

Residential Tenancies Tribunal

Decision 20-0023-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 08 April 2021** 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 landlord participated in the hearing. (*Affirmed*)
3. The respondent, [REDACTED], hereafter referred to as tenant1 did not participate in the hearing. (*Absent and Not Represented*)
4. The respondent, [REDACTED], hereafter referred to as tenant2 participated in the hearing. (*Affirmed*)
5. The details of the claim were presented as a written fixed term agreement set to expire on 15 August 2019 and rent set at \$800.00 per month with utilities extra and rent was due on the 1st of each month. A security deposit in the amount of \$400.00 was collected on or about 15 August 2018 and remains with the landlord.
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], 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 show that the tenant1 was served with the notice of this hearing on the **23 Oct 2020** by serving the original documents to the tenant by email to the address [REDACTED] and supplying the verification of the email. Subsequent service for hearings was completed by Residential Tenancies including on 08 March 2021 for the hearing on 08 April 2021.

The affidavit submitted by the landlord show that the tenant2 was served with the notice of this hearing on the **08 March 2021** by serving the original documents to the tenant by email to the address [REDACTED] and supplying the verification of the email.

A phone call was placed to the tenants at:

[REDACTED] **(Tenant 1):** No answer Message left.
[REDACTED] **(Tenant 2):** No answer, message left. Tenant2 later logged into the conference call.

8. As tenant1 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.
9. The landlord amended the application to remove the request for late fees.

Issues before the Tribunal

10. The landlord is seeking the following:
 - a) Rent Owing **\$1600.00**;
 - b) Damages **\$2138.27**;
 - c) Hearing Expenses;
 - d) Application of Security Deposit

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. 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: Compensation for Damages - \$2138.27

Relevant Submissions

Landlord Position

13. The landlord testified that when the property was recovered it was noticed that the following items were damaged as outlined:
 - a. Cleaning Basement
 - b. Replace carpets in bedrooms
 - c. Labor (*repair doors, plaster, paint, extra cleaning, clean outside, snake the tub*)
14. The landlord testified that when the property was recovered it was noticed that there were holes in the bedroom and living room walls as well as the two interior bedroom doors.
15. The landlord testified that the property was left in a filthy condition with animal feces in the home and two dogs living in the basement for the winter. The landlord further stated that the property was filled with garbage. The landlord testified that it was such a mess that cleaners had to be hired to properly clean the unit.
16. The landlord stated that the carpets in the bedrooms were stained with urine to such a degree that the carpets had to be replaced. She testified that she attempted to professionally clean the carpets but they didn't come clean and the company did not charge for the service as they couldn't get it clean. The landlord testified that the carpets were a seisel carpet with one being 12-15 years old and the second at 8 years old.
17. The landlord submitted photos of the property damages (**Exhibit L # 3**) along with an invoice for cleaning from Magic Wand Inc. (**Exhibit L # 4**), and a series of three receipts from Home Depot, Home Hardware and Factory Clearance (**Exhibit L # 5**) for the flooring replacement.

18. The landlord further added that the bathroom had to be repainted as the tenants painted without permission. She stated that it took 4 coats to cover the blue color applied by the tenants.
19. Also in the bathroom, the landlord testified that there was a blue sand like substance in the bathtub drain that had to be snaked. The landlord is claiming this as a part of the claimed self-labor. The landlord further stated that the blue substance was also on the exterior of the house and across the deck.

Tenant Position

20. The tenant testified that the dog house that was on the property was removed. He added that he can only recollect one hole in the wall of the purplish room. In regard of the carpets, the tenant indicated that there was an odor. He added that he did leave in April 2019 and can't speak for the care of the dogs after that time frame.
21. The tenant did acknowledge painting the bathroom a blue color without permission and apologized to the landlord for doing that.

Analysis

22. I have reviewed the testimony and evidence of the landlord and tenant 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
23. Tenant2 in this matter has been extremely cooperative and has acknowledged items of concern for which he was a part of or had knowledge of. There is no apparent attempt to avoid responsibility on tenant2's part.
24. The photos of the property don't lie and tell a story in and of themselves. The property was left in an unclean condition. The blue sand like substance appears to be some sort of child's play sand or fish tank gravel. Either way, it certainly doesn't belong across the window and deck of the property, in the traps of the bathtub or anywhere else other than the garbage can, toy container or fish tank depending on the substance. There is no excuse for this in a rental unit.
25. The remaining pictures also show a unit not taken care of as would reasonably be expected. As such, I find that the tenants left the property unclean. There is again no excuse to leave pet feces inside a unit. I find that the tenants are responsible for the cleaning expenses of the landlord in the amount of **\$864.46** as claimed.

