

Residential Tenancies Tribunal

Decision 19-0040-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 29 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 tenant, participated in the hearing (*Sworn*) and was represented by [REDACTED], Solicitor.
3. The respondent, [REDACTED], hereafter referred to as the landlord, participated in the hearing – *Sworn*.
4. The details of the claim were presented as a written monthly rental agreement 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 \$600.00 was collected on the tenancy on or about 28 August 2018. The tenant issued a termination notice dated 28 Feb 2019 for the intended termination date of 30 March 2019 and no particular Section of the *Residential Tenancies Act, 2018* identified.
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 applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

6. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **17 May 2019** by serving the application for dispute resolution document to the tenant personally at [REDACTED].
7. The affidavit submitted by the tenant shows that the landlord was served with the notice of this hearing on the **08 May 2019** by serving the application for dispute resolution document to the landlord by Xpress Post mail ([REDACTED]).
8. There was no hearing expenses claimed by either party at the hearing.

Issues before the Tribunal

9. The **landlord** is seeking the following:
 - a) Compensation for Damages **\$868.56**
 - b) Application of Security Deposit **\$600.00**
10. The **tenant** is seeking the following:
 - c) Refund of Security Deposit **\$600.00**

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. Also relevant and considered in this case are Sections 42 of *the Act*; Policy 9-3: *Claims for Damages to Rented 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 - \$868.56

Relevant Submissions

Landlord Position

13. The landlord is claiming for several areas of damage as itemized in the claim breakdown (**Exhibit L #5**) as follows:

- a. Labor 25.5 Hours @ \$15.00/hour (**\$382.50**)
 - i. Clean up Cigarette Butts (1 Hour)
 - ii. Remove Potting Soil Debris/garbage left at the curb (1.5 Hours)
 - iii. Snow Clear Walkways (10 Hours)
 - iv. Clean Pet Debris (8 Hours)
 - v. Stain front & Back Deck (5 Hours)
 - b. Replace Heater and Install (**\$282.59**)
 - c. Storage fees for abandoned property (**\$100.00**)
 - d. Stain for two decks (**\$103.47**)
14. The landlord testified that the one of the six (6) electric baseboard heaters in the residential premises, burnt off. The landlord testified that he advised the tenant to maintain the temperature setting to a comfortable setting after finding the thermostat setting at 23 degrees. The landlord claims that as a result of the temperature being set at 23 degrees, this caused the heater to arch and burn. The landlord submitted photos (**Exhibit L # 2**) showing scorching in the heater and on the wall at the back of the heater. The landlord is seeking the cost of the purchase and installation of a new heater (\$282.59).
15. The landlord testified that when the tenant vacated the property, she left personal belongings in the shed that the landlord stored. The landlord testified that he completed an Affidavit of Abandoned Personal Property () and the items were picked by the tenant or representative on 29 April 2019. The landlord testified that he checked the market costs of two local self-storage facilities (1) Rylands Self-Storage and (2) Walsh's Mechanical and both are priced at \$110.00 plus HST for a 10 x 10 storage unit. There was no estimate presented into evidence for this quote and the landlord is claiming a flat \$100.00 for the storage.
16. The landlord is claiming for the re-staining of the two exterior decks claiming that the tenant's dog did his business on the deck all winter and caused the stain to come off the boards. The landlord testified that the decks were built on October 2018 and all the boards were pre-stained prior to construction. The landlord is claiming for 5 hours labor @ \$15.00 per hour to complete two coats. The landlord submitted receipts from the original purchase of stain at Canadian Tire (**Exhibit L # 3**) @ \$29.99 + HST per Gallon (\$34.49 each or \$103.47 total). The landlord also referred to the photos (**Exhibit L # 2**) to demonstrate the claimed damages.
17. The landlord is claiming for labor to clean up cigarette butts around the property (1 hour @ \$15.00 per hour). The landlord testified that the tenant smoked outside and did not contain the cigarette butts. The landlord testified that the cigarette butt pots were tipped over the deck and required the landlord to clean up the butts. He was not sure if the wind tipped them over or if the tenant was responsible. The landlord referred to the photos to demonstrate the claim (**Exhibit L # 2**).
18. The landlord is claiming for labor to clean up spilled potting soil and garbage left

at the curb which wasn't picked up by the town (1.5 hours @ \$15.00 per hour - \$22.50). The landlord referred to the photos (**Exhibit L # 2**) and indicated the soil was on the ground at the bottom of the deck and there was garbage left in black bags at the curb.

