

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0534-05

Michael Greene  
Adjudicator

---

### Introduction

1. The hearing was called at **9:30 am** on **01 February 2021** 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 the landlord, participated in the hearing and was represented by [REDACTED] (*Affirmed*).
3. The respondent, [REDACTED] referred to as the tenant, participated in the hearing. (*Affirmed*).
4. The following details of the tenancy have been indicated as a written fixed term tenancy set to expire on 31 August 2020 and rent set at \$1000.00 per month exclusive of utilities. Rent was due on the 1<sup>st</sup> day of each month and a security deposit in the amount of \$750.00 was collected on or about 15 September 2015.
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. An issue arose during the hearing related to the outgoing inspection report where a question was raised to its validity. The tenant stated that the landlord pasted the tenant's signature to the form. The board requested the original document from the landlord for inspection, which was received by mail. There was no apparent indication that the document was forged as indicated by the tenant.

7. The claim was amended at the onset of the hearing as follows:
  - a. To reduce the amount being claimed for damages by \$50.00 to \$1347.96

### **Issues before the Tribunal**

8. The landlord is seeking the following:
  - a) Payment of rent in lieu of notice **\$1000.00**;
  - b) Payment of late fees
  - c) Payment of Damages **\$1347.96**
  - d) Hearing expenses
  - e) Application of the Security Deposit

### **Legislation and Policy**

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. 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: Rent in Lieu of Notice- \$1000.00**

#### **Relevant Submissions**

##### Landlord Position

11. The landlord testified that she did not receive proper notice to terminate the tenancy. The landlord claims to have placed it for rent immediately when she became aware that the tenant was vacating, but did not get any takers. The landlord added she posted a [REDACTED] on 24 October 2020 (Exhibit L # 1).

##### Tenant Position

12. The tenant stated that she discussed moving with the landlord and advised that she would not be renewing her agreement at its conclusion (31 August 2020).
13. The tenant stated that the landlord was in agreement to finish up at the end of September which was 1 month beyond the conclusion of the tenancy.

14. The tenant testified that she did not provide any written termination notice to the landlord, however, the landlord was aware because she was advertising and showing the property while the tenant was living in the unit.

## Analysis

15. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlord actually owed by the tenant.
16. It is clear that no formal written notice was provided by the tenant in this matter to terminate the tenancy. It is also clear that there was conversation between the parties concerning the termination of the tenancy in advance of the tenant vacating. The tenant herself indicated that the landlord was showing the property to prospective renters while the tenant was still living in the unit.
17. The landlord is required by law to mitigate any potential loss to the best of the landlord's ability and not simply sit back and recover funds from the vacating tenant. The landlord's ad is not posted on [REDACTED] until 24 October 2020 which is beyond three weeks after the tenant left the property but did show the property for rent while the tenant was still living in the property. I further refer to the estimate provided from Kent (**Exhibit L # 2**) and note that this estimate wasn't obtained on 05 November 2020. I draw from this that the below claimed damages were not much of a concern in preventing the property from being rented, as the estimate wasn't obtained until 05 November 2020.
18. The tenant is required to provide a written notice of termination when ending a tenancy and failed to do so, however, the landlord is required to mitigate their loss and waited three weeks beyond the date of vacating to post an ad. The landlord did however show the property prior to the tenant vacating. The claimed damages could not have been a concern as the estimate from Kent wasn't obtained for 5 weeks beyond the tenant vacating.
19. The landlord certainly had knowledge that the tenant was leaving because she showed the property. I will agree that there was no formal notice and most landlords do not post an ad until a formal notice is provided or the property is vacated. The landlord could have posted an ad immediately after the tenant vacated and not waited three plus weeks. I find that the landlord did not make reasonable efforts to mitigate a loss of rental income and as such is not entitled to the rent for October in lieu of proper termination notice. I find the landlord's claim for rent fails.

## Decision

20. The landlord's claim for rent fails.

## Issue 2: Payment of Late Fees - \$75.00

### Landlord Position

21. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent at the end of the tenancy.
22. The landlord testified that the tenant owes rent in lieu of notice for October 2020. The landlord indicated that they are claiming late fees allowable under the *Residential Tenancies Regulations, 2018*.

