

## Residential Tenancies Tribunal

[REDACTED] Decision 20-0019-03

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **9:30 am on 29 July 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 tenant participated in the hearing. (*Affirmed*)
3. The respondent, [REDACTED], hereafter referred to as the landlord participated in the hearing. (*Affirmed*)
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 1<sup>st</sup> of each month and a security deposit in the amount of \$500.00 was collected on or about 16 October 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 affidavit submitted by the tenant shows that the landlord [REDACTED] was served with the notice of this hearing on the **18 March 2020** by serving the application for dispute resolution document to the landlord via registered mail ([REDACTED] [REDACTED]).
7. The affidavit submitted by the landlord shows that the tenant [REDACTED] was served with the notice of this hearing on the **18 June 2020** by serving the application for dispute resolution document to the tenant by email provided on the tenant's initial application [REDACTED].
8. The landlord amended the claim at the onset and removed the request for the items under the section OTHER totalling \$236.50.
9. The issue listed compensation for inconvenience is amended in two ways:
  - a. Items 7 – 9 listed as travel cost of landlord responsibilities is removed from the claim as costs of doing business for the landlord totalling \$255.80.
  - b. The remaining list items 1 – 6 are actually labor costs (\$314.40) and will be addressed under damages.

## Issues before the Tribunal

10. The tenant is seeking the following:
  - a) Refund of Rent **\$493.45**;
  - b) Hearing Expenses;
  - c) Refund of Security Deposit
11. The landlord is seeking the following:
  - d) Compensation for Damages **\$2264.40**;
  - e) Hearing Expenses;
  - f) Application of Security Deposit

## Legislation and Policy

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

13. 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.*
- d. *The Frustrated Contracts Act.*

### **Issue 1: Compensation for Damages - \$2264.40**

#### **Relevant Submissions**

##### Landlord Position

14. Evidence was led by the tenant that on or about 09 March 2020 there was a fire in the building. The tenant was required to vacate the unit as the water and electricity was cut from the building also as a result of the fire.
15. The landlord testified that when he arrived home from working away, there were still items belonging to the tenant in the unit and he contacted him to have them removed as the insurance company requested.
16. Additionally, the landlord indicated that he was required to remove the appliances as well and hired [REDACTED] to remove the items.
17. The landlord testified that when the property was recovered it was noticed that the following items were damaged as outlined:
  - a. Fridge was scratched
  - b. Kitchen Countertop was swelled up
  - c. Dryer was scratched
  - d. Holes in the walls
  - e. Scratch on the Shelf (Master bedroom)
  - f. Replace trim on Spare Bedroom
  - g. Self-Labor (16 Hours @ \$19.40)
18. The landlord submitted into evidence a copy of the claim breakdown (**Exhibit L # 2**) along with photos of the claimed damages (**Exhibit L # 1**). The landlord testified that he noted that the outside of the fridge was scratched and there was still food in the unit going moldy. He stated that there was a Tim Horton's cup turned over on the countertop join causing it to swell up and the bathroom vanity was left in a state. He added that the dryer top was scratched and was looking to replace the top of the dryer.
19. The landlord testified that he did not have any estimates, invoices or quotes for the costs associated with the repairs being claimed above. He added that he searched the costs for the appliances from "appliances.com" and estimated the cost of the countertop replacement himself.

20. The landlord claimed for repair to holes in the walls. He stated that there was a hole in the closet, which was pushed through from the utility room, and at least 16 push pins holes in the walls from hanging pictures. For this he is claiming \$500.00 for the labor to paint and \$100.00 for 2 gallons of paint and \$100.00 for the repair to the hole in the closet. There were again no invoices, quotes or receipts for same.
21. The landlord is further claiming for the replacement of one piece of door trim on the spare bedroom. The landlord is seeking \$60.00 to replace, paint and install one piece of door trim. There were no invoices, quotes or receipts presented for the repair.
22. The landlord is seeking self-labor in the amount of **\$310.40** (16 hours @ \$19.40/hour).

### Tenant Position

23. The tenant disputes this claim in its entirety and stated that when he signed the lease in the beginning of the tenancy, he signed it on top of the dryer with the landlord. The tenant stated that the landlord noted the scratches were there and stated that the previous tenant had scratched the dryer.
24. The tenant added that with regard to the countertop, the landlord's electrician was in the property and left a Tim's Coffee on the counter that obviously spilled.
25. The tenant also disputes the damages to the appliances claiming that there was no scratches when he vacated. The tenant called a witness (■) who testified that he did not see any damages in the unit (appliances or walls) only a bit of dirt. He stated that he was hired by the landlord to remove the appliances. The witness did not remember any scratches on the fridge.
26. The tenant testified that he only used a couple push pins to hang pictures and has no idea about any hole in the wall of the closet. He testified that he was never in the hot water room and there was no apparent hole in the closet when he left. He further added that the push pins would be considered normal wear.
27. To demonstrate the condition of the property, the tenant provided a video of the property (**Exhibit T # 1**).

