

Residential Tenancies Tribunal

[REDACTED] Decision 19-0120-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on **11 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 landlord, [REDACTED], hereafter referred to as landlord1, participated in the hearing (*Affirmed*).
3. The landlord, [REDACTED], hereafter referred to as landlord2, participated in the hearing (*Affirmed*).
4. The tenant, [REDACTED], hereafter referred to as the tenant, participated in the hearing (*Affirmed*).
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$600.00 per month and due on the 1st of each month. A security deposit in the amount of \$400.00 was collected on the tenancy on or about 18 April 2018. The tenant indicated that a termination notice was issued to the landlord on 23 August 2019 for the intended termination date of 28 August 2019 under Section 24 of the *Residential Tenancies Act, 2018*.
6. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicants have 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 applicants have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

7. The affidavit submitted by the landlords show that the tenant, was served with the notice of this hearing on the **26 January 2020** by serving the documents to the tenant personally at [REDACTED] and has had **15 days** to provide a response.
8. The security deposit related to this tenancy was dispensed with in a previous hearing, [REDACTED] and will not be dealt with in this decision.

Issues before the Tribunal

9. The landlords are seeking the following:

- a) Rent in Lieu of Notice **\$600.00**;
- b) Compensation for Damages **\$1064.44**
- c) Payment of Utilities **\$21.79**
- d) Hearing Expenses **\$20.00**

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 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 - \$600.00

Relevant Submissions

Landlord Position

12. Landlord1 stated that they did not receive a proper notice from the tenant when she vacated the rental property (28 August 2019). Landlord1 testified that a notice they received from the tenant on 23 August 2019 for 28 August 2019 was not a proper termination notice as the number of days provided do not fall in line with the requirements of Section 24 of the *Residential Tenancies Act, 2018*. Landlord1 testified that they re-rented the property for October 2019 and are seeking \$600 rent for the month of September 2019 @ \$600.00 per month.
13. Landlord1 testified that they advertised the property for rent in early October and was successful for re-renting late October 2019. Both parties acknowledge that the written notice was issued on 23 August 2019 for 28 August 2019 under Section 24 of the *Residential Tenancies Act, 2018*.

Tenant Position

14. The tenant testified that she issued a verbal notice to the landlords to terminate and followed it up with a paper notice. The tenant acknowledged that the notice she issued was short by one (1) day and posed to be a technical difficulty. The tenant disputes this portion of the claim and doesn't feel it is justified.

Analysis

15. I have reviewed the testimony and evidence of the landlords and tenant 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 tenant.
16. With respect to the rent in lieu of notice being claimed, there are a number of factors that need to be considered, the first is the notice. Neither party has submitted into evidence an actual copy of the notice in question. Both parties have acknowledged in this hearing and the previous hearing ([REDACTED]) that a notice was issued by the tenant on 23 August 2019 for 28 August 2019 under Section 24 of the *Residential Tenancies Act, 2018*.
17. This poses a problematic situation concerning the notice. It is clear that the notice does not allow for 5 clear days as required under Section 24 of the *Residential Tenancies Act, 2018*. Which, transitions into my next direct point of contention, that being the section the notice which the notice was issued under. It was issued under Section 24 as both parties agree but the appropriate section would be Section 23 where a landlord contravenes peaceful enjoyment of the property.
18. A landlord is entitled to a proper notice of termination regardless of merit of the notice. In this case all indications are the notice that was issued, was faulty on at least two parts of the notice. This would render the notice to be not valid or proper. A landlord is also required to mitigate any potential loss to the property as quickly as is reasonable. This claim deals with damage issues that involve plastering and painting to several areas of the property. This would have been completed during the month of September 2019, however, the landlord did not even attempt to re-rent the property until posting the property for rent until 07 October 2019. Mitigation is not taking your time with repairs knowing that the tenant would be responsible for the rent for the month of repairs. It is making the repairs and minimizing the loss as quick as reasonably possible. I find that the landlords were slow to mitigate the loss, perhaps thinking that the tenant would be responsible. For the damages contained in this claim, it should take no longer than a week to complete the repairs. As such, I will allow an award for a ½ month of rent in lieu of notice as the tenant did fail to provide a proper notice. As such, the landlords' claim succeeds in the amount of \$300.00.

