

Residential Tenancies Tribunal

[REDACTED] Decision 20-0001-04

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:00 am (Lab Time) on 29 June 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 applicant, [REDACTED], hereafter referred to as the landlord, participated in the hearing. *(Affirmed)*
3. The respondent, [REDACTED], hereafter referred to as the tenant1 did not participate in the hearing. Tenant1 was represented by [REDACTED] as indicated at the hearing.
4. The respondent, [REDACTED], hereafter referred to as the tenant2, participated in the hearing. *(Affirmed)*
5. The details of the claim were presented as a written fixed term rental agreement with rent set at \$1300.00 per month and due on the 1st of each month. It was stated that a security deposit in the amount of \$500.00 was collected on or about 01 March 2018 and the landlord issued a termination notice dated 05 January 2020 for the intended termination date of 19 January 2020 under section 19 of the *Residential Tenancies Act, 2018*.
6. 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

7. The tenant, [REDACTED], authorized at the hearing for her partner, [REDACTED] to act on her behalf during the hearing.

Issues before the Tribunal

8. The landlord is seeking the following:

- a) Payment of rent owing **\$1577.50**
- b) Payment of late fees **\$33.00**
- c) Compensation for Damages **\$3281.23**
- d) Compensation for Missing Items **\$820.32**
- e) Application of the Security Deposit **\$500.00**
- f) 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: Compensation for Damages - **\$3281.23**

Relevant Submissions

Landlord Position

11. The landlord testified that she viewed the property in August 2019 and stated that there was no issues with the unit whatsoever. The landlord further stated that when the property was recovered on or about 08 January 2020, significant damages were noted as follows (**Exhibit L # 4**):

- a. Holes in the sliding screen door
- b. Weather Stripping was damaged on the main door
- c. Blinds were broken in the master and spare bedroom
- d. Bed Framing was broken on the master bed
- e. The property was not clean (Professional cleaning required)
- f. Plaster & Paint several areas of the home

12. The landlord submitted into evidence photos of the property (**Exhibit L # 5**) to demonstrate the condition of the property when the tenants vacated.
13. The landlord testified that upon recovery of the property it was noted that there was a hole in the sliding screen door that needed to be repaired. The landlord referred to the photos (**Exhibit L # 5**) and referred to a quote from Hickey's Construction (**Exhibit L # 4A**) to replace the screen in the amount \$150.00 +HST = \$172.50.
14. In addition to the screen door being broke, the landlord testified that the weather stripping on the main entrance was damaged and required replacement. The landlord referred to the photos (**Exhibit L # 5**) and referred to a quote from Hickey's Construction (**Exhibit L # 4A**) to replace the weather stripping at a cost of \$175.00 + HST = \$201.25.
15. The landlord further testified that the blinds in the master bedroom and the larger spare bedroom were damaged as depicted in photo #'s 7361 & 7362 (**Exhibit L # 5**). The landlord indicated that there were no invoices or estimates to present for these items of the claim.
16. The landlord stated that upon recovery, It was noted that the frame of the master bedroom was broken as depicted in photo #'s 7560 and 7561 (**Exhibit L # 5**). The landlord added that it was the slats and the support leg that was damaged and broken. The landlord submitted the original purchase receipt from Best Buy (**Exhibit L # 6**) in the amount of \$199.99 + HST = \$229.99.
17. The landlord is claiming for the replacement of a kitchen/dining room chair. The landlord testified that there was no estimate available from the company but did submit the original purchase invoice for the complete set (**Exhibit L # 9**) in the amount of \$344.99.
18. The landlord testified that when the unit was recovered the property was left in an unclean condition and required the services of a professional cleaner. The landlord contracted [REDACTED] (**Exhibit L # 7**) to clean the entire house materials included in the amount of \$264.85. The landlord referred to the photos on the Government Server (**Exhibit L # 8**) to demonstrate the cleanliness.
19. The landlord testified that upon recovery of the property it was noted that there were holes in the walls that needed to be repaired and painted. The landlord referred to the photos (**Exhibit L # 5**) and referred to a quote from Hickey's Construction (**Exhibit L # 4A**) to plaster and paint in the amount \$700.00 +HST = \$805.00.

Tenant Position

20. The tenants disputed the landlord's claim stating that the bed in the master bedroom was broken when they arrived. He further testified that the property was not clean upon arrival.
21. Tenant2 testified that there were holes in the walls. He stated that there were no door stoppers. He added that he couldn't say he didn't make any of the holes.
22. Tenant2 stated that he did not take any photos of the deficiencies or notify the landlord of any of the deficiencies.

