

Residential Tenancies Tribunal

Decision 19-0021-04

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on **28 January 2020** 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 originating applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing (*Affirmed*).
3. The countering applicant, [REDACTED], hereafter referred to as landlord1, participated in the hearing (*Affirmed*).
4. The countering applicant, [REDACTED], hereafter referred to as landlord2 did not participate in the hearing – (*Absent and Not Represented*).
5. The details of the claim were presented as a written fixed term rental agreement set to expire on 31 March 2020 with rent set at \$1200.00 per month (utilities included) and due on the 1st of each month. It was stated that a security deposit in the amount of \$900.00 was collected on the tenancy. The tenant issued a termination notice via text message dated 20 August 2019 for the intended termination date of 26 August 2019 and no particular Section of the *Residential Tenancies Act, 2018* identified.
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 tenant show that landlord1 was served with the notice of this hearing on the **10 October 2019 at 1:52 pm GMT** by serving the application for dispute resolution document to the landlord by email to the address [REDACTED] and providing corresponding email verification.
8. The affidavit submitted by the tenant show that landlord2 was served with the notice of this hearing on the **10 October 2019 at 1:34 pm GMT** by serving the application for dispute resolution document to the landlord by email to the address [REDACTED] and providing corresponding email verification.
9. The affidavit submitted by the landlords show that the tenant was served with the notice of this hearing on the **20 November 2019** by serving the application for dispute resolution document to the tenant by email to the address: [REDACTED] with supporting email confirmation attached.
10. The landlords called a witness [REDACTED] ([REDACTED]) as one of the cleaners who attended the property.

Issues before the Tribunal

11. The **landlords** are seeking the following:
 - a) Compensation for Damages **\$414.00**
 - b) Hearing Expenses
12. The **tenant** is seeking the following:
 - c) Refund of Security Deposit **\$900.00**
 - d) Hearing Expenses

Legislation and Policy

13. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
14. Also relevant and considered in this case are Section 42 of *the Act*, Policy 9-3: *Claims for Damages to the Rental Premises*, Policy 9-5: *Life Expectancy of Property* and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Compensation for Damages - \$414.00

Relevant Submissions

Landlord Position

15. The landlords are claiming for cleaning services to the rented premises in the amount of \$414.00.
16. Landlord1 testified that when the premises was recovered, it was noted that the property was not cleaned and as a result it was necessary to have cleaners clean the unit. Landlord1 testified that the following areas were cleaned:
 - a. Kitchen (including cabinets, fridge, stove, dishwasher, freezer and floors).
 - b. Bathroom (including toilet, sink countertop, shower, tub, medicine cabinet, linen tower, floors)
 - c. All windows, floors carpets and laundry area.
17. Landlord1 submitted into evidence an invoice from her personal company **(Exhibit L # 3)** [REDACTED] in the amount of \$414.00. Landlord1 testified that it took two workers 9 hours @ a rate of \$20.00/ hr. Landlord1 testified that she could not acquire any other company's services in the area to complete the work.
18. Landlord1 submitted into evidence photos of the property **(Exhibit L # 2)** which were taken 26 and 27 August 2019. Landlord1 submitted a Rental Premises Condition Report **(Exhibit L # 4)** with no issues of cleanliness indicated. The report was signed by the landlords on 01 April 2019 and by the tenants on 17 April 2019.
19. Landlord1 further submitted into evidence two witness statements **(Exhibits L # 5 & 6)** from [REDACTED] and [REDACTED]. The landlord called [REDACTED] to testify and she stated that she was asked by the tenant to clean the property but did not as there was no supplies provided. The witness stated that she was hired by the landlords to clean and noted the property was not cleaned. She stated that everything needed to be done including (kitchen, baseboards, appliances, cabinets, walls and floors). She stated that things were dusty. The witness testified that in her opinion, the property was not clean.

Tenant Position

20. The tenant disputes the landlords' claim and testified that the property was cleaned when he vacated. The tenant submitted into evidence photos of the property **(Exhibit T # 2)** and video of the unit just prior to leaving for the airport **(Exhibit T # 1)**.

21. The tenant stated that he sees the claim as ridiculous given he occupied the property from June to 26 August 2019. The tenant is seeking his security deposit refunded.
22. The tenant testified that his evidence clearly shows the property was cleaned adequately. He further testified that the landlords are claiming to have the dryer cleaned and he never used the dryer. He stated that the lint must have been there from the previous tenant.