19. The landlord is claiming 10 hours labor to snow clear walkways during the winter months (10 hours @ \$15.00 per hour = \$150.00). The landlord testified that it was the responsibility of the tenant to ensure that the walkways and driveway were free and clear of ice and snow. The landlord referred to the rental agreement (**Exhibit L # 1**). The landlord testified that he cleared the walkways for the tenant and deck all winter long. He stated that he did not want the snow to accumulate on the deck over the winter.
20. The landlord is claiming 8 hours labor @ \$15.00 per hour to clean up pet feces that the landlord claims the tenant failed to clean up during the winter. The landlord testified that he cleaned up after his dog but the tenant failed to do so. There was no photos of the damages being claimed.

Tenant Position

21. Regarding the heater damage in the property, it is the tenant's position that the landlord did verbally request her to maintain the temperature setting to a consistent temperature and she complied with that request. The tenant did indicate that she set the bedroom temperatures at 18-19 degrees as she don't like heat while sleeping. The tenant disputes the claim of the landlord that she caused the damage to the heater.
22. The tenant testified that she did leave behind some belongings behind when she vacated the unit as it completely slipped her mind about the items in the shed. She indicated that the landlord permitted her to store some items in the shed during her stay. The tenant testified that once she was notified that the items were left behind, she made immediate arrangements to have the items picked up.
23. The tenant disputed the landlord's claim that she was the cause of the stain coming off the deck. The tenant had very little to say about this portion of the claim other than she did have a Pomeranian Dog which was permitted by the landlord.
24. Regarding the issue of cigarette butts, the soil and the garbage left at the curb, the tenant testified that she did smoke outside on the deck and had several pots there with gravel in them to safely collect the butts. She testified that she would frequently smoke outside with the landlord's wife. The tenant testified that when she vacated the property, there were pots left on the deck which were frozen to the deck. Additionally, she could not explain the soil as it wasn't there when she vacated. It was stated that the landlord's wife and son also smoked on the property and in addition there were guests around the fire pit that smoked as

well. The tenant testified that when she vacated she left three bags of garbage in black garbage bags at the curb for pick up. She used black bags as this was all she had.

25. Regarding snow clearing at the property, the tenant testified that she assumed the landlord was responsible as it was included in the rent. She added that because of a medical condition, she was not able to do the snow clearing. The tenant made reference to the rental agreement (**Exhibit L # 1**) and specifically section 7 of the agreement. It was noted that there was an underline placed under "snow removal for parking lot" after the document was signed off. The tenant claims there was no discussion of the responsibility for snow clearing.
26. The tenant disputes the landlords claim for removal of dog feces. The tenant states that she cleaned up after her dog during the tenancy.

Analysis

27. The relationship between the landlord and tenant 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 when the issue of temperature setting arose. 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.
28. The electricity during this tenancy was included in the rent paid by the tenant. This sort of arrangement is in most cases troublesome when parties disagree and a definition of adequate level of heat. It is the choice of the landlord at the outset of a tenancy to assess and set an appropriate level of rent to adequately cover expenses that can reasonably be expected to be incurred during the tenancy.
29. A landlord cannot control the living arrangements of a tenant as it relates to the level of heat when the landlord is being compensated accordingly. It would be advisable for a landlord to have separate electrical meters if that level of control is sought. The landlord claims that as a result of the tenant having the thermostat set on 23 degrees, this caused the heater to run all the time and as such, caused the heater to arch and burn. As part of this decision, the Provincial Electrical Inspector was consulted as to the nature of arching as it relates to electrical components. It is the opinion of the electrical inspector that a thermostat being set on a particular setting and the heat running would not cause arching in the heater. Further, the definition of arching is presented as:

***Electrical arcing** happens when an **electric** current flows thorough the air between two conductors, as a result of the **electrical** breakdown of gas that produces an ongoing **electrical** discharge. ... The uncontrolled conduction of **electrical** current and the ionization of the surrounding air is what causes **electrical arcing**.*

Thus, arching happens when there is conduction between two wires, a wire and

a heater or an exposed wire. It is more likely the case that the heater was installed improperly or that a connection of the wires became loose or exposed over a period of time. I find that the landlord's claim that the tenant was negligent in having the thermostat set too high as the cause of the damage to the heater to be highly unlikely and as such, the claim fails.

