

Residential Tenancies Tribunal

Decision 19-0027-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 06 May 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as the tenant1, participated in the hearing (*Affirmed*).
3. The applicant, [REDACTED], hereafter referred to as the tenant2, participated in the hearing (*Affirmed*).
4. The respondent, [REDACTED], hereafter referred to as the landlord participated in the hearing – *Affirmed*.
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$1200.00 per month (utilities extra) and due on the 1st of each month. It was stated that a security deposit in the amount of \$600.00 was collected on the tenancy on or about 22 August 2018. The landlord issued a termination notice dated 22 January 2019 for the intended termination date of 28 February 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 tenants show that the landlord was served with the notice of this hearing on the **02 April 2019** by serving the application for dispute resolution document to the landlord by placing a copy in the mail box of the landlord at [REDACTED].
8. The affidavit submitted by the landlord shows that tenant1 was served with the notice of this hearing on the **24 April 2019** by serving the application for dispute resolution document to the tenant by email to the address: [REDACTED] with supporting email confirmation attached.
9. The affidavit submitted by the landlord shows that tenant2 was served with the notice of this hearing on the **24 April 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 service of documents upon the landlord was by a method not approved under section 42 of the *Residential Tenancies Act, 2018*. The landlord agreed to waive the service requirements and continue with the hearing.

Issues before the Tribunal

11. The **landlord** is seeking the following:
 - a) Compensation for Damages **\$353.54**
 - b) Application of Security Deposit **\$600.00**
12. The **tenant** is seeking the following:
 - c) Refund of Security Deposit **\$600.00**

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 - \$353.54

Relevant Submissions

Landlord Position

15. The landlord is claiming for several areas of damage as follows:
 - a. Replace Bedroom Door (**\$121.77**)
 - b. Replace Moldings in the property (**\$151.99**)
 - c. Plaster, Prime & Paint Basement Wall (**\$54.78**)
 - d. Remove Chewed Wires (**\$25.00**)
16. The landlord testified that when the premises was recovered, it was noted that there was a bedroom door that was cracked. The landlord submitted photos (**Exhibit L # 2**) showing the crack in the bedroom door. The landlord is seeking the cost of the purchase, painting and installation of a new door (\$121.77) (**Exhibit L # 1**).
17. The landlord testified that when the property was recovered it was noted that the moldings in the hallway, the basement and rec room in two places were chewed by a dog belonging to the tenants. The landlord referred to the photos of the damage (**Exhibit L # 2**) and the invoice submitted for the repairs (\$151.99) (**Exhibit L # 1**).
18. The landlord is claiming for the plaster, prime and paint of a fist size hole that was noted in a wall in the basement of the property once it was recovered. There were no photos of this damage to submit into evidence. The landlord again referred to the invoice for the repairs (\$54.78) (**Exhibit L # 1**).
19. The landlord is claiming for the cost to remove the coaxial cables that were chewed by the tenants' dog. The landlord referred to the photos submitted (**Exhibit L # 2**) and the invoice (**Exhibit L # 1**) for the repair costs (\$25.00).
20. The landlord testified that not all repairs were complete.

Tenant Position

21. The tenants disputed the landlord's claim and challenged the invoice submitted into evidence (**Exhibit L # 1**). Regarding the claim for the repair to the basement wall, it is the tenants' contention that this damage was already in the property when the tenants took possession of the unit. The tenants advised that on 13 March 2019, they approached the new owners of the property regarding the supposed repairs and were permitted into the property. From this viewing, the tenants advised that the repairs claimed to have been done, were not completed

and they advised the landlord of this.

22. The tenants acknowledged that the bedroom door was split by them, their dog (puppy) did chew the moldings as claimed and also did chew the coaxial cables in the unit. The tenants state however that the repair to the wall is not their responsibility as it was there when they moved into the property.

