

Residential Tenancies Tribunal

[REDACTED] Decision 20-0027-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 pm on 11 August 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 tenant1 participated in the hearing. (*Affirmed*)
4. The respondent, [REDACTED], (■) hereafter referred to as tenant2 did not participate in the hearing. (*Absent and Not Represented*)
5. The details of the claim were presented as a written fixed term agreement with rent set at \$850.00 per month, due on the 1st of each month and the term set to expire on 30 April 2020. A security deposit in the amount of \$425.00 was collected on or about 03 May 2019.
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. Tenant2, [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 tenant2 [REDACTED] was served with the notice of this hearing on the **30 June 2020** by serving the application for dispute resolution document to the landlord via registered mail ([REDACTED] [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 landlord is seeking the following:

- a) Compensation for Damages **\$341.36**;
- b) Payment of Utilities **\$156.72**
- 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.*
- d. *The Frustrated Contracts Act.*

Issue 1: Compensation for Damages - \$341.36

Relevant Submissions

Landlord Position

13. The landlord testified that when the property was recovered it was noticed that the following items were damaged and of concern:
 - a. Damage to the painted surface in the hallway
 - b. Damage to the wall surface in the bedroom
 - c. Damage to the molding and crown on the cabinets in the kitchen
 - d. Remove recyclables and garbage can
 - e. Labor for repair
14. The landlord submitted into evidence a copy of the claim breakdown (**Exhibit L # 8**) along with photos of the claimed damages (**Exhibit L # 5**).
15. The landlord testified that he noted that the paint on the wall in the hallway was smeared and it appeared there was some wax spilled. He suggested that the paint was smeared when trying to remove the wax. He added that the surface was painted 1 year previous to the tenant moving in. The landlord referred to the photos submitted (**Exhibit L # 5**) and stated that he purchased a gallon of paint (**Exhibit L # 4**) at a cost of \$50.49 plus HST = \$58.06 along with tray liners (**Exhibit L # 3**) at a cost of \$1.49 + HST = \$1.71.
16. The landlord testified that a wall in the bedroom was gouged and required plastering, priming and painting. Again the landlord referred to the photos (**Exhibit L # 5**) and again stated that he purchased a gallon of paint (**Exhibit L # 4**) at a cost of \$50.49 plus HST = \$58.06 along with tray liners (**Exhibit L # 3**) at a cost of \$1.49 + HST = \$1.71. The landlord further stated that maybe a quart could have completed the job, but he wasn't certain and didn't want to run out.
17. The landlord testified that there was a section of the molding in the kitchen that was damaged by water or liquid of some sort which required replacing. The landlord stated that he had this item in personal stock and replaced the molding at a cost of \$10.34 (No invoice supplied). The landlord further testified that a section of crown molding from the top of the cabinets was off and had to be reattached. The landlord indicated this was accomplished with Gorilla glue at a cost of \$6.89 (**Exhibit L # 3**).

18. The landlord claimed for the removal of recyclable bottles and the discarding of a garbage can. The landlord is claiming for 2 hours of labor at \$50.00 to discard the items. There was no invoices submitted to demonstrate that the bottles were disposed of or that the can was disposed of at the landfill.
19. The landlord is further claiming for the labor to make the repairs for the plastering and painting and baseboard/crown molding repairs. The landlord submitted into evidence an invoice from [REDACTED] (**Exhibit L # 2**) in the amount of **\$150.00** (6 hours @ \$25/hour).

Tenant Position

20. Tenant1 testified that the area in question in the hall was the result of Scentsy wax wasted from a burner. They attempted to remove it with a magic eraser. Tenant1 stated that she don't think it would take a full gallon to complete the repairs and didn't feel responsible for painting as a result of normal fading.
21. Tenant1 referred to photos of the property she submitted (**Exhibit T # 1**) and specifically **pic #8** as photos they took when the vacated the property. Tenant1 questions 2 coats of plaster & paint for this portion of the claim.
22. Tenant1 also disputes the damages to the baseboards claiming that there was damages before we moved into the unit. Tenant1 testified that there was a flood there the year prior to them moving in.
23. Tenant1 testified that the bottles were left there as they could not be deposited due to the Covid restrictions. Tenant1 further stated that she left the garbage can for the next tenant to use.
24. Tenant1 testified that she challenges the cost being charged by a non-j journeyman (\$25/hour) and stated that he is a skilled labor at best.

Analysis

25. I have reviewed the testimony and evidence of the landlord and tenant1 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
26. I will deal with each section individually and include any associated labor charged as required.