30. The abandoned personal property also has several intricate details that are required to be explored. The very notion of storage start date commences the day the tenant vacates the property. The landlord did file an application the Residential Tenancies Division as required by the legislation on 24 April 2019. The official record of the application for Disposal of Abandoned Personal Property shows that the landlord has sworn under oath that he notified the tenant that she left property behind on 31 March 2019 and attempted contact on 01 April 2019 and again on the 24 April 2019. Further on this date, the formal application was filed.
31. The landlord's assessment of current market rates is actually a little undervalued based on personal experience within this market. I accept the value of storage placed by the landlord in the amount of \$100.00 total and award the landlord storage fees in the amount of **\$100.00** as claimed.
32. Deck stain under conditions of the extreme winter conditions of Western Newfoundland does not hold up well under normal conditions. Varying factors contribute to the potential breakdown of this stain and its ability to hold up. High traffic areas will not hold up as well as the vertical posts and rails due to usage for example. In reviewing the photos submitted by the landlord, there is no doubt that the stain did not hold up over the winter. What I am not convinced of is the liability of the tenant's dog as the cause. The damage seen in the photos is more in line with the shoveling action of removing snow from a deck and the physical scraping on the boards. I find that the landlord has not adequately shown beyond the balance of probabilities that the tenant was liable for the damages claimed and as such, this portion the claim fails.
33. As it relates to the cleaning of the cigarette butts, the soil and garbage left behind, the evidence shows that there was soil around the ground at the bottom of the deck and from the testimony, it is evident that there were also butts around the fire pit area and there is no doubt that the tenant left three bags of garbage in black bags at the curb which the garbage contractor would not remove. It is a regulation from the Western Regional Waste Management that black garbage bags are prohibited for use with curb side pickup. The landlord would be required to repackage this garbage before placing it back on the curb for pick up. This would incur labor for which the tenant would be responsible. I find that ½ hour labor in the amount of **\$7.50**, would be more than reasonable as an award for this portion. The tenant has acknowledged smoking outside with several "Butt Pots" around the deck. It is also apparent that the landlord's wife would smoke outside with the tenant as well as other members of the family and guests. I accept that the "Butt Pot" was left on the deck intact when the tenant vacated and could have blown over accidentally. With regard to the soil, there was no evidence

to support the claim that the tenant was responsible for dumping the soil negligently. I find that the landlord has again not supported this portion of the claim to show that the tenant was liable and responsible for the damage being claimed against her. As such, this portion of the landlord's claim succeeds in the amount of \$7.50.

34. The responsibility of snow clearing is perhaps the most contentious issue in this claim. It relies on the written rental agreement and the past precedence of orders previous issued. In this claim the Legislation is silent on the notion of snow clearing. The instrument being used as a rental agreement (**Exhibit L # 1**) does not indicate in section 7 of the agreement that snow clearing was included in the services of rent. It is also held through previous decisions, that where the issue of snow clearing is silent, it would fall to the responsibility of the tenant to maintain the driveway associated with the unit and all walkways to the unit. Having said that, the landlord seemingly assumed the responsibility of the clearing of the snow as part of his duties and did not formally notify the tenant that this was her responsibility but just cleared the walk ways. It would be prejudicial to allow a landlord to complete services (snow clearing) seemingly the responsibility of the tenant, and claim for the value of those services at the completion of the contract without formally notifying the tenant and giving the tenant an opportunity to rectify a situation. Both parties to the contract have a duty to the contract and when there is an apparent breach, the bereaved party is required to notify the other party of the breach, providing an opportunity to remedy the breach. There is no evidence to suggest that this occurred in this case. As such, this portion of the landlord's claim fails.
35. In regard to the portion of the claim that the tenant failed to clean up after her dog and left pet feces around, the tenant disputes this notion and states she cleaned up after her dog during the tenancy. The landlord states otherwise and there was no evidence presented to suggest that there was any feces around the property. The lack of evidence to even suggest that there was a loss, leads to only one conclusion and which is that the landlord's claim for damages related to cleaning up pet feces fails.

Decision

36. The landlord's claim for damages succeeds in the amount of \$107.50.

Issue 2: Refund of Security Deposit

Landlord Position

37. The landlord testified that a security deposit in the amount of \$600.00 was collected on the tenancy on or about 28 August 2018. The landlord is seeking that this deposit be applied against any order derived from this application and claim.

Tenant Position

38. 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

39. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) did the tenant pay a security deposit.
40. The tenant has provided a copy of the security deposit receipt (**Exhibit T # 1**) which indicates payment was made on or about 28 August 2018. Additionally, the landlord has acknowledged the receipt of the deposit. Interest on security deposit for the year 2018 and 2019 is set at 0% and therefore the total security deposit to be considered is \$600.00.
41. The landlord filed a claim seeking damages greater than the amount of the damage deposit being held and the amount awarded above falls short of the amount of security deposit being held. As such, I find that the landlord shall 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.

Decision

42. The tenant's claim for refund of security deposit succeeds:

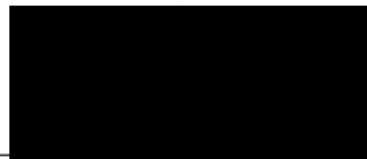
Summary of Decision

43. The tenant is entitled to the following:

- a) Refund of Security Deposit\$600.00
- b) **LESS: Compensation for Damages** **(\$107.50)**
- c) **Total owing to tenant**.....**\$492.50**

09 January 2020

Date



Michael Greene
Residential Tenancies Tribunal
