

Residential Tenancies Tribunal

Decision 19-0110-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on **25 February 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The originating applicant, [REDACTED] hereafter referred to as tenant1, participated in the hearing (*Affirmed*).
3. The originating applicant, [REDACTED] hereafter referred to as tenant2, participated in the hearing (*Affirmed*).
4. The originating applicant, [REDACTED] hereafter referred to as tenant3, participated in the hearing (*Affirmed*).
5. The originating applicant, [REDACTED] hereafter referred to as tenant4, participated in the hearing (*Affirmed*).
6. The countering applicant, [REDACTED], hereafter referred to as landlord1, participated in the hearing (*Affirmed*).
7. The countering applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing (*Affirmed*).
8. The details of the claim were presented as a written fixed term rental agreement commencing 01 October 2016 with rent set at \$1200.00 per month (utilities excluded) and due on the 1st of each month. The agreement term was set to expire on 30 November 2019. It was stated that a security deposit in the amount of \$575.00 was collected on the tenancy on or about 04 September 2016. The landlord issued a termination notice dated 23 September 2019 for the intended termination date of 01 November 2019 under Section 20 of the *Residential Tenancies Act, 2018*.

9. 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

10. The affidavit submitted by the originating applicant show that landlord1 was served with the notice of this hearing on the **12 November 2019** by serving the application for dispute resolution document to the agent for the landlord, [REDACTED], personally at the rental property.

11. The affidavit submitted by the originating applicant show that landlord2 was served with the notice of this hearing on the **12 November 2019** by serving the application for dispute resolution document to the agent for the landlord, [REDACTED], personally at the rental property.

12. The affidavit submitted by the countering applicant show that tenant1 was served with the notice of this hearing on the **13 November 2019** by serving the application for dispute resolution document to tenant1 at the email address: [REDACTED] and attaching a copy of the sent email and verification for the validity of the email address.

13. The affidavit submitted by the countering applicant show that tenant2 was served with the notice of this hearing on the **13 November 2019** by serving the application for dispute resolution document to tenant1 at the email address: [REDACTED] who is at least 16 years of age and lives with tenant2. The landlord has attached a copy of the sent email and verification for the validity of the email address.

14. The affidavit submitted by the originating respondent show that tenant3 was served with the notice of this hearing on the **13 November 2019** by serving the application for dispute resolution document to tenant4 at the email address: [REDACTED] who is at least 16 years of age and lives with tenant3. The landlord has attached a copy of the sent email and verification for the validity of the email address.

15. The affidavit submitted by the originating respondent show that tenant4 was served with the notice of this hearing on the **13 November 2019** by serving the application for dispute resolution document to tenant4 at the email address: [REDACTED] and attaching a copy of the sent email and verification for the validity of the email address.

16. The landlords' property manager was [REDACTED] ([REDACTED]). He was never called as a witness.

17. The landlords amended the claim to increase the amount being claimed for damages by \$213.79 respecting the amount to repair the backyard sod. The new total of damages is \$3168.66.

Issues before the Tribunal

18. The **tenants** are seeking the following:

- a) Refund of Security Deposit **\$575.00**
- b) Hearing Expenses

19. The **landlords** are seeking the following:

- c) Compensation for Damages **\$3168.66**
- d) Rent Owing **\$80.00**
- e) Late Fees **\$5.00**
- f) Hearing Expenses

Legislation and Policy

20. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.

21. Also relevant and considered in this case are Section 20 of *the Act*, 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 - \$3168.66

Relevant Submissions

Landlord Position

22. The landlords are claiming for damages to the rented premises in the amount of **\$3168.66** as follows:

- a. Re-plaster, sand, prime & paint new wall in ensuite living room
- b. Re-plaster, caulk, & paint damaged trim in 2 archways
- c. Re-plaster damaged drywall in porch
- d. Oil prime & stain block the front porch, living room & kitchen ceiling
- e. Plaster touch-ups in porch and basement stairwell, living room

- f. Paint front hallway, basement stairwell & kitchen/dining room ceiling
- g. Replace baseboards, prep and paint new baseboards in front hallway
- h. **Total A-G above (\$1725.00).**
- i. Cleaning services, mold treatment (RE: unapproved wall Installation) **(\$977.50).**
- j. Move washer and dryer back into place **(\$50.00).**
- k. Replace damaged closet doors in porch **(\$202.37).**
- l. Repair sod in back yard **(\$213.79).**

23. The landlords testified that the rental agreement which both parties signed (**Exhibit T # 1**) specifically stated that there were to be no pets in the property. The landlords further added that the tenants brought two dogs into the property (*Chocolate Labrador and a Collie*).

