

Residential Tenancies Tribunal

[REDACTED] Decision 20-0011-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 28 October 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] ([REDACTED]), hereafter referred to as the landlord participated in the hearing. (*Affirmed*)
3. The respondent, [REDACTED] ([REDACTED]), hereafter referred to as the tenant did not participate in the hearing. (*Absent and not Represented*)
4. The details of the claim were presented as a written monthly agreement with rent set at \$700.00 per month and due on the 1st of each month and a security deposit in the amount of \$275.00 was collected on or about August 2019.
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 tenant, [REDACTED], was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date* and, and where the respondent fails to attend the hearing, Rule 29.11(1) states *that the hearing may proceed in the respondent's absence so long as he/she has been properly served*.

The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **09 October 2020** by serving the documents to the tenant by email: [REDACTED] and attaching a copy of the sent email.

A phone call to the tenant was placed [REDACTED] with no answer.

7. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.
8. The landlord amended the claim and removed the request for \$100.00 to show the unit and to remove snow.

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Rent **\$700.00**;
 - b) Compensation for Damages **\$1030.00**
 - c) Application of Security Deposit

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:
 - a. *Policy 12-1: Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF, and;*
 - b. *Policy 9-2 Claims and Counter Claims, and;*
 - c. *Policy 9-3 Claims for Damage to Rental premises.*

Issue 2: Payment of Rent - \$1030.00

Relevant Submissions

Landlord Position

12. The landlord testified that she is seeking rent for the month of February 2020. She stated that the tenant failed to pay rent for this month. The landlord testified that she issued a termination notice (**Exhibit L # 1**) under section 24 and dated 13 January 2020 for the intended termination date of 31 January 2020. She stated that the tenant moved out on the termination date.

Analysis

13. I accept that the tenant has not paid rent for the month of February 2020 as stated by the landlord. However, the landlord is the party that terminated the tenancy with the issuance of the termination notice on 13 January 2020. It is quite apparent that the tenant moved from the unit as requested by the landlord.
14. The landlord is not entitled to terminate a tenancy and then claim rent from the tenant for the following month after the termination. As the landlord terminated the tenancy for cause, interference with peaceful enjoyment and reasonable privacy, then the landlord is not entitled to any further rent beyond the date of termination or the date the tenant vacates whichever is later.
15. As such, the landlord's claim for rent owing fails.

Decision

16. The landlord's claim for rent owing fails.

Issue 2: Compensation for Damages - \$1030.00

Relevant Submissions

Landlord Position

17. The landlord testified that when the property was recovered it was noticed that the following items were damaged as outlined:
 - a. Clean the unit
 - b. Garbage removal
 - c. Bedroom door torn from the frame
 - d. French door split from slamming
 - e. Kitchen cabinet door split
 - f. Bathroom Heater damaged
 - g. Toilet paper Holder replaced
 - h. Unit painted
18. The landlord presented photos of the damages (**Exhibit L # 4**) and a series of photos taken after the repairs were complete (**Exhibit L # 3**).
19. The landlord testified that the unit was left dirty. The landlord testified that she hired a lady to clean the unit and submitted a series of text messages from [REDACTED] (**Exhibit L # 2**) concerning the cleaning and payment for same. She stated that she e-transferred \$150.00 for the cleaning completed (**Exhibit L # 5**).
20. The landlord testified further added that she had family remove the garbage that was left in the unit to the landfill by family. She added that there were no records for this but stated she paid \$50.00.
21. The landlord testified that the bedroom door was torn from the hinges and had to be replaced. She referred to the photos (**Exhibit L # 4**) and presented a screen shot of an estimate from Kent (**Exhibit L # 6**) in the amount of \$162.49 plus HST. The landlord is claiming \$100.00.
22. The landlord testified that the French door was split in the join from what was apparently slamming the door constantly. The landlord referred to the photos of the damages (**Exhibit L # 4**) and again an estimate from Kent (**Exhibit L # 7**) in the amount of \$141.99 plus HST. The landlord is claiming \$150.00 for the replacement.
23. The landlord testified that the kitchen cabinet door was split and broken apart. The landlord again referred to the photos (**Exhibit L # 4**) and stated that this damage has devalued the kitchen in what she estimates to be \$200.00. There was no receipts or estimates for the replacement value of the cabinet door.

24. The landlord testified that the bathroom heater was damaged by the tenant and was replaced. The landlord referred to the photos (**Exhibit L # 4**) to demonstrate the damaged heater. The landlord did not present any receipts for the cost of the replacement heater.
25. The landlord testified that the toilet paper holder was replaced. The landlord is claiming \$20.00 for the replacement. There was no receipts to demonstrate the cost of the replaced item.
26. Lastly, the landlord is claiming for the painting of the unit. She testified that the new tenants agreed to paint the property for the amount of \$200.00 labor and the landlord covering the cost of the paint in the amount of \$160.00. The landlord referred to the text messages (**Exhibit L # 2**) for the conversation concerning the painting and costs. The landlord stated that the entire apartment was painted.