Decision

19. The landlords' claim for rent in lieu of notice succeeds in the amount of **\$300.00**

Issue 2: Utilities - \$21.79

Relevant Submissions

Landlord Position

20. The landlords stated that they had received an invoice from NL Power (**Exhibit L # 1**) in the amount of \$21.79 for the period (*27 August 2019 to 11 September 2019*). The meter was read on 27 August 2019 as the last reading for the tenant. The landlords testified that given the tenant is responsible for the rent, the tenant should as well be responsible for the utilities for the same period, and is claiming this charge for the utilities.

Tenant Position

21. The tenant disputes the claim stating that she was not in the property and should not be responsible for the electrical charges. She further stated that she gave a notice.

Analysis

22. I have reviewed the testimony and evidence of the landlords and tenant in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the utilities that is being claimed by the landlords actually owed by the tenant.
23. With respect to the utilities being claimed, I agree with the landlords that this charge is the responsibility of the tenant. Utilities are required to be paid by the tenant for the period of use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. Records are clear that the meter was read by NL Power of 27 August 2019 which would have reverted the power back to the landlord beginning on this day. I find that based on the testimony provided, the tenant owes utilities in the amount of **\$21.79** covering the period up to 11 September 2019 as the period of rent in lieu of proper notice.

Decision

24. The landlords' claim for utilities succeeds in the amount of **\$21.79**.

Issue 3: Compensation for Damages - \$1064.44

Relevant Submissions

Landlord Position

25. The landlords are claiming the following:

- a. Replace Bedroom Flooring - \$562.66 (Installed)
 - i. Clean Floor from Wax - \$19.40 (Self-Labor @ \$19.40/hr)
 - ii. Plaster/Paint - \$72.00 (Invoiced)
- b. Clean Bathroom - \$19.40 (Self-Labor)
 - i. Clean Wall (Wax) - \$19.40 (Self-labor @ \$19.40/hr)
 - ii. Replace Baseboards - \$38.80 (Self-labor @ \$19.40/hr)
 - iii. Plaster/Paint - \$48.00 (Invoiced)
- c. Living Area/Kitchen Plaster/Painting- \$72.00 (Invoiced)
- d. Main Entrance Plaster/Painting - \$72.00 (Invoiced)
 - i. Cleaning - \$29.10 (Self-Labor @ \$19.40)

26. The landlords testified that after the tenant vacated the property, there were several areas noted of concern. The landlords submitted the flowing evidence to support the claim:

- a. Photos of the bedroom flooring (**Exhibit L # 2**)
- b. Quote from The Paint Shoppe (**Exhibit L # 3**)
- c. Photos of the bedroom floor (Wax) (**Exhibit L # 4**)
- d. Photos of bathroom walls (**Exhibit L # 5**)
- e. Photos of the living area window (**Exhibit L # 6**)
- f. Invoice from Contractor Jeff Webber (**Exhibit L # 7**)
- g. Summary of Self-Labor Charges (**Exhibit L # 8**)
- h. Invoice from Dulux (**Exhibit L # 9**)
- i. Photos of porch area (**Exhibit L # 10**)
- j. Condition Report (**Exhibit L # 11**)

27. The landlords presented first the damages related to the bedroom. The landlords testified that the flooring in the bedroom was damaged from what was apparently the bed frame of the tenant. The landlords testified that the flooring was approximately 8 years old and a laminate product. The landlords presented photos of the damaged flooring (**Exhibit L # 2**) to demonstrate the damage. The landlords also referred to the rental condition report (**Exhibit L # 11**) which indicates that the floor was in good shape at move in. The landlords presented an estimate from The Paint Shop (**Exhibit L # 3**) to replace the floor totaling \$562.66.