24. The landlords further testified that the before pictures presented were taken just prior to the tenants moving in (late September 2016).

25. The landlords testified that the property was in good condition before the tenants took possession (01 October 2016). The landlords presented a condition report (**Exhibit L # 20**) which was completed and signed by all parties on 09 December 2018, mid-way through the tenancy. The report shows the only concern noted at the time was the condition of the back deck (needed replacement).

26. The landlords testified that the tenants left the property in a condition that required cleaning as a direct result of the presence of the dog which were not approved to be in the property. The landlords submitted into evidence the following:

- a. Claim breakdown (**Exhibit L # 18**)
- b. Photos of the property before the tenants (**Exhibit L # 1**)
- c. Photos of the property after the tenants vacated (**Exhibit L # 2**)
- d. Invoice from Bye the Bay Cleaning services (**Exhibit L # 3**)
- e. Cleaner affidavit (**Exhibit L # 4**)

27. The landlords testified that the cleaners were not able to be present but an affidavit was presented (**Exhibit L # 4**) to outline what was done at the property. The landlords testified with support from the cleaners' affidavit, stated that the cleaning was required as a direct result of the dogs being in the property and mold around the windows. The landlords stated that the floors were cleaned and sanitized, carpets were shampooed and sanitized, air exchanger filters and core were cleaned and the windows were cleaned and treated for mold at a cost of \$977.50.

28. The landlords testified that the tenants constructed a wall/doorway in the living room, turning it into another bedroom. The landlords submitted photos of the new construction (completed without permission) (**Exhibit L # 6**). The landlords did indicate that consent was given to the tenants after the construction was done with the condition that the new construction was removed by a professional and repaired prior to vacating the property. The landlords testified that this was not

done and testified that the repairs required involved a plasterer/painter and submitted a quote from Wallspace Plaster & Paint (**Exhibit L # 15**) in the amount of \$1725.00. The landlords further testified that there were areas on the walls of the staircase and porch that also required plaster repair and painting. The landlords as well photos of the stairway walls (**Exhibit L # 7**) and photos of the porch (**Exhibit L # 8**) to demonstrate the damages. The quote was for the entire repair.

29. The landlords are claiming for the replacement of the washer and dryer that was disconnected by the tenants upon moving into the property. The landlords testified that they hired their property manager to move the landlords' washer and dryer back into place and re-connect them at a cost of \$50.00. There was no receipt submitted. The landlords testified that the tenants used their own washer and dryer.
30. The landlords are seeking the replacement of the damaged closet doors in the porch. The landlords referred to the photos (**Exhibit L # 8**) and further submitted into evidence an online quote for the replacement bi-folds from Kent Building Supplies (**Exhibit L # 19**) in the amount of \$202.37 HST incl.
31. The landlords are seeking to have the lawn area in the backyard repaired due to the damage created by a fire pit, the skidoo storage and the storage of a wood pile. The landlords referred to the photos of the area (**Exhibit L # 9**) along with an email quote from [REDACTED] of Central Landscaping (**Exhibit L # 17**) quoting the repair at **\$250.00 plus HST (\$287.50)**.

Tenant Position

32. The tenants dispute the landlords' claim of cleaning the property stating that they cleaned the unit before they vacated the property. The tenants testified that the landlords were fully aware that they had dogs but admits that they did not get permission from the landlords to have the dogs. Additionally, the tenants argue that there were tenants previous who had dogs that would have also created hair in the HVAC system. The tenants testified that the entire property was cleaned prior to vacating and submitted videos (**Exhibits T # 2 - 13**) showing the condition of the property as they left the unit. The tenants further submitted photos of the property (**Exhibit T # 14**) taken as they were vacating. The tenants testified that when they moved into the property, they actually moved in literally just as the previous tenants moved out. The tenants questioned when the landlords took the before photos as there was no time between tenants and suggested the photos were taken at another time before another tenant.
33. The tenants testified that the addition was a doorway and not a wall as described by the landlords. They testified that the structure was removed and repairs completed as indicated in the photos submitted. The tenants doesn't see this as an issue.

34. The tenants did not provide any commentary on the re-connecting of the washer and dryer.
35. The issue of the damaged closet doors was not addressed by the tenants in their presentation other than the presentation of the videos for the area of the home (**Exhibit T # 7**).
36. The tenants testified that there was no lawn out in the back yard, but rather it was all weeds. The tenants did not dispute the fact that the fire pit was there and the skidoo was stored on the lawn in front of the shed. The tenants argue that the lawn/weeds will grow back and this portion of the claim is therefore excessive.