Analysis

23. The relationship between the landlords and tenant was evident at the scheduled hearing. The dispute in this matter is clear, the landlords claim the property was left unclean, the tenant claims it was adequately cleaned; the result is the claims before us.
24. Landlord1 has established the baseline condition of the property by presenting a rental premises condition report acknowledged by both parties with their signatures on the document.
25. Landlord1 has presented her version of cleanliness with her photos of the property. The tenant has also presented his version of cleanliness with photos and video. After careful consideration of both sets of photos and the video and the statements made by both parties, I find that on the balance of probabilities it is more likely that the tenant left the property in the condition as depicted by the landlords. Further, I find that the landlords are asking for a property to be in pristine condition free from all dust, etc., which I find to be unreasonable. There is a certain amount of wear and tear and reasonable usage that would be allowable.
26. Specifically concerning the laundry dryer, I find it hard to believe that the tenant did not use the dryer during his residence. It is more likely that it was used and he or his family was not fully aware of the requirement to clean the lint trap regularly. I make this assumption based on the fact that the tenant was not aware what the unit was called.
27. There is actual indication in the tenant's photos of the dirt being claimed in the landlords' claim, confirming the landlords' assertions. Specifically I speak of the oven and the shower surround in the lower grooves.
28. Based on the totality of the evidence, a landlord can reasonably expect to have to do a general cleaning between tenants. Things like the inside of window closures, general dusting, vacuuming, sweeping and mopping I would assess as reasonable wear and tear unless there was specific and clear indications of neglect. That is certainly not the case as seen by either photos of the landlords or tenant. As such, I find that the amount of hours claimed would be slightly excessive. I find that one person could reasonably complete the excess cleaning

over and above any reasonable wear and tear in the 9 hours claimed. I find that the landlords' claim succeeds in the amount of \$207.00 representing one employee for 9 hours of work at \$20.00/hr.

Decision

29. The landlords' claim for cleaning succeeds in the amount of **\$207.00**.

Issue 2: Refund of Security Deposit

Landlord Position

30. Landlord1 testified that a security deposit in the amount of \$900.00 was collected on the tenancy. The landlords are seeking that this deposit be applied against any order derived from this application and claim.

Tenant Position

31. The tenant agreed with Landlord1 that the security deposit was paid and is seeking to have the security deposit in the amount of \$900.00 refunded by way of an order from this application.

Analysis

32. I have reviewed the testimony and evidence of the landlords and tenant in this matter. As far as I can see, there are 2 issues here that needs to be addressed: (i) did the tenant pay a security deposit, (2) is the tenant responsible for the claimed damages thereby offsetting the security deposit.

33. Both parties have acknowledged that the security deposit was paid by the tenant in the amount of \$900.00.

34. The landlords' claim for damages has been successful in part. As such, I find that the landlords shall offset the damages against the security deposit paid and refund to the tenant that portion of the security deposit as determined below which is in excess of the amount of awarded damages. The tenant's claim for a refund of security deposit succeeds.

Issue 3: Hearing Expenses

Landlord Position

35. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████████) (**Exhibit L # 7**). The landlords are seeking these cost.

Tenant Position

36. The tenant paid a fee in the amount of 20.00€ (\$30.94 CAD) for the service to have a signature witnessed (**Exhibit T # 5**). The tenant paid 111.98€ (\$173.22 CAD) for the airfare (**Exhibit T # 4**) to travel to the location of the Commissioner/Solicitor for a witness as required for the application. The tenant is seeking these costs.

Analysis

37. I have reviewed the testimony and evidence of the landlords and tenant 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*. Both parties have had a successful claim and as such, I find the landlords are responsible to cover these reasonable expenses of the tenant less the landlords' expenses.
38. The conversion of Euros to Canadian dollars is \$1 CAD = 1.55€.

Decision

39. The landlords shall pay the reasonable expenses of the tenant in the amount of \$184.16 less the landlords expenses determined as follows:

a. Total tenant Expenses	\$204.16
b. LESS: Landlord Expenses	<u>20.00</u>
c. Total Owing to Tenant	<u>\$184.16</u>

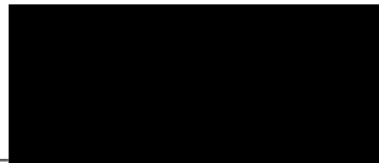
Summary of Decision

40. The tenant is entitled to the following:

a)	Refund of Security Deposit	\$900.00
b)	Hearing Expenses	<u>184.16</u>
c)	Subtotal	\$1084.16
d)	LESS: Damages	<u>(\$207.00)</u>
c)	Total owing to tenant	<u>\$877.16</u>

03 April 2020

Date



Michael Greene
Residential Tenancies Tribunal