

Residential Tenancies Tribunal

Decision 20-0289-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 30 September 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 tenant participated in the hearing. *(Affirmed)*
3. The respondent, [REDACTED], (■) hereafter referred to as the landlord participated in the hearing. *(Affirmed)*
4. The details of the claim were presented as a verbal monthly agreement with rent set at \$800.00 per month and due on the 1st of each month and a security deposit in the amount of \$400.00 was collected on or about 26 September 2019.
5. 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

6. The affidavit submitted by the tenant shows that the landlord [REDACTED] was served with the notice of this hearing on the **21 August 2020** by serving the application for dispute resolution document to the landlord personally to the address: [REDACTED]
[REDACTED].
7. The affidavit submitted by the landlord shows that the tenant [REDACTED] was served with the notice of this hearing on the **02 September 2020** by serving the application for dispute resolution document to the tenant by registered mail ([REDACTED]
[REDACTED]) which shows delivered on **02 September 2020** by Canada Post.
8. The landlord waived their right of service of the evidence for the hearing.

Issues before the Tribunal

9. The tenant is seeking the following:
 - a) Return of Possessions **\$390.00**;
 - b) Hearing Expenses;
 - c) Return of Security Deposit
10. The landlord is seeking the following:
 - d) Rent Owing **\$800.00**;
 - e) Damages **\$550.00**
 - f) Hearing Expenses;
 - g) 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 - \$550.00

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. Washer Broken
 - b. Clean the unit
14. The landlord testified that the washer was not turned on until after the tenant was gone from the unit. The landlord testified that it didn't work and she had ([REDACTED] – Ex-Husband) repair the unit for a fee of \$250.00. The landlord submitted a receipt from [REDACTED] (**Exhibit L # 2**) in the amount of \$250.00 for parts and labor.
15. The landlord testified that once the unit was recovered, the entire unit had to be cleaned. The landlord submitted into evidence a copy of a receipt (**Exhibit L # 3**) for 16 hours labor totaling \$300.00 in the name of [REDACTED]. The landlord testified that she paid two (2) people to clean the property and referred to photos (8) of the property (**Exhibit L # 4**) to demonstrate the damages that required cleaning.

Tenant Position

16. The tenant disputes this portion of the claim and stated that the use of the washer was included in the rent. The tenant further added that if it broke it was wear and tear on the unit. The tenant stated that he used the washer a couple days before he vacated and it worked fine at the point. He stated that he has no idea what happened once he moved.
17. The tenant disputed this portion of the claim stating that when he moved into the property the unit wasn't clean including the oven and the blinds. The tenant supplied a video of the unit along with pictures of the unit just after cleaning and vacating (**Exhibit T # 2**). The file info on the photos were date 03 May 2020 at 1:08 am.

Analysis

18. 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
19. The washer was an item that was included in the rental agreement for the use of the tenant during the tenancy. Given this, it is subject to reasonable wear and tear during the tenancy. The landlord has claimed for a repair and has stated that her ex-husband looked at it, picked up the parts and fixed the unit. There was no indication as to what was wrong with the unit and the person who fixed the unit was not called as a witness to testify. One of the landlord's photos does indicate some accumulation around the bottom of the washer, but it's not indicative of any mechanical failure. The tenant testified that there was nothing wrong with the washer a couple days previous. I find that the landlord has failed to show beyond the balance of probabilities that there was anything wrong beyond reasonable wear and tear with the washer. As the landlord has failed to substantiate the claim for repairs, the claim fails.
20. The landlord too has claimed for the cleaning of the property. The 16 hours labor (2 people for 8 hours each) for the total of \$300.00 seems excessive based on the evidence submitted for consideration. The landlord's photos are close up photos and as such will pick up things as opposed to more distant photos. There was no date stamp on these photos. The tenant testified that the property was not clean when he moved in. The landlord did not provide any signed inspection reports or photos taken of the unit prior to the tenant moving into the property. This would have established a baseline for the condition of the property prior to occupancy and anything after that would have been the liability of the tenant.
21. The tenant did provide a video and photos showing the condition of the unit with date stamps of 03 May 2020 at the early morning hours. These photos show a clean property with freshly mopped floors visible. There was some minor issue with the interior of the fridge which would have required a minor cleaning. There cannot be an expectation of the landlord that a tenant will leave the unit in a pristine condition; there is an allowance for reasonable wear and tear because of living. I find that the unit was not in pristine condition, however, based on the evidence provided from both sides of this dispute, I find that the tenant's evidence is documented clearly and establishes a time frame when the images were taken. I accept that the tenant reasonably cleaned the unit taking into consideration the reasonable wear and tear with the noted minor exception of the fridge. For the cleaning of the fridge I award 1 hour self-labor at the accepted rate of \$19.65 per hour.

Decision

22. The landlord's claim for damages succeeds in the amount of \$19.65.

Issue 2: Refund Owing - \$800.00

Relevant Submissions

Landlord Position

23. The landlord testified that there was a monthly verbal agreement in place and the tenant did not provide a termination notice prior to leaving the unit. The landlord stated that as such, she feels that the tenant is responsible for the rent for May 2020.

24. The landlord testified that she was able to re-rent the property for 01 June 2020 to a [REDACTED]

25. The landlord further added that there was a previous claim filed on this tenancy ([REDACTED]) where a mediated agreement was signed by all parties (**Exhibit L # 1**). This agreement would have the tenant vacating on or before 31 May 2020.

Tenant Position

26. The tenant disputes this portion of the claim stating that he simply do not owe the monies claimed. The tenant and landlord agree that the tenant vacated on 02 May 2020.

