

Residential Tenancies Tribunal

[REDACTED] Decision 20-0022-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:45 am on 26 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], (■) hereafter referred to as the landlord participated in the hearing. (*Affirmed*)
3. The respondent, [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 verbal monthly agreement with rent set at \$600.00 per month and due on the 1st of each month. There was no security deposit collected on this tenancy.
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 **06 July 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] and the person who answered indicated it was the wrong number.

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.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Rent Owing **\$8850.00**;
 - b) Damages **\$4600.00**;

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:
 - 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 1: Rent Owing - \$8850.00

Relevant Submissions

Landlord Position

11. The landlord testified that he is seeking **\$8850.00** for arrears that have accumulated over the tenancy. The landlord submitted into evidence a copy of the rental records (**Exhibit L # 1**). The landlord testified that he is claiming arrears up to 31 December 2019.

Analysis

12. I have reviewed the testimony and evidence of the landlord in this portion of the claim. There is only one item here that needs to be determined; (1) is the rent being claimed by the landlord actually owed by the tenant.
13. The landlord is claiming arrears that have accumulated over the tenancy. Rental records show clearly that arrears have accumulated up to and including 31 December 2019 in the amount of \$8850.00.
14. I accept the landlord's evidence in this matter and find that rent in the amount of **\$8850.00** is owing up to and including 31 December 2019.

Decision

15. The landlord's claim for rent owing succeeds in the amount of \$8850.00.

Issue 4: Compensation for Damages - \$4600.00

Relevant Submissions

Landlord Position

16. The landlord testified that when the property was recovered it was noticed that the property was left in a mess. The landlord testified that he agreed that the tenant could have pets.
17. The landlord submitted into evidence a breakdown of the damages (**Exhibit L # 2**) along with photos (**Exhibit L # 3**) taken by the landlord in March 2020. The landlord testified that there was no rental premises condition report or photos taken of the property prior to the tenant taking possession of the unit. Despite the lack of condition report, he adds that the property was in good condition.

18. The landlord went on to testify that he replaced the carpet (age: 15 years) and vinyl (age: 10 years) with laminate flooring and replaced a love seat. He further added that the bench seating around the table has not been replaced yet, the bathroom door was chewed up and the Barbeque (Weber) was beat up (age: 10 years).
19. The landlord did not supply any receipts, estimates or quotes for the repair or replacement of the claimed damaged items.

Analysis

20. I have reviewed the testimony and evidence of the landlord in this portion of the claim. The landlord 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
21. The landlord's claim as it relates to damages is weak at best. The landlord has not presented any sort of photos, witnesses, or condition reports to establish a baseline of the condition of the property at the onset of the tenancy. This is key to establishing tenant liability in the damages. The photos supplied to depict the damages were taken in March 2020, some 3 months after the tenancy ended. Further, the landlord has only supplied what he estimates the repair costs will be instead of presenting actual receipts for items replaced or estimates for items to be replaced. This is problematic in determining a valuations. Lastly, the landlord's photos submitted are not clear and in some cases not conclusive.
22. As a result of the lack of support for the landlord's version of events related to the damages, I find that the landlord has not met his burden of proof and the claim for damages against the tenant fails.

Decision

The landlord's claim for damages fails.

Summary of Decision

23. The landlord is entitled to the following:

a)	Rent Owing	\$8850.00
b)	Compensation for Damages	<u>0.00</u>
g)	Total owing to Landlord	<u>\$8850.00</u>

18 December 2020

Date

Michael Greene
Residential Tenancies Tribunal