28. Further to the flooring issue in the bedroom, the landlords testified that the tenant had wasted wax on the floor and testified that it took 1 hour of self-labor to remove the wax at a cost of **\$19.40**. In addition, the landlords testified that the tenant had something on the window ledge which caused a burn to the ledge of the bedroom. The landlords testified that they contracted a company to repair the ledge (**Exhibit L # 7**) and referred to the photos (**Exhibit L # 4**) to demonstrate the damage. The landlords are claiming **\$72.00** as demonstrated and charged by the contractor.
29. The landlords are claiming for damages in the bathroom after the tenant vacated the property. The landlords testified that they noted wax was wasted from a shelf in the bathroom and is spilled on the walls below and onto the baseboards. The landlords testified that it was difficult to remove from the wall and baseboards and in removing it, both the wall and baseboards were damaged.
30. The landlords submitted into evidence photos of the areas showing that wax spilled on the areas (**Exhibit L # 5**) and is claiming 1 hour labor to remove the substance from the wall (**\$19.40**) and 2 hours labor (**\$38.80**) to replace the baseboards which were damaged by the cleaning process to remove wax. The landlords are claiming 2 hours labor (**\$48.00**) from the contractor to sand, plaster and paint the wall in the bathroom to repair the areas where wax was removed.
31. The landlords are claiming damage to the ledge in front of the window in the main living area. The landlords stated that it is likely from plants placed in the window without protective trays below them. The landlords referred to photos of the damage (**Exhibit L # 6**) and the contractor invoice (**Exhibit L # 7**) and is claiming for 3 hours to sand, plaster and paint in the amount of **\$72.00** plus an invoice from Dulux (**Exhibit L # 9**) in the amount of **\$65.54** for two gallons. The landlords stated that they are claiming for only one gallon. There was no self-labor hours claimed in this area of the apartment.
32. The landlords lastly are claiming for repairs to the main entrance area respective of an unknown substance left on the ledge next to the entrance. The landlords referred to the photos (**Exhibit L # 10**) and is claiming \$29.10 of self-labor to attempt to clean the substance without success. Further the landlord is claiming \$72.00 for 3 hours of contracted services (**Exhibit L # 7**) to sand, paint and plaster the area in question.

Tenant Position

33. The tenant testified that the damage to the flooring was the result of the frame of her bed. She stated that she did not have protective pads on the bedframe and it caused the scratches to the floor. She further claims, however, that she did not waste wax on the floor. The tenant stated that the wax was wasted by the landlord when they were doing renovations and broke the wax warmer. The tenant referred to file ██████████. The tenant acknowledged that she had a Himalayan salt lamp that left a residue ring on the ledge. The tenant claims that it can be easily painted over.

34. For the issues in the bathroom, the tenant acknowledge the wax spillage on the wall and down over the baseboards.
35. The tenant testified that she did indeed place plants in the window and the water spillage caused damage to the window ledge. The tenant acknowledged the damage.
36. The tenant is claiming that the substance on the ledge is "shatter" which is an illicit drug purchased from the landlords and she readily admits to spilling it on the ledge.

Analysis

37. It is evident from the hearing that the relationship of landlords and tenant broke down at some point creating an atmosphere that reasonableness seemed to be pushed out the door. There are portions of the landlords' claim that are a stretch and unreasonable and similarly there are portions of the tenant's defence that are just as much a stretch.
38. I will speak to the invoice presented from the contracting service. There seems to be a 3 hour minimum for a particular area. I would add that in certain areas, I have no doubt that more than what the tenant may be responsible for was also completed while a job was being done. This is reasonable in the construction world from the position that "you're at it so you might as well do it all". This does not make the tenant liable for the entire cost of the project.
39. Additionally, depreciation also has a factor in any damage claim and will be applied here as well.
40. The tenant acknowledged not placing any protective pads on the bed frame. There is no doubt that the tenant's bed caused the damage to the flooring in the bedroom. The flooring is 8 years old and the Residential Tenancies Section determines that a laminate floor has a useful life expectancy of 15 years in a rental unit thereby leaving 7 years of useful life remaining. I find the tenant responsible for the depreciated replacement value of the floor in the amount of **\$262.57** calculated as: $(\$562.66 \div 15 \text{ years} = \$37.51/\text{year} \times 7 \text{ years remaining} = \$262.57)$.
41. As the landlord has been awarded a cost for the replacement of the flooring, a duplicate award for cleaning the floor will not be awarded. The point of spilled wax is a non-issue.
42. The tenant has acknowledged the damages to the bathroom resulting from the spillage of wax from a scented wax warmer. The landlords have claimed \$106.20 total to make the repairs (\$19.40 to clean; \$38.80 to replace baseboards; and \$48.00 to sand, paint and plaster). The landlords testified that the painted surface was approximately 1.5 years old. The Residential Tenancies Section assesses that a painted surface has a useful life of 5 years in a rental unit thereby leaving

