

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0562-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **01 March 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. (*Affirmed*).
3. The respondent, [REDACTED] hereafter referred to as the tenant, did not participate in the hearing. (*Absent and Not Represented*).
4. The details of the tenancy are a written monthly tenancy commencing 01 September 2016. Rent was set at \$1300.00 per month with utilities extra and a security deposit in the amount of \$975.00 collected on this tenancy on 17 August 2016.
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 tenant, [REDACTED] was 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 the tenant was served with the notice of this hearing on the **04 January 2021** by serving the original documents to the tenant to the number [REDACTED] and attaching a copy of the sent message and by email to the address: [REDACTED] and providing a copy of the sent email.

A phone call was placed to the tenant at [REDACTED] and was unable to make contact.

7. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.

Issues before the Tribunal

8. The landlord is seeking the following:
 - a) Payment of rent owing **\$2275.00**;
 - b) Payment of late fees **\$75.00**
 - c) Compensation for Damages **\$4986.14**;
 - d) Hearing expenses.
 - e) Application of 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:
 - a. Policy 9-3: *Claims for Damages to Rental Premises*;
 - b. Policy 9-5: *Life Expectancy of Property*;
 - c. *Study of Life Expectancy of Home Components*. National Association of Home Builders/ Bank of America Home Equity. February 2007

- d. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF.*

Issue 1: Rent Owing - \$800.00

Relevant Submissions

Landlord Position

11. The landlord stated that the tenant's rent would be partially paid by the Government (\$850.00) and the tenant would be responsible for the balance of the monthly rent (\$450.00). She testified that for August 2020 she received the Government portion and only \$100.00 from the tenant portion. For September 2020 the landlord advised she received only the Government portion of the rent and nothing from the tenant. The landlord is claiming \$800.00 that is owing for the period ending 30 September 2020 (**Exhibit L # 1**). The landlord advised that she indicated the incorrect months on the ledger provided by mistake.
12. The landlord is seeking rent for the month of October 2020 as lost rent due to the damages created by the tenant. The damages to the property are claimed below.

Analysis

13. I have reviewed the testimony and evidence of the landlord 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.
14. With respect to the arrears being claimed, I agree with the landlord that rent is owed. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the written rental agreement established when the tenancy began. Records are clear that rent for the period ending 30 September 2020 has not been paid leaving a balance of **\$800.00**.
15. Further, the rent claimed for October 2020 is at least partially valid. The tenant left the property in a condition that would require the landlord to complete repairs attributable to the tenant and clean, thereby losing a portion or a month's rent for October. Given the partially successful damage claim, I find the tenant responsible for rent for the period of 01 October 2020 to 14 October 2020 in the amount of **\$650.00**.

Decision

16. The landlord's total claim for rent succeeds as follows:
- a) Rent owing up to 30 September 2020 \$800.00
 - b) Rent owing for October 1 - 14, 2020 650.00
 - c) Total Arrears **\$1450.00**

Issue 2: Payment of Late Fees - \$150.00

Landlord Position

17. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent on time.
18. The landlord testified that the tenant has been in arrears on an ongoing basis since 01 August 2020. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

19. Established by undisputed fact above, the tenant was in arrears since 01 August 2020. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
20. The issue of rental arrears has been determined above confirming that the tenant has been in arrears since 01 August 2020.

Decision

21. The landlord's claim for late fees succeeds in the amount of the maximum allowable of **\$75.00**.

Issue 3: Compensation for Damages \$5020.57

Landlord Position

22. The landlord is seeking to recover compensation for damages of the rented premises located at [REDACTED]
23. The landlord testified that as she is currently living in the [REDACTED] area, she hired a property manager to handle the move out.
24. The landlord described the damages being claimed as a result of this tenancy:
 - a. Replace 2 light fixtures **\$33.90**
 - b. Plaster/paint unit walls **\$1900.00**
 - c. Replace Master locking mechanism **\$50.00**
 - d. Replace Fridge **\$750.00**