Analysis

23. As indicated below in paragraph # 44, the credibility of the tenant's testimony has been thrown into question. The same standard is applied here in this section related to the damages.
24. The tenant has attempted to defend the claim from the landlord by stating that damages were done prior to them arriving. He further added that he did not notify the landlord of any deficiencies or take any photos in the event any claim was brought against them. I do not accept this as any sort of defense given the credibility issues of the tenant in this matter. It is just not reasonable what the tenant is saying in his defense.
25. The question of the weather stripping raised a concern for this adjudicator in **Exhibit L # 4A**. There is a charge for screen replacement (\$201.25) and a note that if weather stripping can't be found to match, then the entire door would be replaced in the amount of \$1552.50. The replacement of the door is a "what if" scenario and cannot be quantified. Therefore, the amount of \$1552.50 is removed from the claim. I find that there is a deficiency in the weather stripping and we can and will deal with this portion only. I further find that the tenant is responsible for the damages as described. There was no apparent indication of the age of the weather stripping which is crucial to a depreciated award. In the absence of the age of the deficient item, I am left to make an arbitrary award for compensation using my personal knowledge and previous experience with similar decisions. I find that 50% of the claim is a reasonable award and this portion of the claim succeeds at **\$100.63**.
26. The landlord noted a damaged screen door, which was clearly evident in the photos presented. This damage was not noted by the landlord in August 2019 during an inspection and, therefore, had to have happened during the tenancy from August 2019 to the vacancy date of 28 December 2019. There is no clear age of the screen door in question and thus an arbitrary award will be applied. I find the tenants liable and find that 50% of the estimated cost is a reasonable depreciated award in the amount of **\$86.25** for the replacement of the screen.

27. Whereas it is evident that the blinds in the bedrooms are indeed broken at the time the property was recovered and the damage was not noted in an inspection completed in August 2019, I find that the damage occurred during the tenancy. The landlord has stated that each blind costs \$27.57 to replace but has not supported this with any sort of receipt, invoice or estimate. Given that the landlord has failed to support this portion of the claim in not providing a documented valuation, I find that the claim for blind replacement fails.

28. The damage to the master bedroom bed was evident in the photos presented. Tenant2 testified that the bed was broken upon their arrival. I don't accept this defense. If this was broke on arrival, there is no way the bed could have been slept on for the approximate 18 months of the tenancy. Further, from the original purchase invoice it is documented that the bed was ordered on Christmas day 2017 and therefore not likely delivered until mid-January 2018. That would make the bed 2 months old when the tenants moved in. I find that the damage to the bed frame was the responsibility of the tenants in this matter. The bed at the time the tenancy ended would have been 2 years old and should reasonably have a life expectancy of 10 years in a rental unit. As such, the depreciated value of the bed frame is **\$184.00** calculated as $(\$229.99 \div 10 \text{ years}) \times 8 \text{ years} = \$23.00/\text{year} \times 8 \text{ years} = \184.00 .

29. The landlord also pointed out damage to a kitchen chair in the property which was also purchased on Christmas Day 2017. The landlord presented photos of the damaged chair but were not clear. However, I do accept the evidence of the landlord in this matter and find the tenants responsible. The landlord did not have a receipt for the individual chair but did present the original purchase receipt for the set. There is no clear decisive way to portion the cost from this receipt and therefore a best guess arbitrary award is required. Based on a 10 year life expectancy a depreciation of the entire set would calculate to $\$276.00 (344.99 \div 10 \text{ years}) = \$34.50 \times 8 \text{ years} = \276.00 . Taking this into consideration, I find that **\$50.00** is a reasonable depreciated amount for the chair replacement.

30. The landlord is claiming for the cost associated to have the home professionally cleaned after the tenants vacated. The photos are clear to the condition the property was left. It is clear that the tenants did not or at the very least minimally attempted to clean the property before they vacated. The condition is certainly not a reasonable condition to leave a rented premises. I find the tenants responsible for the cost associated with the cleaning as documented in the invoice from [REDACTED] in the amount of **\$264.85**.

31. The landlord has claimed for the plaster and paint of several areas throughout the home. The estimate presented quotes for plastering/painting and to remount a heater. The heater is not a part of this claim and as such cannot be considered.

