

Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0572-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **12:30 pm** on **17 March 2021** 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. (*Affirmed at 02 Feb 21 sitting*)
3. The respondent, [REDACTED] hereafter referred to as tenant1 participated in the hearing. (*Affirmed at 02 Feb 21 sitting*)
4. The respondent, [REDACTED] hereafter referred to as tenant2 participated in the hearing. (*Affirmed at 02 Feb 21 sitting*)
5. The details of the claim were presented as a written monthly agreement with rent set at \$900.00 per month and due on the 1st of each month. The agreement was an original fixed term agreement which rolled over into a monthly agreement and continued until the agreement ended. A security deposit in the amount of \$975.00 was collected on or about 01 August 2015.
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 affidavit submitted by the landlord shows that tenant1 was served with the notice of this hearing on the **08 January 2021** by serving the original documents to tenant1 via email: [REDACTED]

The affidavit submitted by the landlord shows that tenant2 was served with the notice of this hearing on the **08 Jan 2021** by serving the original documents to tenant2 via email: [REDACTED]

The tenants acknowledged receiving the claim by email on 08 January 2021.

8. During the first sitting of this claim (02 February 2021), it was determined that the tenants were not served with a copy of the evidence being presented and the hearing was postponed and re-scheduled so the applicant could provide the respondents copies of the evidence to be submitted into evidence.

Issues before the Tribunal

9. The landlord is seeking the following:
- a) Damages **\$3868.40**;
 - b) Hearing Expenses;
 - c) Application of Security Deposit

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:
- 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 - \$3868.40

Relevant Submissions

Landlord Position

12. The landlord testified that when the property was recovered it was noticed that the unit was left in a state of disrepair. The landlord outlined the following items:
 - a. Cleaning (Materials & Labor)
 - b. Replace flooring
 - c. Replace the front door
 - d. Replace the fridge crisper
 - e. Repair Bathroom Vanity
 - f. Paint Ceiling
 - g. Paint Living room ceiling
13. The landlord testified that the tenants lived in the property for 5 years and all was well until they wanted to own a dog. The tenants were granted permission and a \$300.00 per deposit was requested by the landlord and paid by the tenants.
14. The landlord submitted into evidence a copy of the rental agreement/rental condition report (**Exhibit L # 12**) along with a copy of the claim breakdown (**Exhibit L # 1**) and a series of photos (**Exhibit L # 2**) to demonstrate the damages to the property.
15. The landlord testified that the property needed a cleaning as there was a greasy film on the blinds and the fans in the property. The landlord referred to the photos submitted (**Exhibit L # 2**) to demonstrate the need for cleaning as well as an invoice from [REDACTED] (**Exhibit L # 10**) in the amount of **\$138.00** for cleaning services.
16. The landlord testified that the flooring was approximately 7 years old at the end of the tenancy. The landlord stated that the floor was damaged as a result of liquid damage and specifically what she indicated was pet urine on the flooring. The landlord indicated that the corners were warped and swelling and referred to the photos (**Exhibit L # 2**) to demonstrate the damages. The landlord additionally submitted two invoices for the purchase (**Exhibit L # 4**) and installation (**Exhibit L # 3**) of the flooring totaling **\$2830.00**.
17. The claim for the front door is a claim for its replacement. The landlord testified that the door showed obvious signs of forced entry. She indicated that the tenants had locked themselves out of the property and in their attempt to gain entry, destroyed the door and locking mechanism. The landlord referred to the photos (**Exhibit L # 2**) and submitted the following as part of the claim:

a. Exhibit L # 5: Invoice from [REDACTED] (door purchase):	\$194.35
b. Exhibit L # 6: Receipt from [REDACTED]:	40.08
c. Exhibit L # 7: [REDACTED] (Paint):	44.82
d. Exhibit L # 8: [REDACTED] (Passage Set):	77.04
e. Installation (CASH PAYMENT)	150.00
f. Painting labor (CASH PAYMENT)	<u>25.00</u>
g. Total	531.29

18. The landlord is seeking the replacement of a broken crisper drawer in the fridge. The landlord stated that there are no photos available to demonstrate the damages. She submitted into evidence an estimate from Easy Appliance Parts (**Exhibit L # 9**) in the amount of **\$133.11** to replace the crisper drawer.
19. The landlord is claiming for the replacement of the bathroom vanity doors (unfinished) and for their painting and installation. The landlord indicated that the veneer was peeling off the back of the doors. The landlord referred to the photos (**Exhibit L # 2**) and submitted two receipts from [REDACTED] (**Exhibit L # 7**) in the amount of **\$16.08** to purchase paint. The landlord is claiming 3 hours of her handy man's time to paint the vanity. There was no costing for the replacement doors.
20. The landlord testified that the tenant painted the ceiling and did a poor job as illustrated by the photos (**Exhibit L # 2**). The landlord testified that she used paint from her stock supply and is seeking **\$100.00** for the cash payment for the labor to paint the ceiling. There was not receipts for this.

