

Residential Tenancies Tribunal

[REDACTED] Decision 20-0013-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 03 November 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED] ([REDACTED]), hereafter referred to as landlord1, participated in the hearing. (*Affirmed*).
3. The applicant, [REDACTED] ([REDACTED]), hereafter referred to as landlord2, participated in the hearing. (*Affirmed*).
4. The respondent, [REDACTED] ([REDACTED]), referred to as the tenant, participated in the hearing. (*Affirmed*).
5. In a proceeding under the *Residential Tenancies Act*, 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 landlord shows that the tenant was served with the notice of this hearing on the **26 February 2020** by serving the original documents to the tenant at the email: [REDACTED].

There were several re-scheduling's of this file and were served by the Residential Tenancies Office.

Issues before the Tribunal

7. The landlords are seeking the following:

- a) Payment of rent owing **\$1181.56**;
- b) Payment of late fees
- c) Damages **\$1552.00**
- d) Hearing expenses.

Legislation and Policy

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

9. Also relevant and considered in this case are:

- a. Sections 19, 34 and 35 of *the Act*, and;
- b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
- c. Policy 9-3: *Claims for Damages to Rental Premises*, and;
- d. Policy 9-5: *Life Expectancy of Property*.

Issue 1: Rent Owing - \$1181.56

Relevant Submissions

Landlord Position

10. The landlords stated that they had entered into a verbal monthly rental agreement with rent set at \$775.00 per month and due on the 1st day of each month and a security deposit in the amount of \$500.00 collected on this tenancy on or about 01 August 2018. The landlords testified that rent is outstanding in the amount of **\$1181.56** up to and including 16 January 2020. The tenant issued a verbal termination notice on 20 December 2019 for the intended termination date 31 December 2019.

11. The landlord submitted into evidence rental records (**Exhibit L # 1**) breaking down the rent as follows:

a. Rent for December 1 – 31, 2019:	\$775.00
b. Rent for January 1 – 16, 2010:	406.56
c. Total	<u>\$1181.56</u>

12. The landlords are claiming rent for the period ending 16 January 2020 in the amount of **\$1181.56** and the landlords stated that the tenant vacated the property as of 01 January 2020. The landlords' claim for rent for January 1 – 16, 2020 (\$406.56) is claimed as lost rent due to the requirement for damages to be repaired.

Tenant Position

13. The tenant testified that she did not pay for rent in January as she was not living in the property. The tenant further testified that she thinks she made a payment in December 2019 in the amount of \$200.00 she believes. The tenant did not supply any record of the payment.

Analysis

14. I have reviewed the testimony and evidence of the landlords and tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlords actually owed by the tenant.
15. With respect to the arrears being claimed, there was no actual termination notice submitted into evidence and the verbal notice issued by the tenant would not be valid in accordance with the *Residential Tenancies Act, 2018*.
16. It is clear that the tenant vacated the property on 01 January 2020 as both parties agree with this date.
17. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began.
18. The landlords are claiming for the entire month of December 2019 claiming rent was not paid as indicated by the rental records. I accept the landlords' records as accurate and do not accept the tenant's statement that a payment was made in December 2019 as it has not been substantiated.
19. Rent for January 1 – 16, 2020 is being claimed as lost rent due to damages. It has been determined below that the landlords' claim for damages has succeeded and thus there would be a valid claim for lost rent for repairs. The amount of repairs that the landlord has been successful with however, does not warrant two weeks of lost time for the repairs.
20. I find that a week is more reasonable and award rent for the period of January 1 – 7, 2020 in the amount of **\$177.87** calculated as $(\$775.00 \times 12 \text{ months}) = \$9300.00 \div 366 \text{ days} = \$25.41/\text{day} \times 7 \text{ days} = \177.87 .

Decision

21. I find the landlords claim for rent is successful in the amount of **\$952.87** (\$775.00 + 177.87).

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

22. The landlords are seeking payment of late fees as a result of the tenant's failure to pay rent on time.

23. The landlords testified that the tenant owes rent for December 2019. The landlords indicated that they are claiming late fees allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

24. Established by undisputed fact above, the tenant does owe rent for the period ending 31 December 2019 as arrears. 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.

25. As the tenant owed rent for December 2019 and remains outstanding as of the hearing, a late fee is applicable. A calculated amount of late fees for the month of December 2019 to the hearing date of 03 November 2020 would exceed the maximum allowable of \$75.00. As such, the landlords' claim succeeds in the amount of \$75.00.

Decision

26. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 4: Compensation for Damages - \$1552.00

Relevant Submissions

Landlord Position

27. The landlords testified that on or about 01 January 2020 the property was recovered and damages were noted. The landlords testified that the following was noted:

- a. Holes in the walls
- b. Cleaning throughout the property/removing belongings
- c. Painting the property.