## Analysis

23. It has been determined above that the tenant is not responsible for the rent in lieu of notice as claimed by the landlord. As the tenant is not responsible for the rent beyond the day she vacated, there is no requirement or ability to calculate a late fee in this matter.
24. As the tenant does not owe rent for October 2020, there is no late fee that is applicable. As such, the landlord's claim fails.

## Decision

25. The landlord's claim for late fees fails.

## Issue 3: Compensation for Damages - \$1347.96

### Relevant Submissions

#### Landlord Position

26. The landlord testified that this portion of the claim seeks only for the replacement of the kitchen countertop. The landlord testified that the countertop was 6 years old. The landlord provided before photos of the countertop (**Exhibit L # 3**) which were taken on November 2014. The landlord added that the unit was vacant until this tenant moved into the unit. The landlord also provided after photos (**Exhibit L # 4**) which were taken on 02 October 2020 and an outgoing inspection report (**Exhibit L # 5**) completed on 01 October 2020.

27. The landlord supplied an estimate from ██████ (Exhibit L # 2) which was dated 05 November 2020 for the replacement of the countertop.

### Tenant Position

28. The tenant emphatically stated that she did not damage the property of the landlord. She testified that the landlord had indicated that everything was fine at the walk through and they signed off the inspection report. The tenant stated that the landlord presented a small piece of paper for her to sign.

### **Analysis**

29. 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 that is “on the balance of probabilities”.
30. In presenting a claim the applicant is required to:
- a. show that a damage exists;
  - b. show that the respondent is liable for the damages and;
  - c. show a cost for the repair or replacement of the damages.
31. On the matter above, the landlord has presented photos of a damaged countertop along with a prior photo. I note that the photo is dated some 10 months prior to the tenant occupying the property and cannot be held as an accurate condition of the property prior to the tenant moving into the property. I acknowledge that the landlord has indicated that there was no one living in the unit prior to the tenant, however I also weigh the credibility of the landlord given she did acknowledge presenting an inspection report for signature to the tenant, which was folded and hiding the contents of the report. I find this practice to be very deceitful and raises questions of credibility in my view.
32. Upon examination of the original report, it is clear that the report was folded to cover the contents, but there was no apparent alteration of the document. The report itself contained comments where there were apparent deficiencies. Noted specifically, is the kitchen countertop which clearly does not indicate any deficiencies, but does indicate “G” which is coded as “Good”. This tells me that at the time of signature of both parties, the item in question was of no concern.
33. As stated above, the landlord has the burden of substantiating the case presented. In this matter the claim is for a damaged kitchen countertop which the landlord reported as “Good”, yet presents a photo of a damaged unit. The evidence is very contradictory and therefore does not substantiate the claim presented. As such, I find that the landlord has failed to support the claim for a countertop replacement and as such, the claim fails.

## Decision

34. The landlord's claim for damages fails.

### Issue 4: Other - \$900.00

#### Relevant Submissions

##### Landlord Position

35. The landlord is claiming for:
- Garbage Removal: \$500.00
  - Cleaning to property: \$400.00
36. The landlord referred to the photos of the shed, outside area and the basement **(Exhibit L # 6)** to demonstrate the amount of items left behind. The landlord further supplied copy of an e-transfer to [REDACTED] and an invoice from [REDACTED] **(Exhibit L # 7)** in the amount of \$950.00. The actual claim for garbage removal is \$500.00 on this claim.
37. The landlord is further claiming for the cleaning of the property in the amount of \$400.00 as also itemized in **(Exhibit L # 7)**. The landlord referred to photos of the property **(Exhibit L # 8)** related to cleaning which were taken on 02 October 2020. The landlord testified that the unit was not left in a clean condition.

##### Tenant Position

38. The tenant testified that when she moved in, there was other tenants in the building who stored things in the shed. She further stated that the things under the deck in the landlord photos was there from a previous tenant. She stated that other tenants moved out of Province and couldn't take all their belongings. She added that it is not my responsibility to clean up after other tenants.
39. The tenant testified that the property is not fenced and therefore the wind tends to blow things from the neighborhood (plastic bottles, cups, etc) into the yard and surrounding yards.
40. The tenant further testified that there were things left in the property when she moved in so she left them as they were not hers. The tenant went on to state that she placed garbage to the curb on the Friday after her move.

