

Residential Tenancies Tribunal

[REDACTED] Decision 20-0295-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 05 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 the tenant participated in the hearing. *(Affirmed)*
4. The details of the claim were presented as a written fixed term agreement with rent set at \$4800.00 per month with utilities included, due on the 1st of each month and the term set to expire on 19 March 2020. A security deposit in the amount of \$3600.00 was collected on or about 19 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 landlord shows that [REDACTED] was served with the notice of this hearing on the **24 September 2020** by serving the application for dispute resolution document to the landlord via email: [REDACTED] and attaching proof of the sent email and a copy of the rental agreement where the tenant provided the email address.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Compensation for Damages **\$3246.99**;
 - b) Hearing Expenses;
 - c) Application of Security Deposit

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. 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 - \$3246.99

Relevant Submissions

Landlord Position

10. The landlord testified that when the property was recovered it was noticed that the following items were damaged and of concern:
 - a. The property was untidy and not clean
 - b. Replacement of one remote (Garage Door) and reprogramming
 - c. Paint bedroom
 - d. Replace two end tables (Living Room)
 - e. Repair hot tub

11. The landlord submitted the following for evidence:
 - a. Exhibit L # 1: Photos of the Property re: Cleanliness
 - b. Exhibit L # 2: Receipt from [REDACTED] Re: Cleaning
 - c. Exhibit L # 3: Invoice from Terra Nova Overhead Doors Ltd.
 - d. Exhibit L # 4: Receipt from The Paint Shop
 - e. Exhibit L # 5: Receipt from Atlantic Home Furnishings
 - f. Exhibit L # 6: Invoice from Bubbas Tubs
 - g. Exhibit L # 7: Rental Agreement
12. The landlord testified that he recovered the property around noon on 19 March 2020 noticing that the property was untidy.
13. The landlord testified that when he recovered and entered the unit, the oven was not clean, the floors were not clean and the garage was not clean. He stated that he had a cleaning service clean the property (**Exhibit L # 2**) for the amount of \$250.00 and referred to photos of the property (**Exhibit L # 1**) and stated that there was one wall in the bedroom with egg over the wall.
14. The landlord testified that two garage door openers were provided to the tenant at the onset of the tenancy and only one was returned when the tenant vacated. The landlord referred to the invoice from Terra Nova Overhead Doors (**Exhibit L # 3**).
15. The landlord testified that the property was originally painted by the contractor who built the property 8 years ago. He stated that in one bedroom, the bed was pushed into the wall and there was a splatter of egg and eggshell on the wall. He stated that after it was cleaned, it required painting. He referred to photos (**Exhibit L # 1**) and submitted a receipt from The Paint Shop (**Exhibit L # 4**). The landlord testified that the painted surface was 8 years old.
16. The landlord is seeking the replacement of two end tables as a result of damage. The landlord stated that the end table in the living room was marked with three white spots (possible heat blanket burns) and a scratch and the night table in the master bedroom had a large white blotch on it. The landlord referred to the photos and submitted an invoice from Atlantic Home Furnishings (**Exhibit L # 5**) for the replacement of the two tables. The landlord estimated the tables to be 9 years old.
17. The landlord is seeking compensation for the repair to the hot tub located on the property. The landlord testified that the tub was winterized before the tenant agreed to rent but the rental contract did indicate it was available during the rental. He stated that he showed the breaker to the tenant and advised to ensure the cover was tied down when not using due to the high winds. The landlord claimed to have noticed once that the cover was not tied down. He states that he was further advised by the tenant in January that he turned off the tub. The landlord testified that the cover blew off the tub and with the temps, there was 3 ft of ice in the tub. The landlord submitted an invoice from Bubbas Tubs for the repairs (**Exhibit L # 6**).

Tenant Position

18. The tenant testified that when he lived there he engaged a cleaning service who cleaned the property every two weeks. He further stated that the property was cleaned the day before he vacated. The tenant challenges the invoice of the landlord's cleaner as not a valid invoice and disputes the claim in its entirety.
19. The tenant acknowledges that one remote to the garage went missing during the tenancy. He questions why he is being charged for two when one was returned.
20. The tenant didn't recall any egg on the wall of the bedroom. He stated that this was his son's room.
21. The tenant testified that he was not aware of any heat blanket burns and feels that the damage was wear and tear. In another statement the tenant indicated that there was a leak from a window adjacent to the tables and perhaps this was the cause.
22. The tenant first testified that the tub was not functional at the onset as indicated by the landlord. The tenant stated that he engaged Bubbas Tubs to make it operational. The tenant noted that he never turned off the tub in January. He further added that he was away in [REDACTED] in January during the "Snowmageddin" for a 10 day period and could not get home. The tenant suggested that perhaps the power went off during the storm causing the tub to freeze. The tenant pointed out that the landlord wasn't in the country. The tenant lastly stated that the house is positioned on a hill and prone to high winds.

