

## Residential Tenancies Tribunal

[REDACTED] Decision 20-0340-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **9:30 am on 02 November 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 participated in the hearing. (*Affirmed*)
3. The applicant, [REDACTED], (■) hereafter referred to as landlord2 participated in the hearing. (*Affirmed*)
4. The respondent, [REDACTED], (■) hereafter referred to as tenant1 did not participate in the hearing. (*Absent and Not Represented*)
5. The respondent, [REDACTED], (■) hereafter referred to as tenant2 did not participate in the hearing. (*Absent and Not Represented*)
6. The details of the claim were presented as a written fixed term agreement with rent set at \$750.00 per month and due on the 1<sup>st</sup> of each month. The agreement was scheduled to end on 30 November 2020. A security deposit in the amount of \$375.00 was collected on or about 29 November 2019.
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 tenants, [REDACTED] & [REDACTED], were 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 landlords shows that tenant1 was served with the notice of this hearing on the **24 August 2020** by serving the original documents to tenant1 via email: [REDACTED]

The affidavit submitted by the landlords shows that tenant2 was served with the notice of this hearing on the **24 August 2020** by serving the original documents to tenant2 via email: [REDACTED]

Phone calls were placed to the numbers on file:

[REDACTED]: No Answer message left on the message manager  
[REDACTED]: No Answer message left on the message manager

The tenants have had **69 days** to provide a response.

9. As the tenants were properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicants, I proceeded in the tenants' absence.

## Issues before the Tribunal

10. The landlords are seeking the following:
  - a) Damages **\$6141.86**;
  - b) Hearing Expenses;
  - c) 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.*

## Issue 1: Compensation for Damages - \$6141.86

### Relevant Submissions

#### Landlord Position

13. The landlords testified that when the property was recovered it was noticed that the unit was left in a complete state of disrepair. The landlords outlined the following items:
  - a. Cleaning (Materials & Labor)
  - b. Missing Dehumidifier
  - c. Replace Smoke Alarms
  - d. Contractor Repairs (Materials & Labor)
  - e. Fuel Consumption
  - f. Lost Rent
14. The landlords testified that this all started when the landlords gave notice to inspect the property (hot water tank) in the event that it needed replacement. At the inspection it was noticed that the property was a mess. The tenants were advised to clean it up. They stated that they couldn't contact the tenants after this interaction.
15. The landlords then issued a repair notice (**Exhibit L # 1**) and advised that the tenants couldn't complete the repairs as they could not afford the repair costs. The landlords stated that the tenants vacated the property on 13 July 2020.
16. The landlords testified that they decided to sell the property and engaged a home inspector who would not complete the inspection as he was fearful for his health and safety. The landlords returned to the property and found it in complete disrepair and submitted the photos of the property to demonstrate the condition (**Exhibit L # 3**).

