

Residential Tenancies Tribunal

[REDACTED] Decision 20-0356-05
[REDACTED]

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 16 February 2021** 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 tenant1, participated in the hearing. *(Affirmed)*
3. The applicant, [REDACTED] hereafter referred to as tenant2, participated in the hearing. *(Affirmed)*
4. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing. *(Affirmed)*
5. The details of the claim were presented as a written fixed term agreement with rent set at \$1600.00 per month and due on the 1st of each month. The agreement was scheduled to end on 31 July 2020. A security deposit in the amount of \$1125.00 was collected on or about 31 July 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 tenant1 was served with the notice of this hearing on the **03 December 2020** by serving the original documents to tenant1 via email: [REDACTED]

The affidavit submitted by the landlord shows that tenant2 was served with the notice of this hearing on the **03 December 2020** by serving the original documents to tenant2 via email: [REDACTED]

The affidavit submitted by the tenants show that the landlord was served with the notice of this hearing on the **08 September 2020** by serving the original documents to the landlord via email: [REDACTED]

Issues before the Tribunal

8. The landlord is seeking the following:

- a) Damages **\$7384.67**;
- b) Hearing Expenses;
- c) Application of Security Deposit

9. The tenants are seeking the following:

- d) Refund of Security Deposit;
- e) Hearing Expenses;

Legislation and Policy

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

11. 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 - \$7384.67

Relevant Submissions

Landlord Position

12. The landlord testified that when the property was recovered it was noticed that the unit was left damaged and unclean. The landlord outlined the following items:
 - a. Cleaning
 - b. Repair chips and paint walls
 - c. Replace lock
 - d. Replace broken blind
 - e. Replace towel rack
 - f. Replace light bulbs
 - g. Replace damaged hardwood flooring (estimate 150 boards)
13. The landlord submitted into evidence a list or breakdown of the damages (**Exhibit L # 2**) along with photos of the property (**Exhibit L # 1**). The landlord's photos were presented and taken on two separate days (31 July 2020) and (01 August 2020).
14. The landlord testified that the home was not left in a clean condition. The landlord acknowledged that the tenant's sister did come back for a period of time to clean, and even after this cleaning, he testified that he had to hire a cleaning company to clean through the property. The landlord submitted an invoice from [REDACTED] Cleaning (**Exhibit L # 3**) in the amount of **\$186.88** to clean the property. The landlord referred to the photos above to demonstrate the unclean condition.
15. The landlord testified that a blind in the property was broken and had to be replaced. The landlord referred to the photos again and submitted an invoice from Home Depot (**Exhibit L # 7**) for the replacement cost in the amount of **\$101.68**.
16. The landlord is claiming for the cost of a replacement front door lock set as the cylinder portion of the lock was destroyed when the property was recovered. The landlord referred to the photos (**Exhibit L # 1**) and submitted a receipt from Kent Building Supplies for the purchase of a new lock set (**Exhibit L # 6**) in the amount of **\$169.61**. He added that it was his thought that whatever happened to the lock, happened during the move out process.
17. The landlord is claiming for the re-installation of the towel rack in the bathroom. He indicated that when the unit was recovered it was noted that the rack was torn from the wall. He indicated that the wall, as a result, required plaster and paint and the rack was re-installed. He submitted a receipt from Home Depot for a pack of wall anchors (**Exhibit L # 8**) in the amount of **\$3.89**. The wall repair is being covered in the plaster/paint section below.

18. The landlord testified that many of the light bulbs in the property was blown and not working when he recovered the unit. He testified that he had to replace the bulbs (50w par 20 bulbs) and is claiming for their replacement. He submitted a copy of a receipt from Home Depot (**Exhibit L # 8**) in the amount of **\$57.45**.
19. The landlord has claimed for the repair to the hardwood flooring in the rental property. The landlord has stated that the flooring was damaged throughout and referred to the photos of the flooring within (**Exhibit L # 1**). He added he didn't take photos of every damaged board. Along with the photos he submitted an estimate from The Paint Shop (**Exhibit L # 9**) in the amount of **\$4654.05** for the replacement of 300 ft² of engineered hardwood. The landlord testified that the flooring was newly installed prior to the tenant moving into the property.
20. Lastly, the landlord is claiming for the repair and painting of the damaged walls throughout the property. The landlord presented two estimates for the repairs from Zen Painting and Architectural Finishes (**Exhibit L # 4**) in the amount of **\$2012.50** and OT Painting & Plastering Inc. (**Exhibit L # 5**) in the amount of **\$2070.00**.
21. The landlord did not submit evidence on the remaining three items in the list of damages (*Dents in the front door, dents in the kitchen cabinets, stained grout in master ensuite shower*) as he did not have any valuations for their repair.

