

Residential Tenancies Tribunal

[REDACTED] Decision 19-0097-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 05 March 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 Tenant1 participated in the hearing. (*Affirmed*)
3. The originating applicant, [REDACTED], hereafter referred to as Tenant2 participated in the hearing. (*Absent and Not Represented*)
4. The countering applicant, [REDACTED], hereafter referred to as Landlord1 participated in the hearing. (*Affirmed*)
5. The countering applicant, [REDACTED], hereafter referred to as Landlord2 participated in the hearing. (*Affirmed*)
6. The details of the claim were presented as a written monthly agreement with rent set at \$700.00 per month and due on the 1st of each month beginning on 31 May 2017 and a security deposit in the amount of \$525.00 was collected on or about 17 May 2017.
7. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicants have 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 applicants have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

8. The affidavit submitted by the tenants show that landlord1 was served with the notice of hearing on the **25 November 2019** by serving the Application for Dispute Resolution to landlord1 by email: [REDACTED]. The tenants have provided the copy of the email sent and supporting documents to show this was a valid email.
9. The affidavit submitted by the tenants show that landlord2 was served with the notice of hearing on the **22 November 2019** by serving the Application for Dispute Resolution to landlord2 by email: [REDACTED]. The tenants have provided the copy of the email sent and supporting documents to show this was a valid email.
10. The affidavit submitted by the landlords show that the tenant1 was served with the notice of hearing on the **01 December 2019** by serving the Application for Dispute Resolution to the tenant by email: [REDACTED]. The landlord has provided the copy of the email sent and supporting documents to show this was a valid email.
11. The affidavit submitted by the landlords shows that the tenant2 was served with the notice of hearing on the **08 February 2020** by serving the Application for Dispute Resolution to tenant2 personally at [REDACTED].
12. The landlords amended the claim during the hearing to remove the request for repairs to the hatch to the basement.

Issues before the Tribunal

13. The tenants are seeking the following:
 - a) Refund of Security Deposit;
 - b) Hearing Expenses;
14. The landlords are seeking the following:
 - c) Compensation for Damages **\$2121.84**;
 - d) Hearing Expenses;
 - e) Application of Security Deposit

Legislation and Policy

15. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
16. 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 - \$2121.24

Relevant Submissions

Landlord Position

17. The landlords testified that when the property was recovered it was noticed that the following items were damaged. The damages were outlined as follows:
 - a. Replace Exterior Main Door (**Materials - \$855.49 & Labor - \$77.60 (4 hours)**)
 - b. **Replace Master bedroom Flooring (**Materials - \$319.30 & Labor \$126.10**)
 - c. Replace Flooring in Living Room/Kitchen (**Materials - \$815.98 & Labor \$378.30**)
 - d. **Plaster & Painting (**Materials - \$113.98**)
 - e. Clean the property (**Labor - \$270.00 (14 hours)**)

**** The tenant concedes to these damages.**

18. The landlords are claiming for a replacement fiber glass door as there was a hole in the door (**Exhibit L # 2**). The landlords further stated that there was a split in the door box which required replacement as well. There were no photos of the damages to the door box. The landlords testified that the door was a fiberglass door installed just prior to the purchase of the property in December 2016. The landlords provided an invoice for the purchase of a new door with door box (**Exhibit L # 3**) in the amount of **\$855.49** and testified that it took 4 hours to install at a cost of **\$77.60**.
19. The landlords are claiming for the replacement of the flooring in the kitchen and living room stating that the tenants caused the damage with some sort of water. The landlords referred to the photos of the property (**Exhibit L # 2 and 4**) and testified that the area replaced was approximately $12 \times 12 = 144 \text{ ft}^2$. The

landlords submitted a receipt for the flooring (**Exhibit L # 3**) totaling **\$815.98** and is claiming labor in the amount of **\$378.30**.

20. The landlords are claiming for the cleaning of the property after the tenants vacated the unit. Landlord2 referred to the photos (**Exhibit L # 2 & 4**) and testified that she had her mother clean the unit. Landlord2 did not present a receipt for the cleaning at the hearing. Landlord2 testified that she paid \$270.00 cash and stated that there was 14 hours labor involved.