32. The photo evidence clearly shows holes or dents in the wall surfaces in several areas with some in areas not near where a door handle might create the dent/hole (ie: hallway, dining room, bathroom, etc). Tenant2 did state that there were holes there when he moved into the property. This statement contradicts

the landlord's inspection in August 2019 which indicates there was no damage in the unit. He also stated that there were no door stops and that "I'm not saying I didn't do some of the holes".

33. There is no indication how old the painted surface is in the property which is necessary to determine an accurate depreciated award. The estimate I find to be excessive for the areas documented in the claim. It may well be a good price when a complete paint job of the property is considered. However, a complete paint job is not warranted in this matter based on the evidence.
34. As such, I find the tenants responsible to the multiple damaged areas to the walls and make an arbitrary award of **\$350.00** for the depreciated award for the plaster and paint of the damaged areas of the rented premises.
35. As such I find that the tenants are responsible for the following:
 - a. Repair Screen Door \$86.25
 - b. Replace Weather Stripping 100.63
 - c. Replace Dining Room Chair 50.00
 - d. Replace Master Bed Frame 184.00
 - e. Clean the Property 264.85
 - f. Plaster/Paint Property 350.00

g. Total owing by Tenants **\$1035.73**

Decision

36. The landlord's claim for damages succeeds in the amount of **\$1035.73**

Issue 2: Rent Owing - \$1577.30

Relevant Submissions

Landlord Position

37. The landlord stated that during a previous hearing ([REDACTED]) rent was awarded to the landlord up to 09 December 2019 leaving \$990.34 owing for December 2019. The landlord testified that the tenant vacated the unit on or about 08 January 2020 when the unit was recovered by abandonment. The landlord further went on to testify that the neighbors in the areas advised her that the tenant actually moved from the unit on 23 December 2019.

38. The landlord submitted a termination notice dated 06 January 2020 to terminate the tenancy on 19 January 2020 (**Exhibit L # 2**). As determined under file [REDACTED], there was no valid termination notice active after 11 November 2019.
39. The landlord is claiming rent for the balance of December 2019 in the amount of \$990.34 as well as rent for January 1 – 14, 2020 in the amount of \$587.16 resulting from the mess and damages that were left by the tenants when they vacated the property. The total claim for rent is **\$1577.50**.

Tenant Position

40. Tenant2 stated that they moved from the property on 02 December 2019 and therefore do not owe the rent being claimed by the landlord.

Analysis

41. I have reviewed the testimony and evidence of the landlord 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 landlord actually owed by the tenants.
42. I first must point out some discrepancies within the testimony of the tenant in this matter and during the testimony of the hearing for [REDACTED]. In this claim the tenant has stated that they moved from the unit on 02 December 2019. This was a statement under affirmation.
43. I first note that the hearing for [REDACTED] was held on 09 December 2019 and at that time the tenants were still living in the unit. During this same hearing, I reference statement of the tenant again that they were moving out of the property on 28 December 2019.
44. The discrepancies pointed out in paragraph 42 & 43 above renders the testimony of the tenant to be unreliable and not credible. I can only assume that the tenant figured that statements from one hearing would not surface in a subsequent hearing, which would be a foolish assumption on the tenant's part.
45. The facts are that as of 11 November 2019 there was no valid landlord termination notice in place to terminate the tenancy. A tenancy must be terminated by either party issuing the proper notice or by way of mutual agreement of both parties, neither of which happened. With respect to the arrears being claimed, I agree with the landlord that rent is owed for the month of December 2019. I find that that the tenants abandoned the rental unit on or about 28 December 2019 as they indicated previously. 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. An award for rent up to 09 December has been issued under [REDACTED] in the amount of \$309.66 thereby leaving an amount owing for December 2019 in the amount of \$990.34. I find the

tenants responsible for this amount of rent. Rent for December 10 – 31, 2019 then is **\$990.34**.

46. The landlord is also claiming for rent for the period of 01 – 14 January 2020 in the amount of \$587.16 as they were unable to re-rent the property due to the damages caused by the tenant. The landlord stated that she was able to secure a new tenant for 15 January 2020.
47. It has been determined above that the tenants were responsible for the damages to the rental unit such that the unit could not be rented. In this regard then, I find it reasonable for the landlord to be awarded the lost rent as the tenants were the direct cause of the loss. I find the tenants responsible for rent for the period of 01 – 14 January 2020 in the amount of **\$587.16**.