Analysis

23. The relationship between the landlord and tenants was evident at the scheduled hearing. It is clear that the relationship started out as a cordial and friendly landlord/tenant relationship and appears to have gone off the rails at some point later in the agreement. To the end of reaching a decision in this matter I will deal with each item separately as was presented by each of the parties.
24. The tenants have questioned the invoice (**Exhibit L # 1**) that the landlord has submitted into evidence. I will address this particular piece of evidence before going forward as it is a key piece of evidence.
25. In business, an invoice is a document that is issued to the customer by the business for services that has been rendered. In this particular case it is clearly marked as an invoice. The landlord has testified that not all the work has been completed.
26. A quote on the other hand is a document issued by a business establishing a price for a scope of work to be completed by the business for the customer.
27. Further, businesses are required by law to charge HST on services rendered and to identify these taxes on the documents (invoices, receipts etc) issued. There is no tax portion on the invoice submitted by the landlord.
28. Lastly, regarding **Exhibit L # 1**, there is no business name, no personal name (other than the name of the landlord referenced), no signature and no business number on the document. I find that the document is suspect technically and gives me concern that an invoice was issued and the landlord indicates that not all work was complete. The costings however, appear to be within market pricing. Given this, I will use this piece of evidence for guidance only in determining the balance of the claim.
29. The tenants have acknowledged damages to the bedroom door, damages to the moldings and damages to the coaxial cables. The total for these portions of the claim are (\$298.76). They dispute the damage to the wall stating that it was there prior to the tenancy beginning. The landlord has failed to establish the condition of the property prior to the tenants taking possession and as such has not shown tenant liability for the portion of the damage concerning the repair to the basement wall. As such, the portion of the claim pertaining to the repair to the

basement wall fails.

30. The tenants have acknowledged the balance of the claim and therefore some level of compensation is required. These items are depreciable items and normally materials would be depreciated separate of labor costs. Given the landlord has not broken out these costs, I will apply depreciation to the labor as well, to the detriment of the applicant. The useful life of interior doors and moldings is assessed to be at 20 years and given the landlord places the age of each as 6 years (installed in 2013), that would leave 70% of the useful life remaining in the items. As such, I find that the tenant is responsible for the replacement of the door and moldings in the amount of 70% of the cost (\$273.76) in the amount of **\$191.63**.
31. Further, I find that as the tenants have acknowledged that their dog chewed the coaxial wires, I find the tenants responsible for their removal in the amount of **\$25.00**.

Decision

32. The landlord's claim for damages succeeds in the amount of **\$216.63** (\$191.63 + \$25.00).

Issue 2: Refund of Security Deposit

Landlord Position

33. The landlord testified that a security deposit in the amount of \$600.00 was collected on the tenancy on or about 22 August 2018. The landlord is seeking that this deposit be applied against any order derived from this application and claim.

Tenant Position

34. The tenant submitted a copy of the receipt for the security deposit (**Exhibit T # 1**) and is seeking to have the security deposit in the amount of \$600.00 refunded by way of an order from this application.

Analysis

35. I have reviewed the testimony and evidence of the landlord 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) it's the tenant responsible for the

claimed damages thereby offsetting the security deposit.

- 36. The tenant has provided a copy of the security deposit receipt (**Exhibit T # 1**) which indicates payment was made on or about 22 August 2018. Additionally the landlord has acknowledged the receipt of the deposit.
- 37. The landlord testified that he e-transferred \$245.36 of the security deposit to the tenants, but they refused the transfer so he still holds the full deposit of \$600.00. The landlord filed a claim seeking damages against the security deposit being held. The landlord's claim has been successful in part. As such, I find that the landlord shall offset the damages against the security deposit paid and refund to the tenants 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.

Decision

- 38. The tenants' claim for refund of security deposit succeeds:
 - a. Security Deposit paid \$600.00
 - b. LESS: Damages (216.63)
 - c. Sub-total \$383.37

 - d. Balance owing to the tenants \$383.37

Summary of Decision

- 39. The tenants are entitled to the following:
 - a) Refund of Security Deposit\$383.37

 - c) **Total owing to tenants.....\$383.37**

27 December 2019

Date



Michael Greene
Residential Tenancies Tribunal