Analysis

37. 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.
38. The tenants have in their presentation raised issues and touched on issues that are not relevant to the claim presented. It is not the role of the tribunal to solve each and every nuance or discrepancy between a landlord and tenant during a tenancy. The tribunal can only deal with issues submitted with the claims. As an example, the service on the furnace, the condition of the shower and the level of oil in the tank are not concerns raised in the landlords' claim and therefore will not be addressed in this decision.
39. There are a number of points that need to be addressed that raises questions. The landlords failed to bring forth a key witness in this matter, the property manager. It is apparent that this person was instrumental in establishing and managing the tenancy and would have first-hand knowledge regarding the photos and when they were taken, the condition of the property both before and after and yet, this person's evidence was not submitted. I find myself questioning how the landlords were able to get photos if the outgoing and incoming tenants met at the door and exchanged keys. The only way, was the photos were taken by the outgoing tenants, which hasn't been established. The condition report completed on 09 December 2018 did not indicate any issues except a dangerous back deck. I can take this as a baseline of the condition.
40. The tenants walk through shows there was mold in the shower area as they vacated. I would have expected that to have been noted on a condition report, thus it would have had to occur between 09 December 2018 and the vacating

date 02 November 19. Similarly, with the mold on the windows, I make the same deductions. In addition, I find it hard to believe that tenants would not address mold on the windows from a previous tenant and leave it there for some 3½ years without either addressing it with the landlords or cleaning it themselves.

41. Both parties' evidence regarding photos are at polar opposites of the spectrum of each other. I am aware that the landlords were not in the area at the beginning of the tenancy and therefore I know that they did not attend to the property prior to the tenants taking possession. We have not heard from the property manager, which is unfortunate as he would likely have answers to many of my questions regarding the evidence. It is unfortunate as well as his testimony likely would have tied up loose ends and questions.
42. The bulk of the cleaning charged by the cleaners was related directly to the dogs in the property (clean and sanitize carpets, floors and clean HVAC from pet hair). The tenants did breach the conditions of the rental agreement which specifically said no pets. In breaching the agreement, the tenants accept the effects this breach brings should the pets cause damage as it relates to pet hair. The tenants are relying on the notion that a previous tenant had pets as a defense. The previous tenants may very well have had pets, but this evidence was not led or presented at the hearing by either party. I see this defense as a smoke screen on behalf of the tenants in an attempt to deflect the issues at hand. There was an affidavit submitted by the cleaners which outlines the need for a sanitizing and cleaning due to the pets. This is a legal oath subject to penalties under the Criminal Code and as such I take that the person taking oath did so with this in mind. I accept the statements of the cleaners that the presence of the pets caused a need for the cleaning and sanitizing of the floors and HVAC system. I am not convinced of the landlords before pictures however, but they are not instrumental in this portion of the decision.
43. I accept the landlords' evidence and find that the tenant is responsible to have the property cleaned because of the breach of the agreement and bringing pets into the property without permission. The pets created a need to have the property sanitized. The landlords' claim for cleaning services succeeds in the amount of **\$977.50**
44. In a similar fashion to the pets, the tenants made alterations to the property without the prior consent of the landlords and erected an entrance system and created a new bedroom in the property. The landlords did consent after the alterations were done with the condition that it is removed professionally and returned to the pre-condition. It is clear from the landlords' photos that the system was removed and the trims re-installed. However, the paint used by the tenants to touch-up was not the same color or there was fading in the color making it noticeable. For this portion of the plaster/paint claim I find the tenants responsible.
45. It was also noted that there were other areas of concern regarding plastering and painting. It is apparent from the landlords' photos that there would have been some nicks and apparent picture hanging holes through the home repaired as

well. One area of the landlords' photos that is in the forefront is an area that appears to have been an old doorway filled in with the joins cracking under a poor plaster job. This appears to have been something done by the landlords or a previous owner and time has seen cracks appear in the plaster. I note that this was repaired by the plasterer yet is not the responsibility of the tenants. A complete picture of what exactly the plasterer did in the property is not clear. The landlords' pictures of the porch and the stairwell are clear that care was not taken either during the tenancy (porch) or during the move (stairwell). In both regards, the tenants are responsible for the dings, scratches and marks placed on the walls that required repair. The Wallspace quote is specific to the areas discussed and as such I accept this quote. I'm sure that the landlords had the property repaired completely but there was no additional quotes submitted to suggest that.

