

Residential Tenancies Tribunal

Decision 20-0032-02

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **10:15 am on 28 January 2021** 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], hereafter referred to as the landlord, did not participate in the hearing, but was represented by [REDACTED]. (*Affirmed*) and hereafter referred to as the landlord.
3. The respondent, [REDACTED] referred to as the tenant, did not participate in the hearing. (*Absent and Not Represented*).
4. 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

5. 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 **04 January 2021** by serving the original documents to the tenant by email: [REDACTED] and attaching a copy of the email sent along with communication correspondence between the parties from this email address.

The tenant have had **14 days** to provide a response.

6. 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.
7. The portion of the landlord's claim itemized as Compensation for Inconvenience is actually more accurately handled under damages and as such will be addressed in that section.
8. The landlord's claim for travel and gas is seen as a cost of doing business for the landlord and not claimable back to the tenant. It is the choice of the landlord to live in a community at a distance from the rental property. The cost then to travel to the property to attend to matters is not the tenant's responsibility. **The claim for travel and gas is removed from the claim.**
9. The landlord amended the application at the hearing to:
 - a. Remove the request for Vacant Possession as the property was recovered.

Issues before the Tribunal

10. The landlord is seeking the following:
 - a) Payment of rent owing **\$1000.00**;
 - b) Payment of late fees **\$75.00**;
 - c) Damages **\$16,200.00 +\$2098.38** for Inconvenience
 - d) Apply Security Deposit
 - e) Hearing expenses.

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. 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 - \$1000.00

Relevant Submissions

Landlord Position

13. The landlord stated that she had entered into a verbal monthly tenancy with the tenant commencing on or about 01 October 2018, rent set at \$600.00 per month and due on the 1st day of each month. A security deposit in the amount of \$200.00 was collected on this tenancy on or about 13 January 2019. The landlord testified that rent is outstanding in the amount of **\$1000.00** up to and including 30 September 2020. The landlord issued a termination notice on 30 March 2020 for the intended termination date 15 April 2020 but did not submit a copy into evidence.
14. The landlord submitted into evidence a copy of the rental records (**Exhibit L # 1**).
15. The landlord is claiming rent for the period ending 30 September 2020 in the amount of **\$1000.00**. The landlord's claim for rent for September 1 - 30, 2020 is claimed as lost rent due to the requirement for damages to be repaired.

Analysis

16. I have reviewed the testimony and evidence of the landlord 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.
17. With respect to the arrears being claimed, records are clear regarding the payments made by the tenant showing a balance of **\$400.00** owing for August 2020.
18. 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.
19. The landlord is claiming for the balance of the month of August 2020 claiming rent was not paid as indicated by the rental records. I accept the landlord's records as accurate.

20. Rent for September 1 - 30, 2020 is being claimed as lost rent due to damages. It has been determined below that the landlord's claim for damages has partially succeeded as it relates to the condition of the property and thus there would be a valid claim for lost rent (**\$600.00**) for repairs.

Decision

21. I find the landlord's claim for rent is successful in the amount of **\$1000.00**.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

22. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
23. The landlord testified that the tenant owes rent for August 2020. The landlord indicated that she is 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 August 2020 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 August 2020 and rent remains outstanding as of the hearing, a late fee is applicable. A calculated amount of late fees for the month of August 2020 to the hearing date of 28 January 2021 would exceed the maximum allowable of \$75.00. As such, the landlord's claim succeeds in the amount of \$75.00.

