **30 January 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 originating applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing and was represented by [REDACTED] (*Affirmed*).
3. The countering applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing (*Affirmed*) and was assisted with an interpreter, [REDACTED] and [REDACTED].
4. The details of the claim were presented as a written monthly rental agreement with rent set at \$740.00 per month (utilities excluded) and due on the 1st of each month. It was stated that a security deposit in the amount of \$550.00 was collected on the tenancy on or about 26 April 2016. The tenant issued a termination notice dated 01 August 2019 for the intended termination date of 31 August 2019 under Section 18 of the *Residential Tenancies Act, 2018*.
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 originating applicant show that tenant was served with the notice of this hearing on the **23 November 2019** by serving the application for dispute resolution document to the tenant personally at [REDACTED].
7. There was no affidavit of service submitted by the countering applicant. The landlord in the matter agreed to waive her right of service and proceed with the applications.

Issues before the Tribunal

8. The **landlord** is seeking the following:
 - a) Compensation for Damages **\$527.09**
 - b) Hearing Expenses
9. The **tenant** is seeking the following:
 - c) Refund of Security Deposit **\$550.00**
 - d) Hearing Expenses

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. Also relevant and considered in this case are Section 42 of *the Act*; Policy 9-3: *Claims for Damages to the Rental Premises*, Policy 9-5: *Life Expectancy of Property* and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Compensation for Damages - \$527.09

Relevant Submissions

Landlord Position

12. The landlord is claiming for damages to the rented premises in the amount of \$527.09 as follows:
 - a. Labor to clean the apartment and paint the bathroom **(\$270.00)**
 - b. Materials for cleaning and painting **(\$257.09)**

13. The landlord testified that when the premises was recovered, it was noted that the property was not cleaned and there was a thick build-up of nicotine in the bathroom which required extensive cleaning and re-painting.
14. The landlord submitted into evidence a breakdown of the claim (**Exhibit L # 2**) along with a copy of the rental agreement (**Exhibit L # 4**), a copy of the rental premises condition report (**Exhibit L # 5**), an invoice from Kent Building Supplies (**Exhibit L # 3**) for the materials as well as photos of the property (**Exhibit L # 1**) showing the claimed damages.
15. The landlord testified that the tenant smoked in the rented premises contrary to the rental agreement and caused the damages claimed today.

Tenant Position

16. The tenant disputes the landlord's claim stating that he cleaned the unit before he vacated the property. The tenant further stated that when he moved into the property, the bathroom was dirty (tub was yellow, walls of the shower were brown, feces on the toilet seat, etc.). The tenant stated that he did not put it in writing to the landlord once he found that the bathroom was not cleaned. The tenant testified that his friend, [REDACTED] was a witness but is not being called at the hearing today.
17. The tenant further testified that the bathroom got worse as he did smoke lightly in the bathroom. He presented photos of the property (**Exhibit T # 2**) when he vacated stating that he swept and mopped and cleaned the fridge and stove when he left.
18. The tenant further added that it is his opinion that the labor rate being charged is excessive and feels the amount of labor is also excessive. He feels he is being ripped off.

Analysis

19. It is incumbent on the applicant in any damage claim to meet the legal tests as identified below:
 - a. Establish that a damage/loss exists;
 - b. Provide a reasonable valuation for the repair/replacement of the loss and;
 - c. Prove beyond the balance of probabilities that the respondent in the claim is responsible/liable for the claimed loss.

20. The landlord has presented her claim that the property was left in a mess by the tenant when he vacated the property. The tenant strongly opposes this claim. The landlord has established a baseline of the condition of the property at the onset of the tenancy with the presentation of the Rental Premises Condition Report. There is no indication on this document that any deficiencies were pointed out in this unit.
21. With respect to the damages, the photographic evidence on both sides is clear. The tenant's photos are limited and taken at a far distance not showing much in detail. The landlord's photos however, depict a clearer picture.
22. There is no question in my mind that the tenant smoked in the bathroom of the unit for the duration of the tenancy which is contrary to the rental agreement. The degree to which smoking occurred really matters little, as the tenant admitted to smoking in the bathroom and a clear result of the damage is evident. As such, I find that the tenant is responsible for the restoration efforts of the bathroom respective of painting and extensive cleaning based on depreciation as determined below.
23. With respect to the balance of the property, the landlord has not shown any additional shots of other parts of the property other than the stove and microwave. With respect to these items, I find that these appliances would require a cleaning and find the tenant responsible.
24. The landlord has made as part of their claim for the labor to clean all walls, windows doors, closet doors and light fixtures. As the landlord has not substantiated these areas of the claim with photos to demonstrate the damages, this portion of the claim fails. I find the tenant not responsible for 8 hours labor @ \$18.00 per hour for a total of \$144.00 as itemized:
 - a. Labor to clean windows – 1 hour @ \$18.00/hour
 - b. Labor to clean doors, closet doors and light fixtures – 2 hours @ \$18.00/hour
 - c. Labor to wash all walls – 3 hours @ \$18.00/hour
 - d. Labor to sweep/mop floors – 1 hour @ \$18.00/hour
25. The landlord is awarded 8 hours labor at \$18.00/hour totaling \$144.00 as itemized:
 - a. Labor to clean appliances – 2 hours @ \$18.00/hour
 - b. Labor to clean and paint bathroom – 6 hours @ \$18.00/hour
26. Respecting the materials being claimed, I find that the materials being claimed are primarily associated with the bathroom with the exception of the paint for the walls at an amount of \$50.92. This item will be disallowed from the award. I find that the tenant is responsible for the materials in the amount of **\$206.17**

Decision

27. The landlord's claim for damages succeeds in the amount of **\$350.17** as follows:

- a. Labor to clean and paint - \$144.00
- b. Materials to clean and paint - \$206.17
- c. **Total Claim Award - \$350.17**

Issue 2: Refund of Security Deposit

Landlord Position

28. The landlord testified that a security deposit in the amount of \$550.00 was collected on the tenancy. The landlord is seeking that this deposit be applied against any order derived from this application and claim.

Tenant Position

29. The tenant agreed with the landlord that the security deposit (**Exhibit T # 1**) was paid and is seeking to have the security deposit in the amount of \$550.00 refunded by way of an order from this application.

Analysis

30. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there are 2 issues here that needs to be addressed: (i) did the tenant pay a security deposit, (2) is the tenant responsible for the claimed damages thereby offsetting the security deposit.

31. Both parties have acknowledged that the security deposit was paid by the tenant in the amount of \$550.00 and the tenant has supplied a copy of the receipt issued for the deposit.

32. The landlord's claim for damages has been successful in part. As such, I find that the landlord shall offset the damages against the security deposit paid and refund to the tenant that portion of the security deposit as determined below which is in excess of the amount of awarded damages. The tenant's claim for a refund of security deposit succeeds.

Decision

33. The landlord shall offset the security deposit against any damages owed as outlined in the attached order.

Summary of Decision

34. The tenant is entitled to the following:

- a) Refund of Security Deposit\$550.00
- b) **LESS: Damages** **(\$350.17)**
- c) **Total owing to tenant**.....**\$199.83**

03 April 2020

Date



Michael Greene
Residential Tenancies Tribunal