### **Analysis**

28. I have reviewed the testimony and evidence of the landlord and tenant 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

29. The landlord in this portion of the claim has not provided any invoices, estimates or receipts for his claim to establish any valuation for the repair or replacement of the items claimed as required. The landlord's photos establishes that at least at the time the photos were taken, there was some damage to the appliances and a fist size hole in a wall of the property. The photos show a couple pictures of push pins in the walls, but these are a normal least intrusive method of a person hanging pictures or art in the home. With any rental, a tenant has a right to use the property under normal wear and tear. The hanging of pictures with push pins or picture hanging hardware is reasonable and well within the scope of normal wear and tear.
30. The landlord has not established the condition of the property at the onset of the tenancy with either a signed incoming inspection report or photos taken prior to the tenant moving in. There has been no evidence to even remotely suggest that the tenant was responsible for the claimed damage of the hole in the wall. As such, the landlord has not shown liability or a valuation for the repair and therefore, this portion of the claim fails.
31. The landlord has indicated that there was a fire at the property (within the building) and as a result the power to the property and the water was shut off. The tenant has stated that he couldn't clean the unit when vacating as there was no power or water. Power and water are a requirement to clean a property. There has been no evidence to suggest that the tenant caused the fire and by extension then would be responsible for the cutting of the power and water. I find that the tenant would not have been able to adequately clean the property as a direct result of the lack of power and water in the property and as such any claim for cleaning does not succeed on this accord.
32. With regard to the damage to the trim, the tenant didn't recall the damage being done but the burden of proof is not on the tenant in this matter. The burden of proof rests with the landlord and again the landlord appears to have made the assumption that simply stating the valuation and rough estimating the costs is sufficient evidence to establish the tests indicated above.
33. I find that the landlord has presented a very weak case regarding the damages to the property. There has been no estimates presented and no liability established on the balance of probabilities that the tenant was responsible. As such, the landlord's claim for damages fails.

## **Decision**

34. The landlords' claim for damages fails.

## Issue 2: Refund of Rent - \$493.45

### Relevant Submissions

#### Tenant Position

35. The tenant is seeking a refund of rent paid for the period of 09 March 2020 to 31 March 2020. The tenant testified that he was required to vacate the unit as the water and electricity was cut from the building also as a result of the fire. He testified that his rent was paid directly to the landlord from Advanced Education and Skills (AES) in the amount of \$700.00.

#### Landlord Position

36. The landlord testified that he was away from the Province working when the fire happened. He indicated that he had no problem refunding the rent of the tenant but wanted to check with AES on who to pay it too. He stated that once I was served with the legal documents, he decided to wait until the decision was rendered to deal with the funds.
37. The landlord acknowledged holding the rent on behalf of the tenant.

### Analysis

38. It is clear from the landlord acknowledgement that he is currently holding the rent belonging to the tenant and on the face of the situation as a result of the fire, had no issue refunding the money.
39. The situation of the fire rendered the property unusable and as a result the *Frustrated Contracts Act* would come into play and thereby free all parties from their legal requirements to the contract from that point onward. This means that the tenant is not required to pay rent and as they have already done so in advance by way of payment through AES, would be entitled to a refund of rent from the date of vacancy to the end of the month.
40. The calculated amount of rent owing to the tenant then is **\$527.85** and calculated as  $(\$700.00 \times 12 \text{ months} = \$8400.00 \div 366 \text{ days} = \$22.95 \text{ per day} \times 23 \text{ days} = \$527.85)$ .

### Decision

41. As the contract of the rental lease agreement is considered frustrated, the tenant is entitled to a refund of the rent in the amount of **\$527.85**.

### **Issue 3: Application/Refund of Security Deposit**

#### Landlord Position

42. The landlord testified that a security deposit in the amount of \$500.00 was paid on the property on or about 16 October 2019 after being received from both AES and the tenant. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
43. The landlord acknowledges holding the security deposit in the amount of \$500.00.

#### Tenant Position

44. The tenant is seeking a refund of the security deposit paid in the total amount of \$500.00. He stated that no receipts were provided by the landlord.

#### **Analysis**

45. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$500.00.
46. The landlord's claim has been unsuccessful as indicated above. The security deposit plus accrued interest is \$500.00 as the interest rate for 2019 – 2020 is set at 0%.
47. As the landlord's claim is not successful, there is no 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 not attributable loss and as such, the tenant is entitled to a refund of the security deposit in the amount of \$500.00.

#### **Decision**

48. As the landlords' claim above has been unsuccessful, the landlord shall refund the security deposit being held to the tenant.

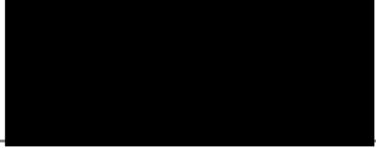
## **Summary of Decision**

49. The tenant is entitled to the following:

a)	Refund of Rent.....	\$527.85
b)	Refund of Security Deposit .....	<u>500.00</u>
c)	Subtotal.....	\$1027.85
d)	<b>Total owing to Tenant.....</b>	<b><u>\$1027.85</u></b>

09 October 2020

**Date**

  
**Michael Greene**  
**Residential Tenancies Tribunal**