

Residential Tenancies Tribunal

[REDACTED] Decision 20-0043-03
[REDACTED]

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 21 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 landlord1 did not participate in the hearing but was represented by [REDACTED] as Property Manager. *(Affirmed)*
3. The applicant, [REDACTED], hereafter referred to as landlord2 did not participate in the hearing but was represented by [REDACTED] as Property Manager. *(Affirmed)*.
4. The respondent, [REDACTED], hereafter referred to as tenant1 participated in the hearing and was represented by [REDACTED] *(Affirmed)*.
5. The respondent, [REDACTED], hereafter referred to as tenant2 participated in the hearing and was represented by [REDACTED] *(Affirmed)*.
6. The details of the claim were presented as a written fixed term agreement with rent set at \$1025.00 per month and set to expire on 31 July 2020. Rent was due on the 1st of each month and a security deposit in the amount of \$843.75 was collected on or about 25 October 2018.
7. 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

8. The affidavit submitted by the tenants shows that the landlord representative [REDACTED] was served with the notice of this hearing on the **20 August 2020** by serving the application for dispute resolution document to the landlords' representative via email: [REDACTED] and providing a copy of the email sent.
9. There was no affidavit submitted by the landlord representative to indicate service of the claim. The tenants opted to waive their right of service for 10 days and continue with the hearing. *It should be noted that the landlord representative submitted copies of the affidavits after the hearing and were not considered at that point.*
10. The claims were amended to reflect the legal name of the tenant as [REDACTED] [REDACTED] going forward.
11. The landlord amended the claim at the onset and removed the majority of the claim for damages with the exception of the claim for professional carpet cleaning totalling \$414.00.

Issues before the Tribunal

12. The tenants are seeking the following:
 - a) Hearing Expenses;
 - b) Refund of Security Deposit
13. The landlords are seeking the following:
 - c) Compensation for Damages **\$414.00**;
 - d) Hearing Expenses;
 - e) Application of Security Deposit

Legislation and Policy

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

15. 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 - \$414.00

Relevant Submissions

Landlord Position

16. The landlord testified that the tenants entered into a written fixed term rental agreement a part of which they were granted permission to have cats. The landlord did also indicate that there were conditions regarding the cats.
17. The landlord referred to article 13F of the rental Agreement (**Exhibit L # 1**). The landlord read the article into the record.
 13. *The following rules will apply to all domestic animals kept by the tenants*
 - (f) *Upon the termination of the rental agreement or of the tenant vacating the property under any circumstance, the tenant will be responsible for repairing any damage or wear and tear caused by the pet during the tenancy. This may include but not limited to, professionally cleaning the carpets, resurfacing wooden floors and/or replacing any excessively soiled flooring, baseboards, doors and trim.*
18. The landlord indicated that they have been unable to locate a move in inspection report and therefore, are only claiming for the carpet cleaning. The landlord testified that the carpets were not cleaned and further testified that they hired *Bye the Bay Cleaners* to complete the job. There was no receipt presented for this service. The landlord submitted a breakdown of the claim (**Exhibit L # 2**) and indicated that only #5 would be applicable for today's hearing.
19. The landlord did not submit the move out inspection report as evidence in advance of the hearing as required but indicated that the tenants were served a copy on 16 October 2020.
20. The landlord representative testified that it is his belief that it is reasonable to ask for a professional cleaning of the carpets due to the cats being in the premises.

Tenant Position

21. The tenant disputes this claim in its entirety and stated that the section of the agreement that the landlord referred to, as indicated above, indicates that the carpets "may" be professionally cleaned. It is the tenants' contention that the carpets did not require a professional cleaning. The tenant presented photos of the property after they vacated the unit (**Exhibit T # 2**) and indicated that the carpets did not need professional cleaning.

Analysis

22. 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
23. The landlord submitted the move out inspection report to the Residential Tenancies Tribunal after the hearing. It was not identified as a piece of evidence or reviewed during the hearing and as such was not considered during the decision making process.
24. The claim is solely centered on the presence of cats in the property during the tenancy. The landlord representative acknowledges that the pets were permitted in the property as per the rental agreement.
25. The first point is the language of the rental contract. The tenant suggests that the contract only allows for the possibility that professional cleaning may be required and not an absolute requirement as suggested by the landlord representative. The rental contract provides an absolute requirement in that the tenant "*will be responsible for repairing any damage or wear and tear caused by the pet during the tenancy.*" This is similar language addressed in the *Residential Tenancies Act, 2018*. This does not preclude, however, the requirement of the landlord to show on the balance of probabilities that a loss has occurred. It is not reasonable or automatic to charge for carpet cleaning simply because a rental agreement indicates it may be required.
26. The landlord has not provided any sort of proof that carpet cleaning was required in this unit and has not provided any receipts for the actual cleaning.
27. Conversely, the tenants have provided photos of the flooring and the remaining parts of the unit as they were vacating. These photos do not depict carpets that are in a dire need of professional cleaning. As such, I find that the landlord representative has failed to show that the carpets required a cleaning and has failed to provide a valuation for the claim, therefore, the claim for carpet cleaning fails.

Decision

28. The landlord's claim for damages fails.

Issue 2: Application/Refund of Security Deposit

Landlord Position

29. The landlord testified that a security deposit in the amount of \$843.75 was paid on the property on or about 25 October 2018. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
30. The landlord acknowledges holding the security deposit in the amount of \$843.75.

Tenant Position

31. The tenants are seeking a refund of the security deposit paid in the total amount of \$843.75 and submitted a copy of the receipt for the security deposit payment (**Exhibit T # 1**).

Analysis

32. Established by undisputed fact above, the tenants did pay a security deposit to the landlord in the amount of \$843.75.
33. The landlord's claim has been unsuccessful as indicated above. The security deposit plus accrued interest is \$843.75 as the interest rate for 2018 – 2020 is set at 0%.
34. 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 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 not an attributable loss and as such, the tenants are entitled to a refund of the security deposit in the amount of \$843.75.

Decision

35. As the landlord's claim above has been unsuccessful, the landlord shall refund the security deposit being held to the tenants.

Issue 3: Hearing Expenses

Landlord Position

36. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL ([REDACTED]) (**Exhibit L # 3**). The landlord is seeking this expense.

Tenant Position

37. The tenants paid a fee in the amount of \$28.73 for the storage device to hold the evidence photos (Jump Drive) (**Exhibit T # 2**) in the amount of \$28.73. The tenants are seeking this expense.

Analysis

38. I have reviewed the testimony and evidence of the landlord and tenants in this matter. The expenses incurred by the tenants 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*. The landlord has failed in their claim and as such, I find the landlord is responsible to cover the reasonable expense of their application and the reasonable expense of the tenants' storage device in the amount of \$28.73.

Decision

39. The landlord shall pay the reasonable expense of the tenants in the amount of \$28.73.

Summary of Decision

40. The tenants are entitled to the following:

a)	Refund of Security Deposit	\$843.75
b)	Hearing Expenses	<u>28.73</u>
c)	Total owing to Tenants.....	<u>\$872.48</u>

22 December 2020

Date

Michael Greene
Residential Tenancies Tribunal