Decision

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

a) Rent owing up to 31 December 2019.....	\$990.34
b) Rent owing for 01-14 January 2020	587.16
c) Sub-total.....	\$1577.50
d) Total Arrears	<u>\$1577.50</u>

Issue 3: Payment of Late Fees - \$33.00

Landlord Position

49. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
50. The landlord testified that the tenants were in arrears for the month of November 2019 and paid the rent in full including the assessed \$75.00 late fee on 11 November 2019. The landlord indicated that she is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Tenant Position

51. Tenant2 testified that he was fully aware of what the landlord was asking to have ordered.

Analysis

52. Established by undisputed fact above and from hearing number [REDACTED], the tenants were in arrears for the period 01 December 2019 to the hearing date (29 June 2020). 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.
53. The landlord has been awarded a partial late fee award in the amount of \$42.00 and therefore can only be awarded the difference up to and including the maximum allowable under regulations. I find the tenants responsible for late fees in the amount of \$33.00 representing the difference of the maximum allowable and an award previously issued.

Decision

54. The landlord's claim for late fees succeeds in the amount of **\$33.00** (\$75.00 - \$42.00) as per the regulations established under the *Residential Tenancies Act, 2018*.

Issue 4: Missing Items - \$820.32

Landlord Position

55. The landlord testified that when the property was rented it was fully furnished. The landlord submitted an items list of missing items and original receipts for their purchase (**Exhibit L # 3**). The landlord further testified that the tenants changed the locks on the property without consent of the landlord and did not provide a key for the new locks.
56. The landlord is seeking compensation for the missing items as outlined in the amount of **\$820.32**.

Tenant Position

57. Tenant2 testified that he was fully aware of what the landlord was asking to have ordered. Tenant2 acknowledged the missing items and stated that they were not new items. Tenant2 stated he was ok with the amount the landlord was seeking.

Analysis

58. I have reviewed the testimony and evidence of the landlord and tenant2 in this matter. Tenant2 has acknowledged the missing items and thus no further explanation is required.

59. I must address the comment of tenant2 when he indicated that the items were not new items. The items were not the tenants to remove from the property regardless if they were new, old or somewhere in between. This is a callous way of looking at another person's property.
60. The items that are missing were purchased in January 2018 making them 2 years old when the tenants vacated. The items in question are general household items with an average life span in a rental unit of 10 years. As such, I will use this to depreciate the award. Given the items were 2 years old at the end of the tenancy, that means the remaining useful life is 8 years, The calculation for depreciation then is: $\$820.32 \div 10 \text{ years} = \$82.03/\text{year} \times 8 \text{ years remaining} = \656.26 .
61. I find the tenants responsible for the depreciated cost of the missing items in the amount of \$656.26.

Decision

62. The landlord's claim for compensation for missing items succeeds in the amount of \$656.26 taking into consideration depreciation.

Issue 5: Hearing Expenses

Landlord Position

63. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit L # 10**). The landlord is seeking this cost.

Analysis

64. 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 tenants are responsible to cover these reasonable expenses.

Decision

65. The tenants shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Issue 6: Application of Security Deposit

Landlord Position

66. The landlord testified that a security deposit in the amount of \$500.00 was paid on the property on or about 01 March 2018. The landlord is seeking permission to apply the security deposit against the order issued by the tribunal.

Analysis

67. Established by undisputed facts above, the tenants did pay a security deposit to the landlord in the amount of \$500.00. The landlord's claim has been successful and the tenants owe the landlord for rent, late fees and damages. The interest rate set out by the Minister on security deposits for 2018 - 2020 is set at 0%. The security deposit plus accrued interest then is \$500.00.

Decision

68. As the landlord's claim above has been successful, the landlord shall apply the security deposit being held against any amount outstanding as directed in the attached order.

Summary of Decision

69. The landlord is entitled to the following:

a)	Rent Owing (up to and including 14 January 2020)	\$1577.50
b)	Late Fees.....	33.00
c)	Missing Items	656.26
d)	Compensation for Damages	1035.73
e)	Hearing Expenses	<u>\$20.00</u>
f)	Sub-total	\$3322.49
g)	LESS: Security Deposit.....	<u>(\$500.00)</u>
h)	Total Owing to Landlord.....	<u>\$2822.49</u>

13 August 2020

Date

Michael Greene
Residential Tenancies Tribunal