

Residential Tenancies Tribunal

Application [REDACTED] Decision 20-0441-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:45 pm** on **23 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 the landlord, participated in the hearing and was represented by [REDACTED] (Affirmed)
3. The respondent, [REDACTED] hereafter referred to as tenant1, did not participate in the hearing.(Absent and Not Represented)
4. The respondent, [REDACTED] hereafter referred to as tenant2, did not participate in the hearing.(Absent and Not Represented)
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$750.00 per month (commencing 01 January 2020) and due on the 1st of each month. It was stated that there was no security deposit collected on this tenancy. There was no termination notice issued on this tenancy.
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 tenants, [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 landlord shows that tenant1 was served with the notice of the original hearing on the **16 October 2020** by serving the application for dispute resolution document to the email: [REDACTED] and providing a copy of the sent email.

The affidavit submitted by the landlord shows that tenant2 was served with the notice of the original hearing on the **16 October 2020** by serving the application for dispute resolution document to the email: [REDACTED] and providing a copy of the sent email.

The tenants have had **37 days** to provide a response.

A phone call was placed to the tenants to the number [REDACTED]. Contact was made with tenant2 who didn't indicate one way or the other if they would be attending the scheduled hearing or not.

As the tenants were properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded with the hearing.

8. The landlord testified that rental arrears for these clients was mediated up to 28 October 2019 under file number ([REDACTED]).

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Payment of rent owing **\$2082.00**
 - b) Compensation for Damages **\$365.00**
 - c) 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 Sections 19, 34 and 35 of *the Act*; and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rent Owing - \$2082.00

Relevant Submissions

Landlord Position

12. The landlord stated that they had entered into a written rental agreement with the tenants commencing sometime prior to 03 December 2012. The agreed rent is at \$750.00 per month and due on the 1st day of each month with no security deposit collected on this tenancy. There was no termination notice issued on this tenancy. The landlord is seeking rent outstanding for the period of 01 November 2019 to 31 March 2020. The landlord submitted a copy of the rent ledger (**Exhibit L # 3**) along with a copy of the rental agreement (**Exhibit L # 1**) and lease renewal document (**Exhibit L # 2**).
13. The landlord is seeking outstanding rent for the period.

Analysis

14. I have reviewed the testimony and evidence of the landlord in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenants.
15. With respect to the arrears being claimed, I agree with the landlord that rent is owed. Rent is required to be paid by the tenants for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. Records are clear that rent for the period ending 31 March 2020 is outstanding in the amount of **\$2082.00**.

Decision

16. The landlord's total claim for rent succeeds as follows:
 - a) Rent owing up to 31 March 2020 \$2082.00
 - b) Total Arrears **\$2082.00**

Issue 2: Compensation for Damages - \$365.00

Relevant Submissions

Landlord Position

17. The landlord testified that upon recovery of the unit after the tenants vacated, it was noted that the following damages were identified by the inspectors:
 - a. Repair large hole in rear right bedroom **(\$101.00)**
 - b. Replace Broken laundry Room Window **(\$120.00)**
 - c. Replace damaged cupboard **(\$144.00)**
18. The landlord submitted an invoice dated **07 July 2020** for the repairs (**Exhibit L # 5**) stating that the costs noted are inclusive of labor. Further the landlord submitted photos of the damages (**Exhibit L # 4**) and testified that the materials were taken for Corporation stock to complete the repairs.
19. The landlord testified that the laundry room window was only a couple of years old but couldn't identify the age of the painted surface or the cupboard doors. I accept the landlord's evidence that the damages exist and are the liability of the tenants.
20. Regarding the rear bedroom wall, there was a large hole in the wall which would have taken a gyproc repair which involves plaster, prime and paint. The old gyproc was destroyed and therefore required replacement. The landlord referred to the photos.
21. The laundry room window was a newer model window and was definitely destroyed and boarded up. The landlord referred to the photos to demonstrate the damages.
22. The landlord testified that a lower cupboard in the kitchen was damaged with the door broken and removed from the cupboard. The kitchen was a solid oak kitchen cupboard doors and the landlord did not indicate the age. The landlord referred to the photos and the invoice for the damages and cost of repairs.

Analysis

23. The basis of determining awards for any damage claim is the same. The applicant holds the burden of proof and in cases associated with Residential Tenancies is "on the balance of probabilities".
24. In presenting a claim the applicant is required to (1) show that a damage exists, (2) show that the respondent is liable for the damages and (3) show a cost for the repair or replacement of the damages.

25. On the matter above, all items of the test have been determined and I am satisfied that the landlord has met the burden of on the balance of probabilities.
26. The rear bedroom wall was destroyed and no explanation could reasonably be determined. I find the tenants responsible and the cost claimed to bring the wall back to a point ready for a finished coat of paint is reasonable and not subject to depreciation. I find the tenants responsible for **\$101.00** to repair the wall.
27. The laundry room window was a relatively new window and again no reasonable explanation could be ascertained for the breakage. I find the tenants responsible for the damage. A vinyl window is a depreciable item in a rental unit. The Residential Tenancies Section assess the useful life span of a vinyl window is 20 plus years. I will assess the window to be 3 years old, thereby, leaving a remaining useful life of 17 years. The calculated depreciated replacement value then is ($\$120.00 \div 20 \text{ years} = \$6.00 \text{ per year} \times 17 \text{ years remaining} = \102.00). I find the tenants' responsible for the window replacement in the amount of **\$102.00**.
28. There is no question that the cupboard door was broken and removed from the lower cupboard. There was no indicated age of the set of cupboards in the property. The photos depict that they were in relatively good condition from what could be seen. The Residential Tenancies Section assess the useful life span of a set of cabinets is 20 plus years. I will assess the age of the cabinets to be 12 years old. The calculated depreciated replacement value then is ($\$144.00 \div 20 \text{ years} = \$7.20 \text{ per year} \times 8 \text{ years remaining} = \57.60). I find the tenants responsible for the cupboard door replacement in the amount of **\$57.60**.

Decision

29. The landlords' claim for damages succeeds in the amount of **\$260.60**.

Issue 2: Hearing Expenses

Landlord Position

30. 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 # 6**). The landlord is seeking this cost.

Analysis

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

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

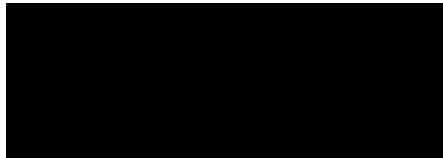
Summary of Decision

33. The landlord is entitled to the following:

a)	Rent Owing (up to and including 31 March 2020).....	\$2082.00
b)	Damages	260.60
c)	Hearing Expenses	<u>20.00</u>
d)	Total owing to Landlord	\$2362.60

21 December 2020

Date



Michael Greene
Residential Tenancies Tribunal