27. There is no question that there was a section of the wall in the hallway that was damaged by the tenants as a result of wasting wax from a Scentsy warmer plugged into the wall. This is clearly the liability of the tenants. The landlord has demonstrated the value with receipts and indicated that the painted surface was approximately 1 year old when the tenants vacated. A painted surface is a depreciable item in a rental unit and is assessed by the Division to have a useful life span of 5 years.
28. To address the concern of the tenants concerning fading, it is normal for any painted surface to fade over time and the reason why any such repairs are depreciated. However, it is acceptable that if a damage occurs, then it is expected that the landlord would mitigate by repairing only the wall in question and go to the corners to blend the color.
29. Further, I find that the hours of labor claimed are reasonable and have been invoiced. I accept this evidence and will apply it accordingly.
30. As such, I find the tenants responsible for the depreciated cost to repair the hallway wall in the amount of **\$77.80** calculated as $(\$97.27 \div 5 \text{ years}) = \$19.45/\text{year} \times 4 \text{ years remaining} = \77.80 . The repair costs above included the following:
- a. Cost of paint (**\$58.06**)
 - b. Cost of tray liner (**\$1.71**)
 - c. Labor (**\$37.50**) (1.5hours @ \$25/hour)
31. There is no question that there was a damage to the wall in the bedroom that was damaged by the tenants. This damage was also noted in photos submitted by the tenants (**Exhibit T # 1**). This is clearly the liability of the tenants. The landlord has demonstrated the value with receipts and indicated that the painted surface was approximately 1 year old when the tenants vacated. A painted surface is a depreciable item in a rental unit and is assessed by the Division to have a useful life span of 5 years.
32. As such, I find the tenants responsible for the depreciated cost to repair the bedroom wall in the amount of **\$77.80** calculated as $(\$97.27 \div 5 \text{ years}) = \$19.45/\text{year} \times 4 \text{ years remaining} = \77.80 . The repair costs above included the following:
- a. Cost of paint (**\$58.06**)
 - b. Cost of tray liner (**\$1.71**)
 - c. Labor (**\$37.50**) (1.5hours @ \$25/hour)
33. The damage claimed to the baseboard and crown molding seems to be minimal in nature. Tenant1 questioned if the baseboard damages were the result of a previous leak. The photos of the baseboards from the landlord does not seem to indicate that the damages were the result of a leak, but more like some liquids spilled over time. I find that the tenants are responsible for these damages, and the costs claimed by the landlord are reasonable in the amount of \$10.34.

34. The crown molding on top of the cabinets is not an item that normally falls off. There is very little activity in this area. I find that it is likely that the tenants was storing something above the cabinets and when attempting to remove, knocked the crown off by accident. I find that the labor claimed again is reasonable (1.5 hours). There is no indication of the age of the cabinets, but they don't appear to be old. As such I will make an arbitrary award for the repairs in the amount of **\$75.00** inclusive of materials and 3 hours labor.
35. The landlord has claimed for the removal of recycling and a garbage can. The landlord is claiming for 2 hours @ \$25.00 /hour for a total of \$50.00. Tenant1 has explained that the bottles were left because of the Covid restrictions which prevented the bottles from being returned and that the can was left for the next tenant. I find this portion of the claim to be frivolous. The landlord has not shown any receipts from the deposit of the bottles (recovered monies would be deducted from any claim) nor any receipts from the dropping of the can to the local landfill (there is a charge of \$164.00 per ton to drop refuge at the landfill). In addition, the bottles can be placed in a blue recycling bag and put out with the weekly garbage at no charge. I accept tenant1's explanation for the garbage can. It could have been reused for a future tenant. I find this portion of the landlord's claim fails.

Decision

36. The landlord's claim for damages succeeds as follows:
 - a. Hallway \$77.80
 - b. Bedroom \$77.80
 - c. Kitchen \$75.00
 - d. **Total \$230.60**

Issue 2: Payment of Utilities - \$156.72

Relevant Submissions

Tenant Position

37. Tenant1 is acknowledging responsibility for the cost of the utilities incurred by the landlord as claimed in the amount of \$156.72.

Landlord Position

38. The landlord submitted into evidence a copy of the NL Power Invoices for the period in question. The NL Power Invoices total \$156.72.

Analysis

39. It is clear from tenant1's acknowledgement that the utilities are owing on the property and has acknowledged responsibility. As such, I find the tenants responsible for the utilities incurred by the landlord in the amount of \$156.72.

Decision

40. The landlord's claim for the payment of utilities is successful in the amount of **\$156.72**.

Issue 3: Hearing Expenses

Landlord Position

41. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit L # 6**). The landlord further submitted two receipts from Canada Post for the service of documents by registered mail in the amount of **\$31.40 (Exhibit L # 7)**. The landlord is seeking these costs.

Analysis

42. 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*. As the landlord's claim has been successful, I find the tenants are responsible to cover these expenses.

Decision

43. The landlord's claim for hearing expenses succeeds in the amount of **\$51.40**.

Issue 4: Application/Refund of Security Deposit

Landlord Position

44. The landlord testified that a security deposit in the amount of \$425.00 was paid on the property on or about 03 May 2019. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
45. The landlord acknowledges holding the security deposit in the amount of \$425.00.

Tenant Position

46. Tenant1 was silent on this issue.

Analysis

47. Established by undisputed fact above, the tenants did pay a security deposit to the landlord in the amount of \$425.00.
48. The landlord's claim has been successful as indicated above. The security deposit plus accrued interest is \$425.00 as the interest rate for 2019 – 2020 is set at 0%.
49. As the landlord's claim is successful as indicated above, the claim against the security deposit being held by the landlord also succeeds. 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 an attributable loss and as such, the landlord shall offset the security deposit against the amount outstanding as determined in this decision and the attached order.

Decision

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

Summary of Decision

51. The landlord is entitled to the following:

a)	Payment of Utilities	\$156.72
b)	Compensation for Damages	230.60
c)	Hearing Expenses	<u>51.40</u>
d)	Subtotal	\$438.72
d)	LESS: Security Deposit.....	<u>(\$425.00)</u>
d)	Total owing to Landlord	<u>\$13.72</u>

27 October 2020

Date

Michael Greene
Residential Tenancies Tribunal