Tenant Submission

21. Tenant1 has acknowledged the damages regarding plastering and painting of the property.
22. Tenant1 has further acknowledged the damages to the bedroom flooring.
23. Tenant1 further acknowledged the damage to the exterior door only. Tenant1 did not concede to any damage to the door box. Tenant1 stated that she had purchased a door at the local hardware store, but left it there and did not release it to the landlords. Tenant1 stated that there was nothing wrong with the door box and that the door alone could be replaced.
24. Tenant1 further disputed the claim for the replacement of the living room and kitchen flooring. Tenant1 argues that the landlords replaced the wood stove with an oil stove thereby limiting the amount of heat in the property. Tenant1 further stated that there is one small fan forced heater in the property, which is inadequate to heat the building with the oil stove. Tenant1 argues that this is the cause of the floor boards lifting and swelling. Tenant1 testified that she cleaned the floors as normal with a mop and bucket for the time they were there. Tenant1 referred to photos submitted (**Exhibit T # 1**) adding that there was a mold issue in the property as is evidence on the photos presented.
25. Tenant1 testified that she did not clean the cupboards, stove, fridge or sink before they vacated. She testified that the black on the windows was mold and disagrees with 14 hours labor to clean the unit.

Analysis

26. I have reviewed the testimony and evidence of the landlords and tenant in this matter. The 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. Tenant1 has acknowledged the damages regarding plastering and painting of the property. As such, I will accept this acknowledgement and award the requested amount to the landlords in the amount of **\$113.98**.

28. Tenant1 has further acknowledged the damages to the bedroom flooring (**Materials - \$319.30**). The landlords are unsure of the age of the flooring as it was in the property when it was purchased. The landlords further testified that the flooring was not damaged prior to the tenants taking possession and referred to the submitted before photos (**Exhibit L # 4**) to adequately demonstrate this fact. I further note that the square footage of both floorings in this claim is approximately 400 ft² and this section is approximately $\frac{1}{4}$ of that total amount. To that end I will apply $\frac{1}{4}$ of the claimed labor to this portion (**\$126.10**). I accept the tenant's acknowledgement of the damage as a result of her bed frame. I further acknowledge that the flooring is a depreciable item but providing a depreciated award is difficult without the age of the existing flooring. To this end, I am forced to make a depreciated arbitrary award. I find that a depreciation of 50% is reasonable and as such I make the award to replace the bedroom flooring inclusive of labor to be **\$222.70** (@ 50% of \$445.40).

29. Tenant1 further acknowledged the damage to the exterior door only. Tenant1 did not concede to any damage to the door box. Tenant1 testified that she purchased a replacement door but left it at the building supply store. The landlords testified that the door was a fiberglass door installed just prior to the purchase of the property in December 2016. The landlords provided an invoice for the purchase of a new door with door box (**Exhibit L # 3**) in the amount of **\$855.49** and testified that it took 4 hours to install at a cost of **\$77.60**. The tenants did not supply any invoice for the door portion only. In most cases it is just as easy and perhaps easier to replace the entire door unit. A hole in a fiber glass door is not an easy repair and would require specialized material and instruments. I accept the landlords' evidence and will consider the replacement of the entire unit for ease, not as a result of any claim for the door box. The life expectancy of a fiber glass door is assessed at a lifetime (85 years) according to The National Home Builders Association, leaving a useful life of 82 years remaining. The depreciated value of the door is **\$900.36** calculated as $(\$933.09 \div 85 \text{ years} = \$10.98 \times 82 \text{ years} = \$900.36)$.