17. The landlords testified that they hired a contractor to complete the repairs and they did the extensive cleaning required. They submitted a breakdown of the repairs required (**Exhibit L # 2**) and a breakdown of their cleaning labor (**Exhibit L # 9**). The landlords testified that [REDACTED] spent 52 hours and [REDACTED] spent 16.5 hours cleaning to prepare for the repairs and clean after the repairs. They are claiming a labor rate of \$19.50/hour. The landlords again referred to the photos to demonstrate the need for the extensive cleaning.
18. The landlords testified that the floors in the property were destroyed from urine soaking and swelling the existing laminate floor and the urine and fecal stained carpet. The landlords testified that the laminate flooring was replaced, the carpet was removed and replaced with laminate and the bathroom flooring was replaced with vinyl flooring. The landlords referred to the contractor invoice for the repairs to the flooring (**Exhibit L # 8**) and again referred to the photos (**Exhibit L # 3**) to demonstrate the need for the repairs. The landlords added that the flooring in the property was 5 years old and submitted the receipts for the cost of the materials (**Exhibit L # 4**).
19. The landlords also testified that as a result of the extensive urine damage and pet scratching and chewing damage, the trims and door casings had to be replaced. The age of the trims are 1 year as indicated by the landlords. The landlords pointed the tribunal to the photos (**Exhibit L # 3**) and specifically to the wooden door scratched, the urine soaked baseboards and scratched door casings. The landlords again referred to the contractor invoice (**Exhibit L # 8**) and the receipts for materials (**Exhibit L # 4**).
20. The landlords lastly testified that the unit required some plaster and paint touch-ups. The landlords testified that where the trims were removed as a result of damage and flooring replacement, some repair to the walls were required. The landlords referred to the contractor invoice (**Exhibit L # 8**), the receipts for the purchase of paint and plaster (**Exhibit L # 4**) and the photos (**Exhibit L # 3**).
21. The landlords are also claiming for the replacement of two smoke detectors that were removed from the ceiling and were urine soaked, which rendered them not usable. The landlords referred to the receipts (**Exhibit L # 4**) at a cost of \$50.23 for the detectors and batteries.
22. The landlords are seeking the cost of a missing dehumidifier from the property. The testified that the dehumidifier was included in the rental agreement (**Exhibit L # 5**) and was not there when the property was recovered. The landlords submitted a receipt for the replacement unit (**Exhibit L # 4**) in the amount of \$218.49.
23. The landlords are claiming \$44.82 for fuel for the travel to and from the landfill and the store for materials. The landlords calculated 464 km travelled @ a consumption rate of 84 L/100 km and a cost of \$1.15/L and 39 L used.

24. The landlords are claiming \$28.75 for the re-keying of the locks as the tenants failed to return the keys. The landlords referred to the receipts (**Exhibit L # 4**) to show the costs from Babb Locks.
25. The landlords are seeking \$242.00 in lost rent for the period July 22 – 31, 2020. The landlords testified that they refunded the rent to the tenants for the above period and further indicated that a termination notice (**Exhibit L # 10**) was issued on 16 July 2020 for the date of 22 July 2020 under Section 22 of the Act. The landlords indicated that the tenants advised they were out of the unit on 13 July 2020. The landlords further testified that once they were aware the tenants had vacated, they posted an abandonment notice on 20 July 2020 to recover the unit on 21 July 2020 (**Exhibit L # 3**). (See *photo of posted abandonment notice*)

## Analysis

26. I have reviewed the testimony and evidence of the landlords in this claim. The landlord applicants are 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
27. The evidence is crystal clear in this claim. The tenants did what I can only describe as willfully and leave the rented premises in a complete state of disrepair. It could be clearly seen that the floors were urine soaked and stained and smeared with what I assume was pet fecal matter.
28. There is no excuse for the level of uncleanliness and destruction that the tenants left the unit in. I am alarmed when I'm advised that a professional home inspector would not enter the building in fear of his health and safety. The photos show clearly the reason.
29. I at first thought that the landlords' claims for hours of cleaning may have been exaggerated. However, after reviewing the evidence, I actually think that they have somewhat been generous. The need for the cleaning is clear. I find the labor charges for cleaning to be reasonable and find in favor of the landlords in the amount of \$1335.75 for labor and \$133.87 for materials for a total of **\$1469.62**.
30. The balance of the repairs was completed by a contractor who has charged a flat labor rate of \$2100.00 to replace the flooring, replace the trims, complete drywall repair and do paint touch-ups. The materials for the repairs were provided by the landlords and receipted in the amount of \$1967.95.
31. The repaired items are depreciable items and as such, depreciation must be considered. Given the labor is a combined amount, specific calculate depreciation cannot be calculated and as such, I will apply a reasonable estimate

based on the evidence presented. After considering the totality of the evidence and considering that the majority of the damage was related to the flooring, I find that the flooring would have been depreciated at about 1/3 of its life span. As such, this is the rate I will apply to the depreciation of the damaged items. The depreciated cost of the damaged items in the property is **\$2725.53** calculated as ( $\$4067.95 \times 67\% \text{ remaining life span} = \$2725.53$ ).

