

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0127-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **27 May 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 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. 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 applicants have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. 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 this hearing on the **23 March 2021** by serving the original documents to the tenant to the email address [REDACTED] with email and verification attached.

The affidavit submitted by the landlord shows that tenant2 was served with the notice of this hearing on the **16 April 2021** by serving the original documents to the tenant to the email address [REDACTED] with email and verification attached.

A phone call was placed to the tenants to the numbers on file:

[REDACTED] There was no answer and a message was left.

[REDACTED] There was no answer and a message was left.

7. As the tenants were 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 tenants' absence.
8. The landlord called two witnesses in this matter:

[REDACTED]
[REDACTED]

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Rental Arrears **\$3345.27**
 - b) Damages **\$2049.50**;
 - 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:
 - 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: Rent Owing - \$3345.27

Relevant Submissions

Landlord Position

12. The landlord stated that they had entered into a written rental agreement with the tenant, commencing 01 October 2012. The agreed rent was set at \$462.00 per month and due on the 1st day of each month with no security deposit collected on this tenancy.
13. The landlord testified that rent was outstanding in the amount of \$3287.27 (**Exhibit L # 1**) for the period ending 28 February 2021 and stated as of the hearing date 27 May 2021 rent remains outstanding.
14. The landlord testified that the balance of rent at move out was \$3927.79. The landlord further testified that there was a payment of \$60.00 made by the tenants on 13 April 2021 and there was a previous order issued (2017-0212-█) for the amount of \$582.52 as a result of a converted mediated agreement. The landlord submitted the documents into evidence as follows
 - a. Mediated Agreement (**Exhibit L # 2**)
 - b. Order 2017 No █ (**Exhibit L # 3**)

Analysis

15. 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.
16. 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.
17. The tenants have already had an order for rent issued against them and this amount cannot be added to any current order. Records also indicate that a payment of \$60.00 was made and applied since the tenants vacated and this amount is deducted accordingly.
18. Records are clear that rent for the period ending 28 February 2021 is outstanding in the amount of **\$3285.27**.

Decision

19. The landlord's total claim for rent succeeds as follows:

- a) Rent owing (on statement of Account) \$3927.79
- b) LESS: Rent Payment from Tenants (April)..... (60.00)
- c) LESS: Amount from previous Order..... (582.52)

- d) Total Arrears up to 28 February 2021 **\$3285.27**

Issue 2: Compensation for Damages - \$2049.50

Relevant Submissions

Landlord Position

20. The landlord testified that when the property was recovered it was noticed that the following items were damaged as outlined (**Exhibit L # 12**):
- a. Prime two bedrooms
 - i. Rear right bedroom
 - ii. Rear left bedroom
 - b. Replace missing batteries in smoke detectors (2)
 - c. Replace missing shower head
 - d. Repair two modified walls in front bedroom
 - e. Remove garbage and items left by tenant
 - f. Replace bi-fold door
 - i. Rear right bedroom
 - ii. Front bedroom
 - g. Replace missing smoke detector in front bedroom
 - h. After hours charge October 2015 (Child threw a cloth down the toilet)
 - i. Repair Structural changes to unit October 2016
 - j. Replace Doors & passage sets
 - i. Rear left bedroom
 - ii. Rear right bedroom
 - iii. Front bedroom
21. The landlord presented into evidence an email (**Exhibit L # 5**) confirming the afterhours call charge along with photos of the structural changes made to the unit (**Exhibit L # 6**) which required repair. The landlord testified that the tenants had made one payment towards the damage charges in the amount of \$125.00 on 01 March 2018 which is reflected in the amount being claimed.
22. The landlord called witness [REDACTED] to speak to the structural issue of the unit. The witness is employed with [REDACTED] as an Engineering Technician and amply qualified to speak to the structural integrity of the building. The witness testified

that the tenants had cut two 5 foot holes in a load bearing wall in the unit and failed to properly reinforce them such that the roof load was transferred and carried by the supporting walls of the building rendering the building unsafe.

23. Further, the witness testified that the tenants removed fire rated gyproc and resilient channel from a fire separation wall to an adjacent unit. The witness testified that the gyproc and resilient channel are a requirement of the building code in multi-unit buildings and are a safety feature to prevent or at least slow the advancement of fire from one unit to the next.
24. The witness testified that the repairs were carried out by [REDACTED] staff and a letter of agreement with the tenants for the costs (**Exhibit L # 7**) was presented into evidence.
25. The landlord further testified that when the tenants vacated the property, damages were noted and a breakdown of same was presented (**Exhibit L # 8**) totaling \$1377.50. The landlord also presented photos of the damages (**Exhibit L # 9**) and called a witness to speak to the damages found during the vacating inspection.
26. The landlord called [REDACTED] who completed the outgoing inspection (**Exhibit L # 9**) on 01 March 2021. The witness testified that the property was last painted approximately in 2012 however, the tenants painted the rooms non-neutral colors and failed to return them to the original colors. The landlord has charged only to bring the painted color to a point where a finished coat can be applied.
27. The witness testified that the property required a paint job and the replacement of several doors along with the replacement of smoke detectors, batteries for other smoke detectors and a shower head (**Exhibit L # 9**). The witness also stated that there was some garbage and personal items left by the tenants that required disposal. The landlord presented a letter from the tenants (**Exhibit L # 10**) giving permission to dispose of any items left behind.
28. The landlord submitted into evidence an invoice from the maintenance department of [REDACTED] (**Exhibit L # 12**) in the amount of \$2049.50 for the repairs to the unit.

Analysis

29. I have reviewed the testimony and evidence of the landlord in this portion of the claim. The 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

30. The evidence presented in this claim has been clear in that the property was left in a condition by the tenants that required some repairs as a result of the direct actions of the tenants. The photos depict some personal belongings left in the unit by the tenants along with some garbage. The tenants have provided permission for the landlord to dispose of the items left.
31. The balance of the landlord's claim I accept and is supported in evidence. The tenants had painted the property some bright colors that will require priming such that a neutral color can be reapplied. The landlord's claim is well within what can be considered reasonable depreciated market pricing for similar repairs.
32. The tenants have acknowledged the structural repairs in their agreement to repay with the landlord. The units are painted a neutral color at the outset and the tenants opted for some brighter colors to suit their décor. That is their choice and further their responsibility to return the walls to the original color or similar or compensate for the landlord to complete the task.
33. Based on the evidence, this tribunal can reasonably assess that the damages as described are the responsibility of the tenants and the amount claimed is well within a reasonable depreciated value for the property. The landlord's claim for damages succeeds in the amount of \$2049.50.

Decision

34. The landlord's claim for damages succeeds in the amount of \$2049.50.

Issue 3: Hearing Expenses

Landlord Position

35. 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 # 11**). The landlord is seeking this cost.

Analysis

36. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred 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 the landlord's claim has been successful, the tenants shall cover the expenses of the landlord.

Decision

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

Summary of Decision

38. The landlord is entitled to the following:

- a) Rent Owing\$3285.27
- b) Damages2049.50
- c) Hearing Expenses20.00
- d) **Total owing to the landlord****\$5354.77**
- e) Any costs incurred to certify the attached order

30 June 2021

Date