28. The landlords submitted photos of the damages being claimed (**Exhibit L # 2**) along with a breakdown of the claim (**Exhibit L # 3**).
29. The landlords testified that there were holes in the walls from hanging pictures. They further added that they were not aware of an incoming inspection report and clearly stated that the holes could have been there before....he wasn't quite sure. There was no photos of the condition of the property prior to the tenant taking possession.
30. The landlords are also seeking compensation for the cleaning of the property and removal of personal belongings in self-labor in the amount of \$388.00 for 20 hours labor at a rate of \$19.40 per hour. The landlords referred to the photos to demonstrate the cleanliness and the belongings left behind belonging to the tenant.
31. The landlords testified that they did not file an affidavit of Abandoned Personal Property seeking permission to dispose of the belongings as per section 32 of the *Residential Tenancies Act, 2018*.
32. The landlords are seeking \$1067.00 for 55 hours labor to paint the property at a rate of \$19.40/hour.

Tenant Position

33. The tenant testified that she did not damage the walls with anything other than small nails to hang pictures. She states that this is well within the reasonable and normal living requirements. She disputes the claim for repair of the walls and painting stating that this is reasonable wear and tear. The tenant indicated that the property was painted immediately prior to the tenant taking possession.
34. The tenant further testified that she did leave personal belongings behind. The tenant did not testify or indicate that the items could be disposed of.

Analysis

35. The basis of determining awards for any damage claim is the same. The applicant holds the burden of proof and in cases associated with Residential Tenancies is "on the balance of probabilities".
36. In presenting a claim the applicant is required to
 - a. show that a damage exists;
 - b. show that the respondent is liable for the damages and;
 - c. show a cost for the repair or replacement of the damages.

37. On the matter above, all items of the test have been determined and I am satisfied that the landlords have met the burden of on the balance of probabilities. The tenant has acknowledged that the property was painted immediately prior to the tenant taking possession meaning that the walls were in new condition. The photos of the damages show clearly that the walls were riddled with holes in places not normally where pictures were hung and the valuation comes down to self-labor at a rate of \$19.40 per hour.
38. The claim for plaster is 5 hours which I find to be excessive for the application of plaster over nail holes. I accept that the evidence also shows the use of framing nail (seen in the landlords' photos) and not necessarily small picture nails. I find that at a stretch 3 hours is more reasonable. I find the tenant responsible for plastering in the amount of **\$58.20** (3 hours @ \$19.40 per hour).
39. The claim for painting is similarly excessive at 55 hours. There was no indication that any ceilings had to be painted so if they were, that would be at the landlords' discretion. Painting bare walls in an empty apartment is considered basic painting and can move quickly. I find that, at a stretch, 25 hours is more than reasonable representing 2.5 days @ 10 hours per day for a total of \$485.00. I find the tenant responsible for the painting in the amount of **\$485.00**.
40. The claim for cleaning and item removal requires some explanation. First the cleaning, there is no doubt that the tenant left the property in an unclean condition according to the photos presented by the landlords. For that I find the tenant responsible and will indicate the award below.
41. Regarding the removal of personal items, the landlords failed to seek permission of the Residential Tenancies to dispose of the items abandoned by the tenant. This is a requirement in law which was not adhered to and therefore any claim for compensation to remove the property cannot be awarded as this would be seen as rewarding an individual for ignoring the laws requiring something to be done.
42. As such, I find that a days cleaning as indicated by the landlord at 10 hours is reasonable for a total of **\$194.00**.

Decision

43. The landlords' claim for damages succeeds in the amount of **\$737.20** (\$58.20 + 485.00 + 194.00).

Issue 5: Application of Security Deposit

Landlord Position

44. The landlords testified that a security deposit in the amount of \$500.00 was paid on the property on or about 01 August 2018. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.

Analysis

45. Established by undisputed fact above, the tenant did pay a security deposit to the landlords in the amount of \$500.00. The landlords' claim has been successful. The security deposit plus accrued interest is \$500.00 as the interest rate for 2018 - 2020 is set at 0%.

Decision

46. As the landlords' claim above has been successful, the landlords shall offset the security deposit being held as determined in the attached Order.

Summary of Decision

47. The landlords are entitled to the following:

a)	Damages	\$737.20
b)	Rent	952.87
c)	Late Fees.....	<u>75.00</u>
d)	Subtotal.....	\$1765.07
e)	LESS: Security Deposit	<u>(\$500.00)</u>
f)	Total owing to Landlords	<u>\$1265.07</u>

31 December 2020

Date


Michael Greene
Residential Tenancies Tribunal