Analysis

27. I have reviewed the testimony and evidence of the landlord in this portion of the claim. The applicant is required to establish three criteria for a successful claim as follows:
 - a. Show that the damage exists
 - b. Show that the respondent is liable
 - c. Show a valuation for the repair or replacement
28. The landlord in this portion of the claim has shown some photos of the claimed damages. In these photos it can be clearly seen that there are items belonging to the occupant (food items, etc). It is clear that someone lived in the unit. I can reasonably deduce that from a cleanliness point of view, the liability of this clearly rests with the tenant. The landlord has also satisfied the conditions of valuation which I find to be reasonable and within market rates. As such, for the cleaning of the unit I find in favor of the landlord in the amount of **\$150.00** as claimed.
29. Regarding the removal of garbage, I have at least two concerns with this item. First, the landlord claims to have paid family to remove the garbage but has not supplied any sort of record of payment or any receipts from the Waste Management Facility to support the claim. Second, I note that the photos show three bags of garbage and some recycling (cardboard). Had this garbage been bagged in appropriate refuge bags (clear) and the recycling bagged (blue), all could have been placed at the curb for the regular weekly municipal pick-up at no charge. I also note here that the garbage was bagged by the cleaners so this cost would be paid by the cleaning costs above. As such, for the reasons noted, I find that the claim for garbage removal is not reasonable and fails.
30. In respect of the painting of the unit, I have some concerns. The landlord is claiming that the entire unit was painted, however, the text messages with the new tenants clearly indicates that the bedrooms and bathroom were likely the only rooms needing painting and the living room and kitchen were painted in

September 2019. I do accept the text messages between the parties as the valuation for the painting (\$160.00 for materials & \$200.00 labor). In reviewing the photos of the damages, the walls in the rooms do not appear to be damaged. The text messages between the landlord and new tenants clearly indicate that the bathroom was a dark color and the new tenants clearly wanted it painted to something more palatable. This however, is not cause to charge the cost of the painting to a former tenant. The landlord indicated that the former tenant smoked but also indicated that the cleaners washed all the walls, which should have taken care of the smoke issue. Based on the photos and the text communications, I am not convinced that the apartment required painting for anything more than to freshen the unit up for a new tenant. This is not the responsibility of the previous tenant, therefore, I find that the landlord's claim for painting fails.

31. The following remaining five items can be dealt with as single unit. I refer the reader back to paragraph 27 above for the legal test required for a successful claim. More specifically, 27(b) refers to showing that the respondent (tenant in this claim) is liable for the damages. As I break this down, the landlord has shown the condition of the property at recovery of the unit. The landlord has shown the condition of the unit after any and all repairs/upgrades have been made. The landlord has also shown the costs of the items either through texts, e-transfers, or online estimates. This is all pertinent evidence in a damage claim, but there is a missing element. I pose the question, what was the condition of the unit prior to the tenant taking possession? There are multiple possible answers to the question, and it is usually satisfied by the presentation of photos taken before the tenant moved in, a signed and acknowledged rental condition report or witnesses etc. In this claim, this question goes unanswered.
32. As there is no way to determine the condition of the unit prior to the tenant taking possession, there is no way to determine when the claimed damages occurred. I find that for the balance of the claim, the landlord has failed to substantiate that the tenant was liable for the damages given we have no certainty to the condition of the property prior to the tenant taking possession. As such, the balance of the landlord's claim fails.

Decision

33. The landlords' claim for damages succeeds in the amount of \$150.00.

Issue 3: Application/Refund of Security Deposit

Landlord Position

34. The landlord testified that a security deposit in the amount of \$275.00 was paid on the property on or about August 2019. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

35. The landlord acknowledges holding the security deposit in the amount of \$275.00.

Analysis

36. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$275.00.
37. The landlord's claim has been successful in part as indicated above. The security deposit plus accrued interest is \$275.00 as the interest rate for 2019 – 2020 is set at 0%.
38. As the landlord's claim has been successful, there is a claim against the security deposit being held by the landlord. The security deposit is an asset of the tenant to be held against any loss incurred by the landlord attributed to the tenancy. In this matter it has been determined that there was a loss and as such, the security deposit shall be disposed of as outlined in the attached order

Decision

39. As the landlord's claim above has been successful, the landlord shall offset the security as outlined in the attached order.

Summary of Decision

40. The tenant is entitled to the following:

a)	Refund of Security Deposit	\$275.00
b)	LESS: Compensation for Damages	<u>(\$150.00)</u>
c)	Total owing to Tenant.....	<u>\$125.00</u>

21 December 2020

Date

Michael Greene
Residential Tenancies Tribunal