

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0206-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **9:30 am** on **02 June 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*)
3. The respondent, [REDACTED] hereafter referred to as tenant1 participated in the hearing. (*Affirmed*)
4. The respondent, [REDACTED] hereafter referred to as tenant2 participated in the hearing. (*Affirmed*)
5. The details of the claim were presented as a written fixed term agreement set to expire on 31 August 2021 with rent set at \$825.00 per month and due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$400.00 was collected on or about 01 October 2019 and has been ordered returned under application 2021-[REDACTED]
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 show that the tenants [REDACTED] were served with the notice of this hearing on the **19 May 2021** by serving the application for dispute resolution document to the tenants to the email addresses: [REDACTED] and [REDACTED]. Verification and proof of the email was attached.
8. This claim was separated from an originating application at the hearing as the landlord failed to file the application as a counterclaim to the originating application.

## Issues before the Tribunal

9. The landlord is seeking the following:
  - a) Damages **\$507.35**;
  - 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 - \$507.35

### Relevant Submissions

#### Landlord Position

12. The landlord testified that the tenants vacated the unit and gave the reasoning that they had found mold in the unit and were concerned for their health.
13. The landlord testified that he thought it might be a structural issue so he had an engineer friend look at it and the landlord claims that it was not a structural

problem. There was no evidence (affidavit, witness testimony, etc) presented to support the conclusion.

14. The landlord testified that there was an extreme number of plants and spritzer bottles in the property and concluded that the mold grew as a result of extreme moisture and low air flow.
15. The landlord further testified that when the tenants vacated and the property was recovered it was noticed that there was extensive damage noted: following items were damaged as outlined:
  - a. Wall anchors used to support shelves installed
  - b. Wall anchors used to install a TV mount
  - c. Paint/Plaster to repair holes
  - d. Paint as an off color paint was used to spot paint
16. The landlord submitted into evidence photos of the property (**Exhibit L # 1**) and further submitted a breakdown of the damages supplied by the contractor (**Exhibit L # 2**). The landlord indicated that his contractor charged labor at \$12.00 per hour totaling \$300.00 and he supplied the materials. There were no receipts submitted for the materials. The landlord lastly indicated that the painted surface in the unit was newly painted prior to the tenants moving into the property.
17. The landlord stated that the tenants referred the mold issue to the [REDACTED] who inspected the property and closed the file.

#### Tenant Position

18. The tenants dispute the claim stating that when they moved out of the property, they had been cleaning mold for approximately 4 months. They confirmed that the living room, hall and bathroom were painted at move in but the bedroom was not completed. The tenants submitted photos (**Exhibit T # 1**).
19. The tenants testified that there was a TV mounted prior to move in and there were wall anchors in the kitchen prior to move in. (Table seen in photos **Exhibit T # 1**).

#### Landlord Rebuttal

20. The landlord testified that the photos of the table were taken prior to the tenants and was attached with screws directly to the studs (no wall anchors used).
21. The landlord further indicated that the hall was not painted to cover mold. The landlord was provided leave to supply photos of the property prior to the tenant (**Exhibit L # 4**) and indicated that these photos do not show a TV mount prior to the tenants moving into the property.

## Analysis

22. I have reviewed the testimony and evidence of the landlord and tenants 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
23. As with the majority of challenged claims, there are widely dissenting opinions on the condition of the property at the end of the tenancy. The applicant always hold the burden of substantiating the claim they are putting forth on the balance of probabilities.
24. The evidence presented in this claim relates only to the repairs required resulting from wall anchors for a TV Mount and shelving and not to a mold issue as indicated by the tenants for their reason for departure.
25. The evidence is clear that the tenants used wall anchors to install a TV mount and shelving for plants. It is also clear that they were not in the premises prior to the tenant taking possession which is in direct contradiction to the tenants' testimony.
26. There is no doubt that the landlord was required to make some repairs including plastering, painting and cleaning windows. As indicated above, a requirement of any successful claim is for the applicant to show a valuation for the repairs. The landlord has provided costing for the labor but has not supplied any receipts for the materials.
27. Painted surfaces in a rental unit are considered a depreciable item and as such any materials and labor are required to be depreciated for any award. A painted surface is seen to have a life expectancy of 5 years in a rented unit.
28. I accept the evidence of the landlord that the tenants caused damage (wall anchors and dirty windows, etc) and I find that they are responsible. In making the award, I can only consider the labor portion of the claim as the landlord has not provided any receipts for the materials. As such, I find that the tenants are responsible for the depreciated value of the wall repairs in the amount of **\$225.00** calculated as ( $\$300.00 \div 5 \text{ years} = \$60.00 \text{ per year} \times 3.75 \text{ years remaining} = \$225.00$ ).

## Decision

29. The landlord's claim for damages succeeds in the amount of \$225.00.

### Issue 3: Hearing Expenses

#### Landlord Position

30. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Digital Government Service NL [REDACTED] (**Exhibit L # 5**). The landlord is seeking this cost.

#### Tenant Position

31. The tenants acknowledged the reasoning on the claim for hearing expenses.

#### **Analysis**

32. I have reviewed the testimony and evidence of the landlord and tenants in this matter. The expenses incurred by both parties 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 landlord's reasonable hearing expenses.

#### **Decision**

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

#### **Summary of Decision**

34. The landlord is entitled to the following:

a)	Compensation for Damages .....	\$225.00
b)	Hearing Expenses .....	<u>20.00</u>
b)	<b>Total owing to landlord .....</b>	<b><u>\$245.00</u></b>

07 July 2021

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**Date**