- e. Re-install back yard gate **\$100.00**
 - f. Replace Glass in French Door **\$150.00**
 - g. Repair Porch Closet door **\$50.00**
 - h. Replace curtains and blinds **\$600.00**
25. The landlord submitted photos of the property to demonstrate the damages **(Exhibit L # 8)**, a copy of the move in condition report and associated photos **(Exhibit L # 4)** along with a breakdown of the claimed damages **(Exhibit L # 2)**. The landlord further submitted an invoice from [REDACTED] **(Exhibit L # 6)** for the repairs in the amount of \$3100.00.
26. The landlord testified that the light fixtures on the second floor and bedroom No 2 was missing when the property was recovered. The landlord is claiming \$16.95 each and referred to an invoice from the Property Management Company **(Exhibit L # 6)** and the photos of the property **(Exhibit L # 3 & 4)**. The Property Manager was not called as a witness in this claim.
27. The landlord testified that the walls of the property were damaged to the point of needing to be plastered and painted. The landlord stated that the walls were marked up, glue on them and holes in multiple walls. The landlord referred to the photos **(Exhibit L # 3 & 4)** to compare the condition before and after the tenant vacated the property. The landlord is claiming \$1900.00 **(Exhibit L # 2 & 6)** for the plaster/paint of the walls in the property. The landlord indicated that the walls were paint in August 2016 making the painted surface 4.2 years old.
28. The landlord presented that the locking mechanism for the master bedroom was missing when the tenant vacated the property as is evident in the photos of the property **(Exhibit L # 3)**. The landlord is claiming \$50.00 **(Exhibit L # 6)**.
29. The landlord was saddened to find that the tenant had unplugged the fridge in the property before vacating leaving a fridge full of food to spoil and rot. The landlord testified that the fridge was ruined due to the stench and pointed out that the freezer could not even be opened. The landlord referred to the photos **(Exhibit L # 3)** and testified that the fridge was disposed of and replaced with a used unit as costed for in the Property Managers Invoice **(Exhibit L # 6)**.
30. The landlord stated that the backyard gate was detached from the fence and had to be reinstalled. The landlord is claiming \$100.00 for the reinstallation of the gate.
31. The landlord testified that two panes of glass were missing from the French Door in the property and is claiming \$150.00 for their replacement.
32. The landlord testified that the hardware for the bi-fold closet door in the porch was broken and had to be repaired. The landlord is claiming \$50.00 for this repair.

33. The landlord stated that the curtains in the living room, bedroom # 2 and 3 were missing along with blinds in the dining room were damaged. The landlord stated that there were three separate blinds in the dining room and were wooden blinds. The landlord testified that they were damaged and required replacement. The landlord referred to the photos (**Exhibit L # 3**) and is claiming \$600.00 for the replacement.

Analysis

34. I have reviewed the evidence of the landlord in its entirety. After considering all the evidence and testimony, it is clear that the tenant did not maintain the property to a reasonable standard as it relates to cleanliness and condition. The landlord is claiming for some significant damages including for the replacement of a fridge and the painting and plastering of the entire home.
35. The landlord is, by her own testimony, an experienced landlord and indicated that she hired a property management firm to handle the move out given she is currently living in [REDACTED]. From this then, I can assume that the landlord did not see the property first hand at move out and relied on the property manager at the conclusion of the tenancy. The property manager was never called as a witness in this matter, as the hands on person handling the move out. I note this as a strange occurrence or a severe oversight on behalf of the landlord.
36. As a matter of analysis I must address some concerns I have with a particular piece of evidence. In particular, the invoice from the Property Management Firm (**Exhibit L # 6**). The receipt itself lacks many of the structured items of a typical invoice or receipt. The company name has a grammatical error, there is no HST number indicated nor any tax applied for the service and was written on 06 February 2021, some 4 months after the tenant vacated. The amounts are all very round numbers and don't include any detail from other suppliers (ie: paint supplies, hardware companies for materials, labor separated, etc). These are all important items for a claim and potentially for tax purposes of the landlord. All these items call into question for me the validity of the invoice.
37. I will add that I have no doubt that the tenant is responsible for damages to the property, but assessing an accurate and fair award is based upon the legitimacy of invoices presented and other evidence.
38. In any damage claim the applicant is required to successfully support three legal tests as outlined:
- 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.
39. The landlord's photographs presented show clearly that the property was certainly damaged during the tenancy. The walls did show signs of wear and

chipping in the photos taken prior to the tenant moving in. The landlord testified that the property was painted 1 month prior to the tenant taking possession, yet the before photos show signs of chipping and scrapes on the walls. Additionally, the move in inspection report (**Exhibit L # 4**) clearly indicates there were chips throughout with the exception of new paint applied in 2 bedrooms. This contradicts the landlord statements of the unit being painted 1 month prior to the tenant occupying.

40. With regard to the painting, we know from the evidence that only two of the bedrooms were painted before the tenant occupied which would make those surfaces at least 4.2 years old. As there is no break down on the paint and labor I am forced to make an arbitrary award for the painting of the two bedrooms that would show a remaining useful life of 0.8 years. I find that **\$75.00** is more than reasonable as a depreciated value.
41. The balance of the painted surfaces I will make the assumption that they were at or greater than 5 years old and based on life expectancy, would be considered fully depreciated and no award can be made. As such, this portion of the claim fails.
42. The light fixtures were indeed damaged or missing and for this I find the tenant responsible. Similarly, there is no logical reasoning for the missing door lock to the master bedroom, and the missing panes of glass in the French Door. As such, I find the tenant responsible for the replacement of the items as follows:
 - a. Light Fixtures
 - b. Door Lock (Master bedroom)
 - c. Repair French Door Glass
43. There were no specific receipts submitted for the purchase of lights at the claimed amounts. The Home Depot Receipts reflect more expensive lighting and the landlord indicated that she was not seeking costs for the upgrades, but only for the basic lighting. The claimed costs of \$16.95 each would reflect a market costs of a basic light fixture and therefore I award this cost to the landlord in the amount of **\$33.90**.
44. The landlord did not provide any receipts for the costing of the door lock replacement or French Door repair other than the property management invoice. I find that invoice to be suspect and therefore I will make an arbitrary award in the amount of **\$20.00** to cover the door lock replacement and **\$75.00** to cover the French Door repair as depreciated values.
45. The fridge can only be described in terms of a disgusting mess. The presence of bugs in the fridge can only indicate that the fridge was off for a significant period of time. It was loaded with food rotting. This is unacceptable and the responsibility for this rests solely in the hands of the tenant. I find the tenant responsible for its replacement. The landlord's only invoice showing the replacement cost of the fridge is that of the suspect invoice of the Property