46. A painted surface is depreciable but the repair of the gyproc is not. As there is no breakdown of materials I will assess an arbitrary depreciated value taking into consideration the length of the tenancy and the fact that extra work was completed. I find that **\$800.00** is a reasonable consideration for a tenancy that lasted 3 ½ years, that there was extra work completed and we are really not sure how old the painted surface is.
47. The landlords are claiming for \$50.00 for the reinstallation of the washer/dryer by the property manager. The landlords have failed to show any receipts for this payment, thereby failing to substantiate the claim as required. As such, this portion of the landlords' claim fails.
48. The landlords are seeking compensation for the replacement of two bi-fold doors that were damaged by the tenants. The landlords' online estimate from Kent is for 2 doors however, the evidence presented by the landlords photos shows that only one doors was damaged. The two doors are not connected, so the replacement of one door is possible. There is no doubt that the spine of the door was damaged and this certainly renders the door unusable. I accept the landlords' evidence and award compensation for the replacement of one door in the amount of **\$101.19 HST Included**.
49. The backyard repair is an area of contention. I will speak first to the tenants defense that the lawn is all weeds. I would hazard to guess that a majority of homes in the areas see the green portion of the land is a form of weed and therefore I do not accept the tenants' defense. It is apparent that the area was groomed as if it was a lawn. The tenants willfully placed a fire pit in the area and opted to leave a skidoo resting directly on the ground. These choices lead to the area being damaged. The tenants could have restored the area prior to moving but decided not to do this. I find the tenants responsible to restore the area in question. I further accept the quote from Central Landscaping as reasonable and within market rates for this work. I find the landlords' claim successful in the amount of **\$287.50**.

Decision

50. The landlords' claim for damages succeeds in the amount of **\$2166.19** as follows:

a. Professional Cleaning -	\$977.50
b. Plaster/painting –	800.00
c. Replace Bi-folds –	101.19
d. Repair Backyard -	<u>287.50</u>
e. Total Damage Award -	\$2166.19

Issue 2: Rent Owing - \$80.00

Relevant Submissions

Landlord Position

51. The landlords stated that the tenants over stayed the termination notice by two days and did not pay for these days rent. The landlords are claiming for the two days of rent based on the scheduled rent due. The landlords are claiming \$80.00 for Nov 1 and 2, 2019.

Tenant Position

52. The tenants acknowledged that they were in the property for an extra two days.

Analysis

53. I have reviewed the testimony and evidence of the landlords and tenants in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlords actually owed by the tenants.

54. With respect to the arrears being claimed, I agree with the landlords that rent is owed. Rent is required to be paid by the tenants for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. The tenants over held the property for two days of November 2019. The rent owing is \$78.90 calculated as: (\$1200.00 X12 months = \$14,400.00 ÷ 365 days = \$39.45/day X 2 days = \$78.90). I find that based on the evidence, the tenants owe rent in the amount of **\$78.90** covering the period up to November 1-2, 2019.

Decision

55. The landlords' total claim for rent succeeds in the amount of \$78.90.

Issue 3: Payment of Late Fees - \$5.00

Landlord Position

56. The landlords are seeking payment of late fees as a result of the tenants' failure to pay rent on time.
57. The landlord testified that the tenants have been in arrears since November 1, 2019. The landlord indicated that they are seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018* and the tenants have been in arrears since November 1, 2019.

Analysis

58. Established by undisputed fact above, the tenants were in arrears for the first two days of November 2019 as a result of over holding. 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.
59. The calculated amount would be for the first day late in this case in the amount of \$5.00.
60. The issue of rental arrears has been determined above confirming that the tenants owes rent to the landlords.

Decision

61. The landlords' claim for late fees succeeds in the amount of \$5.00 as a calculated amount for being late for 1 day.

Issue 4: Refund of Security Deposit

Landlord Position

62. The landlords testified that a security deposit in the amount of \$575.00 was collected on the tenancy. The landlords are seeking that this deposit be applied against any order derived from this application and claim.

Tenant Position

63. The tenants agreed with the landlords that the security deposit (**Exhibit T # 1**) was paid and is seeking to have the security deposit in the amount of \$575.00 refunded by way of an order from this application.

Analysis

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

65. Both parties have acknowledged that the security deposit was paid by the tenants in the amount of \$575.00 and the tenants have supplied a copy of the receipt issued for the deposit.

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

Decision

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

Summary of Decision

68. The tenant is entitled to the following:

a)	Damages	\$2166.19
b)	Rent Owing	78.90
c)	Late Fees.....	<u>5.00</u>
d)	Subtotal.....	\$2250.09
e)	LESS: Security Deposit	<u>(\$575.00)</u>
f)	Total owing to landlord	<u>\$1675.09</u>

8 April 2020

Date

Michael Greene
Residential Tenancies Tribunal