Decision

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

Issue 3: Compensation for Damages - \$16,200.00 + \$2098.38

Relevant Submissions

Landlord Position

27. The landlord testified that the property was rented as a fully furnished unit and the tenant was the first tenant in the property. The landlord testified that prior to occupancy, the landlord cosmetically renovated the property (paint, flooring, etc.) and then rented it to the respondent in this matter.
28. The landlord testified that on or about the 1st week of September 2020 the property was recovered and damages were noted. The landlord testified that the following was noted:
 - a. Clean Property and Removed refuge (Labor) (**\$1000.00**)
 - b. Rental of Garbage Dumpster (**\$898.38**)
 - c. Replace Roof (**\$5000.00**)
 - d. Replace Curtains and Blinds (**\$150.00**)
 - e. Replace Recliner (**\$400.00**)
 - f. Replace Vinyl and Carpet Flooring (**\$5000.00**)
 - g. Replace TV Stand (**\$150.00**)
 - h. Replace 2 metal bed frames (**\$300.00**)
 - i. Replace 2 Box Spring and Mattresses (**\$1200.00**)
 - j. Replace Coffee and End Tables (**\$200.00**)
 - k. Replace 2 Couches (**\$800.00**)
 - l. Replace Dryer (**\$500.00**)
 - m. Replace Washer (**\$500.00**)
 - n. Replace 2 Stoves (**\$1000.00**)
 - o. Replace Fridge (**\$600.00**)
 - p. Replace Kitchen Table and 2 Chairs (**\$400.00**)
29. The landlord submitted photos of the damages being claimed (**Exhibit L # 3**) along with a breakdown of the claim (**Exhibit L # 2**). The landlord testified that the furniture in the property was not new but was purchased used through the Classified ads and was in good shape.
30. The landlord further added that there were no incoming inspection reports on the condition of the property nor was there any photos of the property prior to commencing the tenancy.
31. The landlord testified that there were 4 adults who attended the property for 8 hours to clean the home and remove any garbage to a dumpster that was rented. The landlord testified that she is claiming a rate of \$250.00 per person for the 8 hours each.

32. Regarding the dumpster rental, there was no receipt or invoice presented to demonstrate the rental cost and landfill fees.
33. The landlord stated that the rental property was literally destroyed by this tenant who obviously did not care for the unit. The landlord added that the owner and tenant had an agreement where the tenant's rent was reduced from \$700.00 to \$600.00 and in return the tenant would complete work around the property to improve the property. Repairing a leaky roof was a part of this agreement. The landlord testified that the repairs never were completed and the damage to the ceiling happened because of a leaky roof.
34. The landlord testified that there are no receipts, estimates or invoices for the repair and/or replacement of the items claimed.

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 item "A" above, it is clear that the property was left in a mess. Given the tenant was the only person who rented the unit, one can reasonably surmise that the tenant failed to clean the property before departing.
38. The landlord's claim of \$250.00 per person does not fit with the allowed self-labor rate of \$19.65 per hour for that point in the year of 2020. Based on 8 hours each, the calculation is \$19.65/hour X 8 hours = \$157.20 per person. In this light the landlord's labor claim is excessive for the hours indicated. As such I find the tenant responsible for the cleaning of the unit and calculate the cost to be **\$628.80** (\$157.20 X 4 people = \$628.80.).
39. On the remaining items above (B – P), the landlord has not satisfied either of the second or third requirement of the legal test for a successful claim. The landlord has failed to provide any sort of documented cost to repair or replace the items claimed as damaged. Further, the landlord has not in any way shape or form, demonstrated the condition of the property prior to the onset of the tenancy (no base line photos/videos or no inspection reports). These compared to the submitted photos in this claim would have established the liability of the tenant for the claimed damages. The lack of baseline condition does not establish the condition of the property prior to the tenant.

40. There was an indication in the testimony of a work in lieu for rent agreement between the parties which included the roof. This agreement was not established in evidence and I am not satisfied that such an arrangement existed. As such, the damages associated with the roof leaking would not be the responsibility of the tenant. The repair of the roof is a structural issue and therefore a repair like that is the sole responsibility of the landlord.
41. I find the balance of the claim (items B – P) does not succeed.

Decision

42. The landlord's claim for damages succeeds in the amount of **\$628.80**.

Issue 4: Hearing Expenses

Landlord Position

43. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit L # 4**). The landlord is seeking this cost.

Analysis

44. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord is 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 such, I find the tenant is responsible to cover these reasonable expenses.

Decision

45. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Issue 5: Application of Security Deposit

Landlord Position

46. The landlord testified that a security deposit in the amount of \$200.00 was paid on the property on or about 13 January 2019. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

Analysis

47. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$200.00. The landlord's claim has been successful. The security deposit plus accrued interest is \$200.00 as the interest rate for 2019 - 2020 is set at 0%.

Decision

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

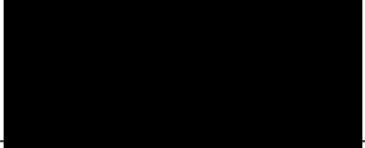
Summary of Decision

49. The landlord is entitled to the following:

a)	Damages	\$628.80
b)	Rent.....	1000.00
c)	Late Fees.....	75.00
d)	Hearing Expenses	<u>20.00</u>
d)	Subtotal.....	\$1723.80
e)	LESS: Security Deposit	<u>(\$200.00)</u>
f)	Total owing to Landlord	<u>\$1523.80</u>

03 February 2021

Date


Michael Greene
Residential Tenancies Tribunal