

Residential Tenancies Tribunal

[REDACTED] Decision 20-0044-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 pm on 14 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 tenant1 participated in the hearing. *(Affirmed)*
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 monthly rental agreement with rent set at \$950.00 per month, due on the 15th of each month. A security deposit in the amount of \$700.00 was collected on or about November 2018.
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 affidavit submitted by the landlord shows that the tenants were served with the notice of this hearing on the **30 August 2020** by serving the application for dispute resolution document to the tenants personally.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Compensation for Damages **\$2931.45**;
 - b) Hearing Expenses;
 - c) Application of Security Deposit

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: Compensation for Damages - \$2931.45

Relevant Submissions

Landlord Position

11. The landlord testified that when the property was recovered it was noticed that the following items were damaged and of concern:
 - a. Clean the property
 - b. Plastering
 - c. Painting
 - d. Replace Lock Set
 - e. Supplies for Cleaning, plastering and painting
12. The landlord testified that she completed the work herself and is charging labor at the self-labor rate of \$19.65 per hour.

13. The landlord submitted into evidence a copy of the claim breakdown (**Exhibit L # 1**) and testified that there were no incoming inspection reports completed or photos taken of the property before the tenants took possession or the condition after they left the unit.
14. The landlord testified that a deep clean was required in the property as there was a heavy film of oil on everything and an odor from cooking. The landlord testified that it took 64 hours at the self-labor rate of \$19.65 per hour to clean the property. There was no photos of the property to demonstrate the cleaning required. The landlord did submit an invoice from Dollarama (**Exhibit L # 2**) in the amount of \$8.63 for normal cleaning supplies picked up. She further stated that she used stock supplies from inventory, but did not elaborate on what was used.
15. The landlord testified that there were various holes in the walls of differing size that required plastering before the walls could be painted. The landlord testified that it took 21 hours to complete the plastering in the unit. She further added that she used materials from stock inventory. There were again no photos submitted.
16. The landlord testified that she had to repaint the entire apartment and took 49.5 hours to complete. She stated that supplies were taken from stock inventory and she estimated that it was 6 gallons of paint used along with roller sleeves.
17. The landlord is claiming for the replacement of a lock set because the tenants failed to return all keys. The landlord is claiming \$29.89 and submitted a receipt from Castle Building Supplies (**Exhibit L # 4**).

Tenant Position

18. The tenants testified that they returned the property in a clean condition. The tenants did acknowledge that they did forget to clean behind the stove and the oven itself indicating it was an honest mistake. They claim to have hired someone to clean the unit.
19. The tenants testified that they used command hooks as requested by the landlord. They claim the paint was older and when the command hooks were removed, some of the paint came off as well. The tenants stated that they obtained the paint color from the landlord and when applied as a touchup, the color did not match. The tenants stated that they did as they were instructed and required and should not be charged for a complete renovation in this matter.
20. The tenants acknowledge that they failed to return all keys and stated that they are ok with the charges for the lock. Similarly, as they forgot to complete some cleaning, they are fine with the cost of supplies in the amount of **\$8.63**.

Analysis

21. I have reviewed the testimony and evidence of the landlord and tenants 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
22. The tenants have acknowledged the need for some cleaning that they had forgotten by mistake. As well, they have acknowledged the need for the landlord to replace the lock to the property. For these two items I find in favor of the landlord, however' the claim for cleaning in the amount of \$1257.60 is excessive for that, which has been proven.
23. The landlord has failed to show the condition of the property after the tenants vacated and has failed to show the condition of the property prior to the tenants taking possession. These two items are basic in any damage claim. For the portion of cleaning acknowledged by the tenants, I find that 4 hours is more than reasonable. The rate of \$19.65/hour will be used for a total award of **\$78.60** plus the **\$8.63** of materials noted above.
24. Regarding the replacement of the lock, the landlord is claiming \$28.89 which is documented and acknowledged by the tenants. In addition, I will allow for 1 hour labor to install the lock for a replacement total of **\$48.54**.
25. Regarding the plastering, the tenants information sheet (**Exhibit L # 6**) clearly instructs the tenants to utilize only command strips for hanging items. I accept that the tenants did do as instructed. The removal of these strips apparently still created some damage, however, this damage was not a willful or negligent act of the tenants and therefore cannot be held responsible for the repairs. There are times when things happen no matter how careful one is to avoid such damages. Added to this, the landlord has failed to actually show the condition of the unit either before the tenancy or after the tenancy ended. As such, I find that the claim for plastering and subsequent painting are not a willful or negligent action of the tenants and therefore, the landlord's claim fails.
26. Regarding the painting, the landlord failed to show the condition of the unit before and after the tenancy and in failing to do this, has not met the burden required for a successful claim. In addition, the tenants did what was expected of them in obtaining the color from the landlord. It is unfortunate that the color on the wall faded and did not match. As such, the landlord's claim for painting fails.

Decision

27. The landlord's claim for damages succeeds as follows:

- a. Cleaning \$87.23
- b. Painting \$00.00
- c. Plastering \$00.00
- d. Lock Replacement \$48.54
- e. **Total \$135.77**

Issue 2: Hearing Expenses

Landlord Position

28. 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 # 5**). The landlord is seeking this cost.

Analysis

29. I have reviewed the testimony and evidence of the landlord and tenants 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 in part, I find the tenants are responsible to cover this expense.

Decision

30. The landlord's claim for hearing expenses succeeds in the amount of **\$20.00**.

Issue 4: Application/Refund of Security Deposit

Landlord Position

31. The landlord testified that a security deposit in the amount of \$700.00 was paid on the property on or about November 2018. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

32. The landlord acknowledges holding the security deposit in the amount of \$700.00.

Tenant Position

33. The tenants were agreeable to apply the security deposit against any order issued.

Analysis

34. Established by undisputed fact above, the tenants did pay a security deposit to the landlord in the amount of \$700.00.

35. The landlord's claim has been successful as indicated above. The security deposit plus accrued interest is \$700.00 as the interest rate for 2018 – 2020 is set at 0%.

36. As the landlord's claim is successful in part 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

37. 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

38. The tenants are entitled to the following:

a)	Security Deposit.....	\$700.00
b)	LESS: Compensation for Damages	(\$135.77)
c)	LESS: Hearing Expenses	(\$20.00)
d)	Subtotal	\$544.23
d)	Total owing to Tenants.....	<u>\$544.23</u>

15 December 2020

Date

Michael Greene
Residential Tenancies Tribunal