3.5 years of useful life in the paint. I further find that for the sole area claimed of wax owing to the tenant, 1 hour of total sand, paint and plaster is more in line with the damage. I am certain that there was more than this area repaired while the contractor was there. I find that the tenant is responsible for the depreciated value of **\$57.54** calculated as $(\$82.20 \div 5 \text{ years} = \$16.44/\text{year} \times 3.5 \text{ years} = \$57.54)$.

43. The tenant has acknowledged the damage to the window ledge in the main living area as a result of water spilling from plants in the window. This is simply a careless action of the tenant with damage resulting. It is apparent from the photos that the damage to the plaster is in the area of a plaster taped seam or metal edge (more likely). This repair would likely create some more challenges and likely take slightly longer. Again the painted surface has a useful life of 5 years with 3.5 years remaining. The landlord has submitted the costing of paint in this section, but will be utilized through the apartment. I will include the cost here and depreciate it accordingly. The landlord claimed cost is \$104.70 (\$32.70 for paint and \$72.00 labor). I find the tenant responsible for the depreciated value of the repairs in the amount of **\$73.29** calculated as: $(\$104.70 \div 5 \text{ years} = \$20.94/\text{year} \times 3.5 \text{ years remaining} = \$73.29 \text{ as a depreciated value})$.
44. The tenant again acknowledged spilling a substance called "shatter" on the ledge of the main entrance. The landlords are claiming 1.5 hours of cleaning time @ \$19.40/hour (\$29.10) and 3 hours (\$72.00) to sand, plaster and paint the area. I find that this portion of the landlords' claim is the area I have concern. The evidence does not support the claim and I find that the landlord is over claiming against the tenant in this section. There was no mention of the damaged edge of the ledge being charged to the tenant and I would estimate that this was repaired or quoted in the repair of the contractor.
45. I find that the landlords' claim at best should amount to 1 hour of cleaning in the amount of \$19.40. I will award this because there was a small drop of a substance on the ledge and the tenant's acknowledgement that she did not clean it. I find the tenant is responsible for 1 hour cleaning of the main entrance totaling **\$19.40**.

Decision

46. The landlords' claim for damages succeeds in the amount of \$412.80.

Issue 4: Hearing Expenses

Landlord Position

47. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit L # 12**). The landlord is seeking this cost.

Analysis

48. I have reviewed the testimony and evidence of the tenant and landlords in this matter. The expenses incurred by the tenant is 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

49. The tenant shall pay the reasonable expenses of the landlords in the amount of \$20.00.

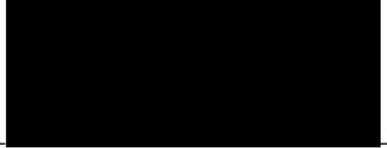
Summary of Decision

50. The landlords are entitled to the following:

a)	Rent Owing	\$300.00
b)	Compensation for Damages	412.80
c)	Payment of Utilities	21.79
d)	Hearing Expenses	20.00
e)	Total Owing to Landlords.....	<u>\$745.59</u>

3 April 2020

Date


Michael Greene
Residential Tenancies Tribunal