30. With respect to the flooring in the living room and kitchen of the property, the evidence in the before photos does show that the flooring in the kitchen and living room was in good condition. The after photos are a complete different story. I note multiple areas of lifting from what appears to be excess liquid/moisture on the flooring. Further, I note additional damage to the edge of some boards where the laminate finish has been chipped away exposing the fibers below and making them more susceptible water/moisture damage. The landlords have shown that the damage has occurred during the tenancy but the tenant disputes the liability stating that the damage occurred as a result of the lack of heat in the unit when the landlords removed the wood stove in place of an oil stove and one fan forced electric heater. Tenant1 stated that there is not adequate heat in the property. The claim/defense of the tenant is that there was inadequate heat was not substantiated in anyway, so relying on the testimony of

the respondent solely without supporting evidence would be irresponsible in the decision making process. I am further not convinced that a lack of heat by itself, would cause the swelling of the boards, there would have to be some moisture involved. The tenant's claimed a mold issue and demonstrate this issue on the baseboards of the bedroom. This could indicate a moisture issue and/or a lack of air flow in the area where the mold is located. It is really not clear from the evidence.

31. In this case and from the tenants' testimony, the cleaning of the floors was via mop and bucket. Laminate flooring is literally a paper fiber product with a formica coating on the top giving it the hard finish. In the joins, this product is susceptible to water damage. The manufacturer of this product warns on the use of water for cleaning and recommends a special cleaner specifically designed for laminate floors. Tenant1 did not use the cleaner and failing to do so created a negligent situation respective the damage to the floors. I find the tenants responsible for the damage to the floors. The landlords does not know the age of the flooring and again I am forced to make an arbitrary depreciated award and will again use the 50% depreciation factor. I find that the depreciated replacement value of the kitchen/living room floor is **\$597.14** calculated as $(\$1194.28 \times 50\%) = \597.14 .
32. The landlords are claiming for the cleaning of the property after the tenants vacated the unit. Landlord2 referred to the photos (**Exhibit L # 2 & 4**) and testified that she had her mother clean the unit. The landlords did not present a receipt for the cleaning at the hearing. However, I note here that a receipt was emailed to the office (not considered) for the cleaning and dated the date of the hearing. Landlord2 testified that she paid \$270.00 cash and stated that there was 14 hours labor involved. The landlords have failed to substantiate the expenses at the scheduled hearing and the receipt date, being the day of the hearing is considered suspect and will not be considered in this decision. As such, the landlords' claim for cleaning fails as the landlords failed to support the costs associated with the claim.

Decision

33. The landlords' claim for damages succeeds as follows:

a. Replace Main Entrance Door	\$900.36
b. Replace Master Bedroom Flooring	222.70
c. Replace Kitchen/Living Room Flooring	597.14
d. Plaster/Painting	113.98
e. Clean the property	<u>0.00</u>
f. Total Damages	<u>\$1834.18</u>

Issue 2: Application of Security Deposit

Landlord Position

34. The landlords testified that a security deposit in the amount of \$525.00 was paid on the property on or about 17 May 2017. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.

Tenant Position

35. The tenants are seeking to have the security deposit refunded.

Analysis

36. Established by undisputed fact above, the tenants did pay a security deposit to the landlords in the amount of \$525.00 (**Exhibit T # 2**). The landlords' claim has been successful in part. The security deposit plus accrued interest is \$525.00 as the interest rate for 2017 – 2019 is set at 0%.

Decision

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

Issue 3: Hearing Expenses

Landlord Position

38. The landlords 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 landlords are claiming a charge from Canada Post (**Exhibit L # 6**) for the attempted service of claim documents via registered mail in the amount of \$13.11. The landlords are seeking this expense.

Analysis

39. I have reviewed the testimony and evidence of the landlords in this matter. The expenses incurred by the landlords 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

40. The tenants shall pay the reasonable expenses of the landlords in the amount of \$31.11.

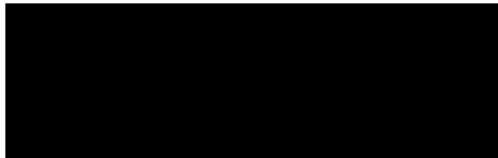
Summary of Decision

41. The landlords are entitled to the following:

a)	Damages	\$1834.18
b)	Hearing Expenses	<u>31.11</u>
c)	Subtotal.....	\$1865.29
c)	LESS: Security Deposit being held	<u>(\$525.00)</u>
d)	Total owing to Landlords	<u>\$1340.29</u>

08 April 2020

Date


Michael Greene
Residential Tenancies Tribunal