## Analysis

41. 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 that is “on the balance of probabilities”.
42. In presenting a claim the applicant is required to:
  - a. show that a damage exists;
  - b. show that the respondent is liable for the damages and;
  - c. show a cost for the repair or replacement of the damages.
43. On the matter above, the landlord has presented photos of the interior and exterior of the property. There are indications in the photos of personal belongings in the shed, under and on the back deck, and in the basement area of the property. The items are very generic (toys, shovels and a Wal-Mart shopping cart). There is no specific identifying markings or indications of ownership on them. The tenant has stated that the items are not hers and were left by other tenants who vacated the other unit in the building.
44. The landlord has shown a cost associated with removing the items (\$500.00) however, I cannot hold the tenant responsible as I am not satisfied that the items in question belonged to the tenant. It is highly possible in a multi-unit building, that other tenants could have left the items and those charges should have been dealt with when those tenants vacated. As such, I find the landlord’s claim for garbage removal to be unsubstantiated and therefore not successful.
45. The claim for cleaning has been presented that a cleaning was required through the entire property. The photos submitted by the landlord certainly do not depict a property that was left in shambles or of an extreme unclean condition. The photos do depict that perhaps a vacuuming was required and the kitchen needed a cleaning (appliances and cupboards). A landlord should not expect that a property is to be returned in pristine condition such that no work is required by the landlord, an accounting of reasonable wear and tear has to be considered.
46. The landlord’s claim of \$400.00 for cleaning is for the entire house. As there is no specific breakdown of labor for specific areas, I am left to arbitrarily determine amounts. I have found above that a complete cleaning was not required and only specific areas required attention. The biggest area of concern was the kitchen. I will allow for 2/3rds or 66% of the charge as a reasonable cost to address the concern areas of cleaning. I find the tenant responsible for **\$264.00** ( $\$400.00 \times 66\% = \$264.00$ ) for cleaning the property.

## Decision

47. The landlord’s claim for “Other” succeeds in the amount of \$264.00.

## **Issue 5: Hearing Expenses**

### Landlord Position

48. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL [REDACTED] (**Exhibit L # 11**). The landlord is seeking this cost.

### **Analysis**

49. I have reviewed the testimony and evidence in this matter. The expenses incurred by the landlord in this case are not considered a reasonable expense as per policy. They are provided for within Policy 12-1 *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF* in the event the claim has been successful. In this claim, the landlord has been largely not successful and in fact would not have incurred this expense had there been a reasonableness applied to the ending of the tenancy. As such, the landlord's claim for expenses does not succeed.

### **Decision**

50. The landlord's claim for hearing expenses fails.

## **Issue 6: Application of Security Deposit**

### Landlord Position

51. The landlord testified that a security deposit in the amount of \$750.00 was paid on the property on or about 15 September 2015. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.

### **Analysis**

52. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$750.00. The landlord's claim has been successful in part. The security deposit plus accrued interest is \$750.00 as the interest rate for 2015 - 2020 is set at 0%.



**Decision**

53. As the landlord’s claim above has been successful in part, the landlord shall offset the security deposit being held as determined in the attached Order.

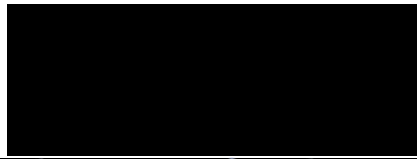
**Summary of Decision**

54. The tenant is entitled to the following:

a)	Security deposit .....	\$750.00
b)	LESS: Damages .....	0.00
c)	LESS: Rent .....	0.00
d)	LESS: Late Fees.....	0.00
e)	LESS: Other.....	(\$264.00)
f)	LESS: Hearing Expenses .....	<u>(0.00)</u>
g)	<b>Total owing to Tenant.....</b>	<b><u>\$486.00</u></b>

18 February 2021

**Date**



**Michael Greene**  
**Residential Tenancies Tribunal**