Tenants Position

21. The tenants have acknowledged the damages to the front door. They testified that they locked themselves out and forced the door open to gain entry. As a result the tenants accept the cost of damages.
22. The tenants further testified that the ceiling was only primed and not painted. They indicated that this happened around the time [REDACTED] became sick. The tenants accept responsibility for this portion of the claim.
23. The tenants dispute the claim for cleaning stating that a walk through was completed with the care taker and everything was fine.
24. The tenants dispute the claim of the landlord to replace the laminate flooring. The tenants stated that they didn't think the flooring was in need of replacement. They stated that the property was 7 years old and reasonable wear and tear has to be considered in this regard. They dispute the notion of the landlord that their pet urinated on the floor causing the damage. They also added that the tenant before them had a cat which could have urinated. (*The landlord disputes that there was a cat in the property from the previous tenant*).

25. The tenants went on to say that the humidity levels from upstairs and downstairs differ and affect the flooring differently. In addition they indicate that there should have been a couple quotes for the labor to install the flooring instead of depending on one quote.
26. The tenants dispute the claim for the broken crisper in the fridge. They state that the crisper broke from normal use. They added that there was no presentation of photos prior to them occupying the property.
27. The tenants simply have no idea what happened with the vanity. They dispute the claim of the landlord.

Analysis

28. I have reviewed the testimony and evidence of the landlord and tenants in this claim. The landlord applicant is 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
29. Additionally, the tenants are responsible for damages resultant from a willful or negligent act of the tenant as expressed in section 10(1) 2 of the *Residential Tenancies Act, 2018* as follows:

10 (1) 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.
30. I must point out at this stage that the landlord has submitted into evidence a move in/out inspection report signed by at least one tenant for both the move in and move out inspection. The move out inspection clearly indicates several areas of concern:
 - a. Two bathroom(s) required cleaning
 - b. Blinds needed cleaning
 - c. Flooring in living room and two bedrooms replaced

It should be noted that these areas of concern at move out were not an area of concern at move in.

31. The acceptance and acknowledgement by the tenants for the damages as it relates to the ceiling and front door lead to an award against the tenants for the depreciated value of the claimed items **\$283.36**. I will deal with these items first:
 - a. **Replace Front Exterior Door:** The total claimed is \$531.29 inclusive of labor. Evidence is such that the property was 7 years old and in all likelihood, the exterior door is that age. Residential Tenancies assesses the

life expectancy of an exterior steel door to be 15 years which leaves a useful life of 8 years on the door. The depreciated value is **\$283.36** calculated as: $(\$531.29 \div 15 \text{ years} = \$35.42/\text{year} \times 8 \text{ years} = \$283.36)$.

- b. **Painting the Ceiling:** The total claim is \$100.00 for the labor to apply a finished coat of paint. The landlord used stock from a personal supply. There is no indication of the age of the paint, however, the tenants acknowledged priming the ceiling which would account for the streaky appearance as demonstrated in the evidence. It is very likely that the painted surface was at 5 years and up to 7 years as the original paint. Residential Tenancies assesses the useful life of a painted surface to be 5 years. As this is the minimum anticipated age, I find that the painted surface has out lived its useful life and would require a finished coat of paint. As such, the claim for painting the ceiling fails.
32. The landlord has claimed replacement of a crisper drawer from the fridge. There are a couple issues with this portion of the claim. In a fridge, the crisper drawers are used daily and in some case, frequently, through normal use. It is conceivable that through normal use, breakage can occur. The landlord has not demonstrated that the damage actually existed nor has she demonstrated that any damage was the result of a negligent or willful action of the tenants or someone permitted on the property by the tenants. As a result of the lack of supporting evidence from the landlord, I find that the tenants are not responsible for the claimed damages to the crisper drawer.
33. With regard to the cleaning that is being claimed, the landlord has no provided many photos to demonstrate the cleaning but the inspection report speaks volumes. The tenant has signed off on the reports which clearly indicate that the bathrooms and blinds were at least in need of a cleaning. The landlord's cleaning service is documented and invoiced and within normal and reasonable market rates. I find the landlord has supported this portion of the claim and as such, I find the tenants responsible for the cleaning of the property in the amount of **\$138.00**.
34. The landlord has claimed for the restoration of the bathroom vanity. The landlord indicated that the door required replacement as a result of the veneer on the inside and outside of the doors was peeling and /or chipped off. The landlord did not have an explanation for the condition of the vanity. Like the landlord, the tenants too could not explain the condition of the vanity. The tribunal has only the advantage of examining the photos presented to it in an attempt to explain the condition. It is apparent on the panel above the doors there is much wear in the finished surface and some apparent bubbling of the veneer there as well. In looking at all the areas of concern, it is apparent that the areas were over a period of time soaked in water which was left. The peeling on the rear of the doors can only separate as a result of a breakdown in the adhesive over time. There is no indication that this is willful on the tenants part, however, it is seen as reasonable that a tenant would clean up any spilled water such that this sort of thing doesn't happen. I find that tenants responsible for the repairs at the depreciated value of **\$59.15**. Residential Tenancies assesses the useful life of a

