

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0485-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 pm** on **10 November 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED] hereafter referred to as landlord1, participated in the hearing. (*Affirmed*).
3. The respondent, [REDACTED] referred to as the tenant, participated in the hearing. (*Affirmed*).
4. The landlord and tenant entered into a written monthly rental agreement with rent set at \$500.00 per month and due on the 1st day of each month and a security deposit in the amount of \$300.00 collected on this tenancy on or about August 2018 (**SEE ORDER** [REDACTED]).
5. In a proceeding under the *Residential Tenancies Act*, 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

6. The Security Deposit has been disposed of in a separate order [REDACTED]
[REDACTED]

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Compensation for Damages **\$400.44**;
 - b) Hearing expenses.

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. Also relevant and considered in this case are:
 - a. Sections 19, 34 and 35 of *the Act*, and;
 - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
 - c. Policy 9-3: *Claims for Damages to Rental Premises*, and;
 - d. Policy 9-5: *Life Expectancy of Property*.

Issue 1: Compensation for Damages - \$400.44

Relevant Submissions

Landlord Position

10. The landlord testified that when the property was recovered it was noted that the carpet in the tenant's bedroom was left filthy and stained. The landlord testified that the carpet was left full of dark human hair with stains. The landlord submitted photos of the property prior to the tenant taking possession (**Exhibit L # 2**) and photos of the property when it was recovered (**Exhibit L # 3**). The landlord testified that he had to have the carpet professionally cleaned and presented an invoice from [REDACTED] (**Exhibit L # 5**). Regarding this invoice he stated that the basic cleaning fee is for 2 bedrooms and a hallway for \$89.95 plus HST (**\$103.44**) and this is the only portion of the invoice he is attributing to the tenant. He stated that this is their minimum fee.
11. The landlord further is claiming damages to the walls with excessive chips and scrapes (**Exhibit L # 3**). The landlord is claiming for plastering (1.5 hours - \$97.00) and paint in the amount of \$24.00. There was no receipt for the paint submitted.

12. The landlord is claiming for the cleaning of the tenant's bedroom and carpets prior to steam cleaning. The landlord testified that every inch of the room had to be scrubbed including the removal of nasal mucus from the walls. The landlord testified that it was apparent that the tenant had not cleaned her room for the two years while was living in the unit. The landlord is claiming for 2 hours of cleaning for a total cost of \$100.00.
13. The landlord testified that he had to remove 6 bags of garbage to the landfill for which he is claiming \$100.00 to cover the removal and trip to the landfill. There was no receipts from the Waste Management Facility submitted into evidence.

Tenant Position

14. The tenant disputes the claim of the landlord stating that she feels it is an excessive claim. She stated that she feels that the professional cleaning should be perhaps \$70.00 as she was responsible only for one bedroom of the invoice. She further adds that maybe \$30.00 for the cleaning labor.
15. The tenant stated that she can't remember the property being like that which is depicted in the landlord's photos. The tenant indicated in her evidence package (**Exhibits T # 1**) that she feels the claims are normal wear and tear.

Analysis

16. 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".
17. In presenting a claim the applicant is required to:
 - a. (1) show that a damage exists;
 - b. (2) show that the respondent is liable for the damages and;
 - c. (3) show a cost for the repair or replacement of the damages.
18. 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.
19. The tenant obviously did not do much if any cleaning in the property during the tenancy. The tenant's notion that leaving an abundant of human hair on the carpet and in the garbage can is not normal wear and tear. Further, to the notion that the tenant feels the landlord should have completed professional cleaning during the tenancy, I find that this notion is simply wrong. The tenant is required to maintain the property during the tenancy as outlined in section 10(1)(2) of the *Residential Tenancies Act, 2018* which reads:

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

20. I find that the tenant is responsible for the cleaning of the property prior to any professional carpet cleaning. The landlord is claiming for 2 hours labor. The Residential Tenancies allows for a self-labor rate of \$19.65/hour for the period in question calculated as minimum wage plus \$8.00/hour. I find that this is a reasonable claim and award the landlord **\$39.30** for the labor to clean the property.
21. The professional cleaning was indeed necessary. The sheer amount of human hair left on the floor would be enough to warrant the need of a professional steam cleaning. The staining on the carpets only adds to the needs of a professional. I find that this is not considered normal wear and tear and certainly not the responsibility of the landlord. Most business models for carpet cleaning tend to package a minimum requirement for a set price as the landlord has identified in the invoice presented. As the price charged is a minimum standard and had the tenant not left the carpets in the condition they were, this charge would not have been required. As such, I find in favor of the landlord and award for the professional cleaning of the carpets in the amount of \$89.95 plus HST for a total of **\$103.44**.
22. The landlord has claimed for plastering and painting of chipped and scratched walls. I find that the walls were indeed chipped and scratched during the tenancy. This is the responsibility of the tenant however, the painted surface is a depreciable item in a rental unit. The painted surface is seen to have a 5 year life span. There was no indication of the age of the paint prior to the tenancy, but the pictures prior to the tenant occupying, shows that the paint was in good condition and as such I will assume freshly painted. The tenant lived there for 2 years and therefore the paint would have approximately 3 years of useful life remaining. The landlord did not provide a receipt for the purchase of paint, but the amount claimed (\$24.00) is under the market rate for paint and therefore I find to be a reasonable amount.
23. As above labor is allowed for in the amount of \$19.65 per hour for self-labor. The amount of repairs then is \$53.48. The depreciated award is calculated as $(\$53.48 \div 5 \text{ years} = \$10.70/\text{year} \times 3 \text{ years remaining} = \$32.10)$. The landlord's claim for plastering and painting is successful in the amount of **\$32.10**.
24. Lastly, the removal of bagged garbage is a weekly service that is allowed for in the payment of municipal taxes. The landlord has not provided any receipts for the waste management facility to drop off any garbage. It is the opinion that the landlord simply wanted the garbage gone from the property instead of holding it

until the next scheduled garbage collection day. As the landlord has not supported the claim with receipts and had a no cost option through the municipal collection, I find that the landlord's claim for garbage removal does not succeed.

Decision

25. The landlord's claim for damages succeeds in the amount of \$174.84.

Issue 4: Hearing Expenses

Landlord Position

26. 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 # 6**). The landlord is seeking this cost.

Analysis

27. I have reviewed the testimony and evidence of the landlord and tenant 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* in the event the claim has been successful. As the landlord's claim has been successful, I find the tenant shall cover the reasonable expenses of the landlord.

Decision

28. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

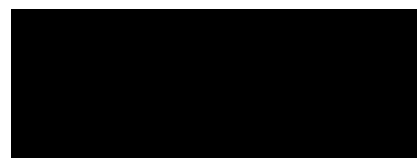
Summary of Decision

29. The landlord is entitled to the following:

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|----|--------------------------------------|------------------------|
| a) | Damages | \$174.84 |
| b) | Hearing Expenses | <u>20.00</u> |
| f) | Total owing to Landlord | <u>\$194.84</u> |

21 December 2020

Date



Michael Greene
Residential Tenancies Tribunal