Tenant Position

22. Regarding the cleaning of the unit, tenant1 stated that the unit was cleaned by her sister. She stated that the pictures presented by the landlord were taken before her sister went back and re-cleaned for a second time for 4 hours. Tenant1 again added that she did think that a full cleaning was required in the unit.
23. The tenants were unsure of the damage to the blind but acknowledged that it was quite possible and accepted and acknowledged the damages to the blind.
24. The tenants testified that they had trouble with the door lock on December 19, 2020 and notified the landlord. They added that the landlord shipped a new lock to them and asked them if they would replace it. They added the lock was working when they left the property.
25. The tenants fully acknowledge that the towel rack did come off the wall during the tenancy and acknowledged the damages.
26. The tenants stated that many of the lights in the property were pot lights and special bulbs. They stated that they didn't feel comfortable changing pot light bulbs and stated that the landlord agreed.

27. The tenants stated that in the middle of the living room floor, there was one section of hardwood floor and one piece of flooring that came up and was chipped. They stated that the floor wasn't mentioned during the move out inspection and that the boards were unevenly placed when they took possession.
28. With regard to the plastering and painting, tenant1 acknowledged that the walls were chipped during the move out process and on the back bedroom walls, there was mascara that her son put on the wall.

Analysis

29. I have reviewed the testimony and evidence of the landlord and tenants in this 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
30. The tenants have acknowledged some of the damages, however I will address each item separately as the tribunal has some specific issue with portions of the claim to be addressed.
31. Blind Replacement: The landlord is claiming for the replacement of the blinds and from the picture evidence, it shows that the blind was a basic mini blind type. The tenants have acknowledged responsibility however, the landlord's claimed replacement is an upgrade from the blind that was in place. The replacement blind is a 2 inch faux wood blind which come in significantly higher in price and are certainly better in quality and function. This is an upgrade for the landlord and that is not the purpose of this claim process. The purpose is to place a party who has incurred a loss back to the same level as they were less reasonable wear and tear. Awarding for an upgrade does not achieve that goal. The blind is at least 2 years old and perhaps more, but there is no clear answer as that evidence was not led at the hearing. Given this, and we don't have a replacement cost for a similar blind, I will make an arbitrary award of \$25.00 as a depreciated replacement value for the blind. This portion of the landlord's claim succeeds in the amount of **\$25.00**.
32. Re-install Towel Rack: The tenants has acknowledged this damage and the claim of \$3.89 for the replacement wall anchors is reasonable. The plaster/painting portion of this section will be addressed in the plaster/painting section. The landlord is awarded **\$3.89** for the re-installation of the wall anchors.
33. Replace Light Bulbs: The replacement of light bulbs is very much a wearable item in a rented premises. As all the bulbs were operational on entry, it is not unreasonable to ensure that they are all operational on exit. It is the tenants' responsibility to replace bulbs as they blow during the tenancy. I acknowledge that perhaps the pot light bulbs are a little trickier to replace, but that does not

absolve the tenants of their responsibility. Additionally, the tenants had the option of purchasing adequate number of bulbs to be replaced and leave them at the unit so the landlord could change them. They opted or didn't at least think of doing that. I find that the claim for light bulbs is reasonable and costed with receipts. The landlord's claim for replacing light bulbs succeeds in the amount of **\$57.45**.