26. The landlord indicated that the carpets in the bedrooms were beyond cleaning and had to be replaced. Indications are they were 8 years and the second 12-15 years old. Based on the testimony of the landlord and the photos, I would assess the carpets to be a mid-grade carpet. In any damage claim, depreciation has to be considered. In a rental unit, Residential Tenancies allows for a mid-grade carpet to have a useful life of 8 years and after such time would be fully depreciated. Given the carpets in this unit are at the 8 year mark or greater, they would be considered fully depreciated and as such no award for their replacement can be awarded. The landlord's claim for carpet replacement fails.
27. The landlord has claimed for labor to plaster, paint, extra cleaning and unclogging the tub. As mentioned above, the property was left in a condition the warranted plastering and painting and extra cleaning. This would be considered extra over and above the standard cleaning of the cleaners hired.
28. There is no indication in the labor breakdown how many hours was spent on each item of concern making it difficult at best to make an accurate award. To further complicate things, there was no indication how old the existing paint was to allow for depreciation.
29. In looking at the work completed, I find that 51 hours is excessive and find that a work week of 40 hours is more reasonable. This calculation would then have a starting point of 40 hours x \$15.00/hour = \$600.00. In allowing for depreciation then I would apply an arbitrary percentage of 40% depreciated, taking into consideration some of the tasks are not depreciable. As such, the depreciated award for labor claimed is **\$360.00**

Decision

30. The landlord's claim for damages succeeds in the amount of **\$1224.46** (\$864.46 + \$360.00).

Issue 2: Rent Owing - \$1600.00

Relevant Submissions

Landlord Position

31. The landlord testified that she is seeking **\$800.00** as rent owed for the period of 01 September 2019 to 30 September 2019 and is further seeking **\$800.00** for the period 01 October 2019 to 31 October 2019 as rent in lieu of notice.
32. The landlord testified that the tenants failed to pay rent for the month of September as required by the rental agreement. The landlord submitted rental records (**Exhibit L # 1**) to demonstrate the arrears. The landlord further testified that the tenants vacated the property without notice on 04 September 2019 and she is further seeking rent for October 2019 for the lack of notice. The landlord

testified that she was not able to re-rent the property for this month as a result of the damages in the unit.

33. The landlord submitted a series of text messages (**Exhibit L # 2**) between the parties.

Tenant Position

34. Tenant2 testified that he vacated the property on or about April 2019 but acknowledged that he did not notify the landlord that he had vacated the property.
35. Tenant1 was not present to comment.

Analysis

36. I have reviewed the testimony and evidence of the landlord 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 landlord actually owed by the tenant.
37. With respect to the arrears being claimed, I agree with the landlord that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the written rental agreement established when the tenancy began. Records are clear that rent for the period ending 30 September 2019 has not been paid leaving a balance of **\$800.00**. There was no indication that proper notice was provided by the tenants prior to vacating. As such, the tenants owe rent in the amount of \$800.00 for the period ending 30 September 2019.
38. Further, rent for October 2019 is being sought as a result of rent in lieu of notice. As part of this type of claim, the landlord is required to mitigate their loss in order to claim the rent in lieu of notice. The landlord has indicated that the property could not have been rented because of the damages. I note that the damages are indicated as cleaning, carpet replacement, plaster and paint. I further note that the receipts for cleaning and flooring replacement are dated accordingly:
 - a. Cleaning : December 2019
 - b. Factory Clearance: Feb 2020
 - c. Home Depot: June 27, 2020
 - d. Home Hardware: June 28, 2020

In addition, the tenant vacated on 04 September 2019. The time line does not add up with respect to a successful mitigation. It is more like the landlord took their time to complete renovations and that decision cannot be attributed to the tenants for the lack of rent for October. In this regard, I find that the tenants are not responsible for rent for the month of October 2019. The landlord's claim for rent in lieu of notice fails.

Decision

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

- a) Rent owing up to 30 September 2019 \$800.00
- b) Total due to Landlord..... \$800.00**

Issue 3: Hearing Expenses

Landlord Position

40. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Digital Government and Service NL (████████) (Exhibit L # 6). The landlord further paid fees totaling \$120.00 for Commissioner for Oaths Expenses but did not present any receipts for these expenses. The landlord is seeking these costs.

Analysis

41. 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*. However, expenses are reimbursed for documented expenses with receipts. As the landlord has failed to provide receipts for the Commissioner expenses, any award will not include these expenses. As such, I find the tenants are responsible to cover the reasonable expenses of the application fee of the landlord in the amount of \$20.00..

Decision

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

Issue 4: Application/Refund of Security Deposit

Landlord Position

43. The landlord testified that a security deposit in the amount of \$400.00 was paid on the property on or about 15 August 2018. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

44. The landlord acknowledges holding the security deposit in the amount of \$400.00.

Tenant Position

45. The tenant acknowledges the landlord is holding the security deposit and understands the request of the landlord to have it applied against an order.

Analysis

46. Established by undisputed fact above, the tenants did pay a security deposit to the landlord in the amount of \$400.00.
47. The landlord's claim has been successful as indicated above. The security deposit plus accrued interest is \$400.00 as the interest rate for 2018 – 2021 is set at 0%.
48. The security deposit is an asset of the tenants to be held against any loss incurred by the landlord attributed to the tenancy. In this matter it has been determined that there was attributable loss and as such, the landlord is entitled to offset the security deposit against a demonstrated loss as outlined in the attached order.

Decision

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

Summary of Decision

50. The landlord is entitled to the following:

a)	Rent Owing	\$800.00
b)	Compensation for Damages	1224.46
c)	Hearing Expenses	<u>20.00</u>
d)	Subtotal	\$2044.46
e)	LESS: Security Deposit.....	<u>(\$400.00)</u>
g)	Total owing to Landlord	<u>\$1644.46</u>

23 April 2021

Date

Michael Greene
Residential Tenancies Tribunal