32. The landlords have claimed for the re-keying of the locks because the tenants did not return them. The responsibility of the landlords are to ensure the safety and security of the tenants during a tenancy. There is no guarantee that a tenant will return all the keys to the property upon vacating and therefore, it is seen as a cost of doing business for landlords to either re-key or change the lock system between tenants. As such, the landlords' claim for re-keying the locks fails.
33. The landlords have claimed for the replacement of two smoke detectors that were removed from the ceiling and were urine soaked, which rendered them not usable. I accept the evidence of the landlords and find the tenants responsible. This portion I will award full costs of \$50.23 for the detectors and batteries.
34. The landlords are seeking the replacement cost of a dehumidifier that was in the property at the onset of the tenancy. The rental agreement indicates that this was included in the rental property and the photos of the unit does not depict that the unit is in the property after the tenants vacated. A dehumidifier is a depreciable item and any replacement cost shall take this into consideration. The landlords indicated that the unit was approximately 5 year old and is seen to have a life expectancy of 10 years. The depreciated replacement cost then is **\$109.25** calculated as ( $\$218.49 \div 10 \text{ years} = \$21.85 \times 5 \text{ years remaining} = \$109.25$ )
35. Lastly, the landlords are claiming for the loss of rent for the balance of July 2020. It was stated by the landlords that they issued the tenants a termination notice dated 16 July 2020 for the intended termination date of 22 July 2020 under section 22. They also indicated that the tenants advised them that they were out of the property on 13 July 2020.
36. The landlords did as they indicated, terminated the tenancy effective 22 July 2020. Once a termination notice is issued, it cannot be retracted. As the landlords terminated the tenancy, they are not entitled to any further rent after the date of termination or the date the tenants vacated. As such, the landlords' claim for lost rent fails.
37. The landlords' claim for fuel regarding trips to the landfill and store are reasonable and appropriately calculated. This portion of the claim succeeds in the amount of **\$44.92**.

## Decision

38. The landlords claim for damages succeeds as follows:

a. Cleaning	\$1469.62
b. Contractor Repairs	2725.53
c. Replace Smoke Detectors	50.23
d. Missing Dehumidifier	109.25
e. Fuel Usage	44.82
f. Lost Rent	0.00
g. Re-keying Locks	<u>0.00</u>
<b>h. Total:</b>	<b><u>\$4399.45</u></b>

## Issue 6: Application/Refund of Security Deposit

### Landlord Position

39. The landlords testified that a security deposit in the amount of \$375.00 was paid on the property on or about 29 November 2019. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.

40. The landlords acknowledges holding the security deposit in the amount of \$375.00.

### Analysis

41. Established by undisputed fact above, the tenants did pay a security deposit to the landlords in the amount of \$375.00.

42. The landlords' claim has been partially successful as indicated above. The security deposit plus accrued interest is \$375.00 as the interest rate for 2019 – 2020 is set at 0%.

43. The landlords' claim is partially successful. The security deposit is an asset of the tenants to be held against any loss incurred by the landlords attributed to the tenancy. In this matter it has been determined that there was attributable loss and as such, the landlords are entitled to offset the security deposit against the damages as outlined in the attached order.

## Decision

44. As the landlords' claim above has been successful in part, the landlords shall offset the security deposit being held against the damages as outlined in the attached order.

### Issue 3: Hearing Expenses

#### Landlord Position

45. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL ( [REDACTED] ) (Exhibit L # 9A). The landlords are seeking this cost.

#### **Analysis**

46. I have reviewed the testimony and evidence of the landlords in this matter. The expenses incurred by the landlords 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 such, I find the tenants are responsible to cover these reasonable expenses.

#### **Decision**

47. The tenants shall pay the reasonable expenses of the landlords in the amount of \$20.00.

#### **Summary of Decision**

48. The landlords are entitled to the following:

a)	Compensation for Damages .....	\$4399.45
c)	Hearing Expenses .....	<u>20.00</u>
d)	<b>Subtotal .....</b>	<b>\$4419.45</b>
e)	LESS: Security Deposit.....	<u>(\$375.00)</u>
g)	<b>Total owing to Landlords .....</b>	<b><u>\$4044.45</u></b>

31 December 2020

Date

  
Michael Greene  
Residential Tenancies Tribunal