vanity to be 20 years. I will again make the assumption that this unit is 7 years old based on the evidence presented and calculate the depreciated value as ($\$91.08 \div 20 \text{ years} = \$4.55/\text{year} \times 13 \text{ years} = \$59.15.$)

35. Lastly, the landlord is claiming for the replacement of flooring in the rented premises. The landlord has presented several photos of the laminate flooring claiming that the flooring is bubbled as a result of the tenant's dog urinating. The landlord mentioned on several occasions during the hearing that she opted not to send a sample of the boards to a lab for analysis but would if it was necessary. The question was asked of the tribunal as to whom would be responsible for the cost of the analysis. The answer was provided that if the respondents were found liable then they would be responsible.
36. I am troubled by this tactic of the landlord. It was presented as a sort of an intimidation tactic in an attempt to hang a lab analysis invoice over a respondents head. The applicant to a claim must decide what evidence they are prepared to present to the tribunal at the time of the hearing. The landlord opted at this hearing to not analyze the boards and present this into evidence at the hearing. As such, this evidence would have been available at the time of the hearing and therefore would not be considered fresh evidence which could be addressed at any potential appeal process.
37. In reviewing the flooring evidence presented, the edges do appear to be raised consistently across the floor. There also does not appear to be any sort of typical water bubbling at the edges where one would expect it. The consistent raising across the floor in the absence of any water bubbling is more consistent with a humidity issue as was explained by the tenants. I do not find that one can draw a conclusion that the condition of the floor as demonstrated by the evidence presented was the result of the tenants' dog urinating on the floor. As such, the landlord's claim for flooring replacement fails.

Decision

38. The landlord's claim for damages succeeds as follows:

a. Front Door Replacement	\$283.36
b. Paint the ceiling	0.00
c. Replace the Fridge Crisper Drawer	0.00
d. Clean the unit	138.00
e. Repair Vanity	59.15
f. Replace Flooring	<u>0.00</u>
g. Total:	<u>\$480.51</u>

Issue 6: Application/Refund of Security Deposit

Landlord Position

39. The landlord testified that a security deposit in the amount of \$975.00 was paid on the property on or about 01 August 2015. The landlord indicated that \$300.00 of this amount was requested as a pet deposit about 1 ½ years into the tenancy. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
40. The landlord acknowledges holding the security deposit and pet deposit in the amount of \$975.00.

Tenant Position

41. The tenants testified that the amount of security deposit and pet deposit is being sought to be refunded.

Analysis

42. Established by undisputed fact above, the tenants did pay a security deposit to the landlord in the amount of \$675.00 on 01 August 2015 and an additional \$300.00 as a pet deposit approximately 1½ years later.
43. The landlord collection of a pet deposit is prohibited by the legislation and the landlord is to refrain any further collections in this regard.
44. The landlord's claim has been only partially successful as indicated above. The security deposit plus accrued interest is \$675.00 as the interest rate for 2015 – 2021 is set at 0%. In addition, the pet deposit (extra security deposit) would stand at \$300.00 for a total of \$975.00.
45. The landlord's claim is partially successful. The security deposit is an asset of the tenants to be held against any loss incurred by the landlord attributed to the tenancy. In this matter it has been determined that there was a loss and as such, the landlord is entitled to offset the security deposit against the damages as outlined in the attached order.

Decision

46. As the landlord's claim above has been successful in part, the landlord shall offset the security deposit being held against the damages as outlined in the attached order.

