

Residential Tenancies Tribunal

Decision 19-0050-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:00 pm on 03 October 2019 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 originating applicant, [REDACTED], hereafter referred to as the Tenant1 participated in the hearing. (Affirmed)
3. The originating applicant, [REDACTED], hereafter referred to as the Tenant2 participated in the hearing. (Affirmed)
4. The countering applicant, [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 \$1200.00 per month and due on the 1st of each month beginning on 31 August 2015 and expired 30 June 2016 and continuing on a monthly basis thereafter. It was stated that a security deposit in the amount of \$600.00 was collected on or about 31 August 2015.
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 tenants show that the landlord was served with the notice of hearing on the **06 August 2019** by serving the Application for Dispute Resolution to the tenant by registered mail (██████████). Canada Post indicates that the document was delivered on 06 August 2019.
8. The affidavit submitted by the landlord shows that the tenant1 was served with the notice of hearing on the **11 September 2019** by serving the Application for Dispute Resolution to the tenant by registered mail (██████████). Canada Post indicates that the document was delivered on 11 September 2019.
9. The affidavit submitted by the landlord shows that the tenant2 was served with the notice of hearing on the **13 September 2019** by serving the Application for Dispute Resolution to the tenant by registered mail (██████████). Canada Post indicates that the document was delivered on 13 September 2019.

Issues before the Tribunal

10. The tenants are seeking the following:
 - a) Refund of Security Deposit;
 - b) Hearing Expenses;
11. The landlord is seeking the following:
 - c) Compensation for Damages **\$759.83**;
 - d) Hearing Expenses;
 - e) Application of Security Deposit

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. 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 - \$759.83

Relevant Submissions

Landlord Position

14. The landlord testified that when the property was recovered it was noticed that the following items were damaged. The damages were outlined as follows:
 - a. Replace Bathroom Flooring and Baseboards (\$414.83)
 - b. Clean the rental unit (\$345.00)
15. The landlord testified that the property was virtually a new unit when the tenants took possession on 31 August 2015. An incoming inspection report was submitted (**Exhibit L # 3**) which indicates only two minor areas of concern none of which is part of these claims today. The landlord further submitted photos of the property (**Exhibit L # 1**) which were taken between the dates 30 June 2019 to 03 July 2019.
16. The landlord testified that the property was left in an unclean condition when the tenants vacated the property on or about 28 June 2019. The landlord suggested that the photos submitted (**Exhibit L # 1**) clearly demonstrate the condition of the property as left by the tenants and required an extensive cleaning. The landlord testified that he engaged the services of a cleaning company (Finishing Touches) and submitted an invoice from the company (**Exhibit L # 2**) in the amount of \$345.00 to clean the rental unit. The landlord further submitted a sworn statement from the owner of the cleaning company, [REDACTED], (**Exhibit L # 5**) who indicated *that the property requires an extensive cleaning and the only way to rid the home of the smell is to replace the laminate flooring. Additionally, the witness stated that due to a buildup of hard grease on the cupboards, the cabinets may require re-finishing.*
17. The landlord further testified that he was notified by the tenants in 2015 that they were having trouble with the lower level toilet. The landlord testified that he arrived at the property to find water and fecal matter on the floor. The landlord stated that it was an unknown cause for the water and fecal matter and the toilet was functioning when the landlord arrived. The landlord also advised that there was no sewer back-up from the floor drains and there was no insurance involved in the incident. The landlord submitted an estimate from Kent Building Supplies (**Exhibit L # 4**) in the amount of **\$414.83** and indicated this was an estimate to replace the flooring and baseboards that was removed from the bathroom in 2015.
18. The landlord referenced several items in the photos with respect to damages (scratched stove, damaged walls in closet due to coat hanger and toilet paper roll holders being removed, scratched flooring, etc.) which have not been itemized or valued with estimates or invoices.

Tenant Submission

19. The tenants testified that they vacated the unit on 28 June 2019 at approximately 6 pm. They stated that they left prior to any inspection was completed and question the Finishing Touches Invoice. The tenants indicated that the business is not a registered business in the community of Gander and there is no indication of payment for the invoice.
20. Regarding the claim for the replacement of flooring and baseboards in the bathroom, the tenants state that this was an event of an apparent sewer backup and they discovered the water and fecal matter over the floor in the bathroom and rec room. It was cleaned up by themselves and the landlord. The tenants did request that a plumber attend the property to investigate the issue but none showed. The tenants stated that this event happened in 2015 and nothing was said or done about this event since then once the water and fecal matter was cleaned up.
21. The tenant further disputed the claim for cleaning stating that there were items that were not in pristine condition when they moved in and they did not feel obliged to clean upon moving from the unit. The tenant did not present any photos or evidence to support the claims raised in their defense.

Analysis

22. I have reviewed the testimony and evidence of the landlord and tenants in this matter. 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
23. Regarding the claims for replacement of flooring in the lower bathroom. The landlord has established that the flooring was missing along with the baseboards. The landlord has also supplied an estimate from Kent Building supplies that was acquired in August 2019, some two months after the tenants vacated and 4 years after the event itself that caused the damage which I find suspect.
24. The landlord has not provided any evidence to support the cause of the toilet backup other than to state that it was functioning when he arrived. There was no inspection of the unit or system to establish cause and subsequently no reports from the professionals of these systems. I find that the landlord has not shown that the cause of the apparent toilet backup was the responsibility of the tenants. Additionally, I am at a loss to explain why it would have taken 4 years to bring a claim against the tenants for the damages related to the toilet. As such, I find that this portion of the landlord's claim fails.

25. With respect to the landlord's claim for cleaning of the unit. The landlord has established the condition of the unit prior to the tenant occupation was in good condition as established by the incoming inspection report signed by all parties. The photos supplied by the landlord after the tenants vacated are clear in the condition that the property was left in. It is clear to the author of this report that the tenants did not adequately clean the property prior to them vacating the unit. The tenants make a claim that the oven for instance was not cleaned before they took possession, yet the condition report indicates otherwise. Additionally, there was nothing presented to the landlord to indicate that anything was out of order as they were moving into the unit. As such, I find that a thorough cleaning of the unit was required and the invoice from Finishing Touches as presented by the landlord is accepted by this tribunal. I find that the tenants are responsible for the cleaning of the rental unit in the amount of \$345.00 as claimed by the landlord.

Decision

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

a. Clean Apartment	<u>\$345.00</u>
b. Total Damages	<u>\$345.00</u>

Issue 2: Application of Security Deposit

Landlord Position

27. Landlord testified that a security deposit in the amount of \$600.00 was paid on the property on or about 31 August 2015. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

Tenant Position

28. The tenant is seeking to have the security deposit refunded.

Analysis

29. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$600.00. The landlord's claim has been successful in part. The security deposit plus accrued interest is \$600.00 as the interest rate for 2015 – 2019 is set at 0%.

Decision

30. As the landlord's claim above has been successful, the landlord shall apply the security deposit being held against the attached Order as outlined in the attached.

Issue 3: Hearing Expenses

Landlord Position

31. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL ([REDACTED]) (**Exhibit L # 7**). The landlord is seeking this expense.

Analysis

32. I have reviewed the testimony and evidence of the landlord 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

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

Summary of Decision

34. The tenants are entitled to the following:

a)	Damages	\$345.00
b)	Hearing Expenses	<u>20.00</u>
c)	LESS: Security Deposit being held	<u>(\$600.00)</u>
d)	Total owing to Tenants.....	<u>\$235.00</u>

27 March 2020

Date

Michael Greene
Residential Tenancies Tribunal