Management Firm. The landlord did indicate that a second hand fridge was secured and I would not expect a receipt for such a purchase.

46. The Residential Tenancies Section assess a refrigerator to have a useful life expectancy of 12 years. The landlord has indicated that the damaged refrigerator was purchased in 2013 making it 7 years old at the time the tenant vacated. In this case, there has been no photos of the replaced unit to indicate condition and there has been no breakdown of the unit cost versus labor to pick up and install. As I cannot trust the invoice presented I will make an arbitrary assessment that \$600.00 is sufficient for the cost and labor to install. Depreciation will be calculated on this amount. The depreciated value of the replacement refrigerator is **\$250.00** calculated as: $(\$600.00 \div 12 \text{ years} = \$50.00/\text{year} \times 5 \text{ years remaining useful life} = \$250.00)$.
47. In regard to the missing blinds and curtains, the landlord testified that she was missing blinds in the house in the vicinity of 9 yet the claim for damages speaks of blinds only in the dining room missing and the receipts from Home Depot are for the purchase of 11 separate blinds. I further note that on the inspection report or the photos prior to occupancy, there is no mention of blinds or indication of their presence in the property. I find that the landlord has not supported this portion of the claim for the missing blinds and curtains and therefore this portion fails.
48. The landlord's claim for the re-installation of the backyard gate lacks any detail on materials or labor. There are no additional receipts supplied for materials associated with the gate and therefore I assume the claim is all labor. There is no other word to describe the labor charge but excessive. I assess that 1 hour labor would be sufficient with minimal materials such as screws and maybe new hinges. I find the tenant responsible for the re-installation of the gate and also find that **\$50.00** is a reasonable award for this portion of the claim.
49. Lastly, the landlord's claim for the repair to the porch bi-fold closet door. The property manager notes in the invoice of a repair, however, there is no photos to suggest that anything was wrong with the door. The landlord has failed to support the claim with proof that there was damage. As such, I find that the claim to repair the closet door fails.

Decision

50. The landlord's claim for damages succeeds in the amount of **\$503.90** determined as follows:
 - i. Replace Light Fixtures: **\$33.90**
 - ii. Painting/Plastering: **75.00**
 - iii. Replace Bedroom Lock: **20.00**
 - iv. Replace Fridge: **250.00**
 - v. Repair Gate: **50.00**

vi. Repair French door:	75.00
vii. Repair Closet door:	0.00
viii. Replace Curtains & Blinds:	0.00

Issue 4: Application/Refund of Security Deposit

Landlord Position

51. The landlord testified that a security deposit in the amount of \$975.00 was paid on the property on or about 17 August 2016. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
52. The landlord acknowledges holding the security deposit in the amount of \$975.00.

Analysis

53. Established by undisputed fact above, the tenant did pay a security deposit to the landlords in the amount of \$975.00.
54. The landlord's claim has been partially successful as indicated above. The security deposit plus accrued interest is \$975.00 as the interest rate for 2016 to 2020 is set at 0%.
55. The landlord's claim is partially successful. The security deposit is an asset of the tenant to be held against any loss incurred by the landlord attributed to the tenancy. In this matter it has been determined that there was an attributable loss and as such, the tenant is entitled to a refund of the balance of the security deposit as outlined in the attached order.

Decision

56. As the landlord's claim above has been mostly unsuccessful, the landlord shall refund the security deposit being held to the tenant as outlined in the attached order.

Summary of Decision

57. The landlord is entitled to the following:

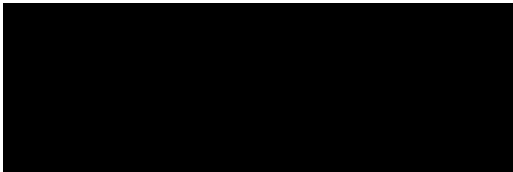
- a) Rent Owing\$1450.00
- b) Late Fees75.00
- c) Damages503.90
- e) **Sub-total****\$2028.90**

- f) **LESS: Security Deposit**..... **(\$975.00)**

- g) **Total Owing to Landlord**.....**\$1053.90**

09 March 2021

Date



Michael Greene
Residential Tenancies Tribunal