Analysis

27. The determining factor in this portion of the claim is the evidence related to the mediated agreement entered into by both parties. This agreement sets out that the tenant would vacate **on or before** 31 May 2020. The agreement is non appealable upon execution by both parties.

28. The mediated agreement is the landlord's notice that the tenant will be vacating at some point up to 31 May 2020, which is exactly what the landlord wished. The tenant is required to pay for the use and occupation of the property and it has been stated that the tenant vacated on 02 May 2020. As such, I find that the tenant is responsible for rent for May 1 – 2, 2020 as calculated.

29. The calculated amount of rent owing to the tenant then is **\$52.46** and calculated as $(\$800.00 \times 12 \text{ months} = \$9600.00 \div 366 \text{ days} = \$26.23 \text{ per day} \times 2 \text{ days} = \$52.46)$.

Decision

30. The landlord's claim for rent is successful in the amount of **\$52.46**.

Issue 3: Return of Possessions - \$390.00

Relevant Submissions

Tenant Position

31. The tenant is claiming for the return of his possessions that he claims were locked in the shed on the property.

32. The tenant supplied a list of the items he is seeking returned (**Exhibit T # 1**) and identified as:

- a. Chainsaw (\$275.00) **(2 years old)**
- b. Pipe wrench (\$25.00) **(10 years old)**
- c. 2 Gas Cans (\$40.00) **(1 year old)**
- d. An Electrical Tester (\$10.00) **(new)**
- e. Deck Broom (\$40.00) **(new)**

33. The tenant testified that there was no receipts or invoices. He stated that he got the pricing from Home Hardware and Kent. The tenant also testified that he requested the items from the landlord but she indicated that she had nothing to do with the key to the shed.

Landlord Position

34. The landlord testified that she did not have any dealings with the shed. She stated that when the property was vacated there were stuff left under the deck which was taken to the dump. The landlord testified that the deck broom is at the property and the tenant is welcome to it whenever he wants. She further testified that she is 100% certain that the items are not in the shed.

Analysis

35. The evidence in this portion of the claim is bewildering at best. The tenant is claiming for several items which would normally be found in a shed type of environment. The bewildering part is the statement that the landlord did not have anything to do with the shed, yet one of the items being sought is present on the property. Additionally, the landlord has acknowledged removing belongings left behind and taking them to the landfill without any affidavit of abandoned property filed as required under the *Residential Tenancies Act, 2018*.
36. The tenant has not provided any estimates but I accept the testimony of the tenant that the property he is claiming was locked in the shed when he vacated. The relationship of landlord and tenant was not cordial at the time as is indicated in the tenant videos and audio files submitted above. It was especially tense between the tenant and the male at the property at the time. I find that based on the evidence that the landlord indicated that the deck broom is present and that items were removed to the dump without any inventory filed, the fact that the items being sought would normally be found in the shed and that the relationship with the male landlord at the time was tense, that the items were likely in the shed and removed by someone other than the tenant.
37. As there is no documented values I find that an arbitrary award based on depreciation for the total value of \$150.00 is reasonable for everything except the deck broom. Further, I find that the tenant is entitled to the return of the deck broom.

Decision

38. The tenant's claim for return of possessions is successful as follows:
 - a. Return of the Deck Broom
 - b. Depreciated Value of remaining items **\$150.00**

Issue 4: Application/Refund of Security Deposit

Landlord Position

39. The landlord testified that a security deposit in the amount of \$400.00 was paid on the property on or about 26 September 2019. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
40. The landlord acknowledges holding the security deposit in the amount of \$400.00.

Tenant Position

41. The tenant is seeking a refund of the security deposit paid in the total amount of \$400.00.

Analysis

42. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$400.00.
43. The landlord's claim has been partially successful as indicated above. The security deposit plus accrued interest is \$400.00 as the interest rate for 2019 – 2020 is set at 0%.
44. The landlord's claim is partially successful. The security deposit is an asset of the tenant to be held against any loss incurred by the landlord attributed to the tenancy. In this matter it has been determined that there was minimal attributable loss and as such, the tenant is entitled to a refund of the balance of the security deposit as outlined in the attached order.

Decision

45. As the landlord's claim above has been mostly unsuccessful, the landlord shall refund the security deposit being held to the tenant as outlined in the attached order.

Issue 5: Hearing Expenses

Landlord Position

46. 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 also seeking the cost of the registered mail (**Exhibit T # 3**) in the amount of \$13.44. The landlord is seeking these costs.

Tenant Position

47. The tenant paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (████████) (**Exhibit T # 4**). The tenant is also seeking the cost of the registered mail (**Exhibit L # 6**) in the amount of \$13.44. The tenant is seeking these costs.

Analysis

48. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The expenses incurred by the landlord and tenant 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's claim has not been successful and as such, I find the landlord is responsible to cover the reasonable expenses of the tenant and their own hearing costs.

Decision

49. The landlord shall pay the reasonable expenses of the tenant in the amount of \$33.44.

Summary of Decision

50. The tenant is entitled to the following:

a)	Refund of Security Deposit	\$400.00
b)	Return of Possessions	150.00
c)	Hearing Expenses	<u>33.44</u>
d)	Subtotal	\$583.44
e)	LESS: Rent Owing	(52.46)
f)	LESS: Compensation for Damages	<u>(19.65)</u>
g)	Total owing to Tenant.....	<u>\$511.33</u>

03 November 2020

Date

Michael Greene
Residential Tenancies Tribunal