Analysis

23. 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
24. I will deal with each section individually and include any associated labor charged as required.
25. There is no question from the evidence that at least the oven was not cleaned when the property was recovered. Similarly the garage floor was not cleaned as well. I can accept that the tenant may very well have used a cleaning service during the tenancy, but that is not to say that the oven was cleaned on a regular basis. I am willing to go out on a limb and suggest that the cleaning service likely did not clean the garage with a trail of sand being left during the move process.

The egg on the wall in the bedroom would have to be cleaned and this would be the limit of cleaning shown by the landlord. I find that the landlord likely had the cleaner go through the property while they were there to freshen up the unit, but this would not be attributable to the tenant. I find that for the damages shown by the landlord that 5 hours would be more than reasonable. The invoice supplied for [REDACTED]'s Services is certainly not a normal receipt and likely wouldn't hold up to the scrutiny of CRA, but this tribunal is not adjudicating a tax return and will accept the receipt but award only $\frac{1}{2}$ against the tenant in the amount of \$125.00. The landlord's claim for cleaning succeeds in the amount of **\$125.00**

26. The tenant has acknowledged misplacing one remote and as such is responsible for the replacement of same. The landlord has claimed \$395.00 for the repairs as invoiced. Given that the tenant is only responsible for one remote, I find that the tenant is responsible only for $\frac{1}{2}$ of the cost in the amount of **\$197.50**.
27. Regarding the bedroom painted surface, there has been an allowance in the cleaning section above for the cleaning of the egg from the wall. The painted surface was identified as being 9 years old. The Residential Tenancies Section allows for a useful life expectancy of a painted surface in a rented premises of 5 years. That would indicate that the paint has been fully depreciated and no award will be made for the painting of the bedroom. The landlord's claim for painting fails.
28. The landlord's claim for the replacement of the end tables seems a bit drastic. There is no doubt that there was marks on the tables and I do not accept the tenant's response that they did not see the white blotch on the bedroom table. That would be impossible as it is the size of tissue box. I find in favor of the landlord but not for the replacement cost as the tables are 9 years old and are still quite functional. I will however, award an arbitrary amount as compensation for the depreciated damages to the two tables in the amount of **\$100.00**.
29. The hot tub issue seems to be the most contentious issue between both parties. It is apparent that the damage of freezing and the lifter happened during the time frame of the snowmageddon in January 2020. At this time frame, the entire region was on lock down, there were orders in place respective of movement through the city streets and there were mass power outages in the region. The storm saw record breaking winds and record breaking snow falls. I accept that the tenant was out of town in [REDACTED] and could not get back to town because of the restrictions. It is reasonable to assume that the damages being claimed could have been caused by the events of the January snow storm and there was nothing anyone (landlord or tenant) could have done to rectify or mitigate the situation. There is no conclusive evidence that the tenant shut down the hot tub at any point during the tenancy. There is a reasonable likelihood that the winter events in January 2020 could have caused the freezing and damage to the hot tubs. As such, I find that it is a reasonable conclusion that the damages to the hot tub were the result of the January Snow Event. As such, the landlord's claim for hot tub repairs fails.

Decision

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

- a. Cleaning \$125.00
- b. Remotes \$197.50
- c. Painting \$0.00
- d. End tables \$100.00
- e. Hot Tub \$0.00
- f. Total \$422.50**

Issue 2: Application/Refund of Security Deposit

Landlord Position

31. The landlord testified that a security deposit in the amount of \$3600.00 was paid on the property on or about 19 September 2019. 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 \$3600.00.

Tenant Position

33. The tenant acknowledged that the Security Deposit should be applied against any order.

Analysis

34. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$3600.00.
35. The landlord's claim has been successful in part as indicated above. The security deposit plus accrued interest is \$3600.00 as the interest rate for 2019 – 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 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 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 tenant is entitled to the following:

- a) Security Deposit.....\$3600.00
- b) LESS: Compensation for Damages(\$422.50)
- c) **Total owing to tenant**.....**\$3177.50**

15 December 2020

Date



Michael Greene
Residential Tenancies Tribunal