34. Cleaning: The tenants are responsible to keep the premises clean and repair damages caused by a willful or negligent act as outlined in Section 19(1)(2) of the *Residential Tenancies Act, 2018*. The landlord's photographic evidence were dated on two specific dates (31 July 2020) and (01 August 2020). I note a difference in the level of cleanliness between the two sets of photos, however, the level of cleanliness in the second set and dated 01 August 2020, leaves room for additional cleaning. The landlord has costed the services of the cleaning company and I find that is well within market rates for similar services. I find that the tenants are responsible for the cleaning services of the landlord in the amount of **\$186.88**.
35. Door Knob Replacement: The damage to the door knob is clearly an internal issue and perhaps not readily noticeable until the cylinder stops functioning. The evidence is such that the landlord himself does not even know the cause of the damage other than it occurred from mid to late December 2019 and 31 July 2020. The landlord did request an inexperienced person to install the door knob and in doing so accepts some level of responsibility if that installation does not go as planned. I acknowledged that the cylinder is destroyed on likely not functioning, however, there has been no evidence led that clearly indicates a level of negligence or a willful act of destruction on part of the tenants to render the lock nonfunctioning. As such, the landlord has not substantiated his claim for replacement and as such this portion fails.
36. Painting/Plastering: Similar to the blind above, there is no clear answer regarding the age of the painted surface of the apartment as that evidence was not led at the hearing. We know only that the painted surface was at least 2 years old at the time the tenants vacated. The evidence photos indicate that this is perhaps accurate. Painted surfaces are depreciable and are assessed to have a useful life of 5 years in a rented premises. The tenants have acknowledged that there were chips throughout as a result of moving and mascara in the back room on the walls. I find the tenants responsible for the damage to the painted surfaces and the associated depreciated cost of repair. The depreciated value is **\$1207.50** and calculated as $(\$2012.50 \div 5 \text{ years} = \$402.50/\text{year} \times 3 \text{ years remaining life span} = \$1207.50)$.
37. Flooring: The landlord has stated that the flooring was installed just prior to the tenants, I will make the reasonable assumption that at the time the tenants vacated, it would be at least 2 years old. From a depreciation point of view the following assessments are made respective of hardwood flooring: (1) the finish has a useful life of 5 year and (2) the flooring has a useful life of "lifetime". The current average life span of a human is approximately 80 years.

In review of the evidence and in particular the photos presented, I note that the landlord indicated that the flooring was scratched to pieces and the estimate indicates that approximately 150 boards or 300 ft² was affected. The presented evidence does not depict the extent of damages indicated by the landlord. Of the pictures presented I note images 100948, 101434 and 105558 appear to be scratches without a doubt. I further note that images 100437 and 100511 appear to be chips resulting from a probable flaw in the boards as they are chipped from the grain and along the grain of the wood. There are further other images that show apparent chips in the wood and they appear to be in the kitchen area where one can expect such damage from things falling from the countertop.

The tribunal can only assess the evidence presented and the initial assessment is that the extent of damages claimed is not what has been depicted. Based on the evidence, I find that the tenants are responsible for some of the superficial scratches shown in the above noted images but not the chips along the edges of the boards and with the grain of the wood. These are more likely a flaw with the specific boards. There is no clear way to assess the square footage affected and the replacement of the flooring is certainly not warranted. However, compensation for the damages is warranted and I am forced to again make an arbitrary depreciated award. I find that the tenants are responsible for **\$698.11** representing 15% of the claimed cost.

Decision

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

a. Cleaning	\$186.88
b. Repair chips and paint walls	1207.50
c. Replace lock	0.00
d. Replace broken blind	25.00
e. Replace towel rack	3.89
f. Replace light bulbs	57.45
g. Replace damaged hardwood	698.11
h. Total:	<u>\$2178.83</u>

Issue 2: Application/Refund of Security Deposit

Landlord Position

39. The landlord testified that a security deposit in the amount of \$1125.00 was paid on the property on or about 31 July 2018. 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 \$1125.00.

Tenant Position

41. The tenants seek to have the security deposit refunded.

Analysis

42. Established by undisputed fact above, the tenants did pay a security deposit to the landlord in the amount of \$1125.00.
43. The landlord's claim has been partially successful as indicated above. The security deposit plus accrued interest is \$1125.00 as the interest rate for 2018 – 2020 is set at 0%.
44. The landlord's claim is partially successful. 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 attributable loss and as such, the landlord is entitled to offset the security deposit against the damages as outlined in the attached order.

Decision

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

Issue 3: 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 # 10**). The landlord is seeking this cost.

Analysis

47. I have reviewed the testimony and evidence of the landlord and tenants in this matter. The expenses incurred by the landlord is 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

48. The tenants shall pay the reasonable expenses of the landlord in the amount of \$20.00.

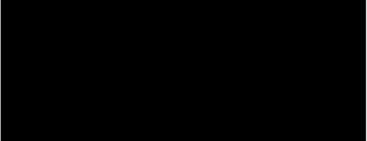
Summary of Decision

49. The landlord is entitled to the following:

a)	Compensation for Damages	\$2178.83
c)	Hearing Expenses	<u>20.00</u>
d)	Subtotal	\$2198.83
e)	LESS: Security Deposit.....	<u>(\$1125.00)</u>
g)	Total owing to Landlords	<u>\$1073.83</u>

01 March 2021

Date


Michael Greene
Residential Tenancies Tribunal