

Residential Tenancies Tribunal

Decision 19-0051-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 1:30 pm on 11 June 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 landlord, participated in the hearing.
3. The respondent, [REDACTED], hereafter referred to as tenant1 participated in the hearing.
4. The respondent, [REDACTED], hereafter referred to as tenant2 participated in the hearing.
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$850.00 per month (utilities extra) and due on the 1st of each month. It was stated that there was a security deposit in the amount of \$500.00 collected on the tenancy. The landlord issued a termination notice dated 06 May 2019 for the intended termination date of 17 May 2019 under Section 19 of the *Residential Tenancies Act, 2018*.
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 claim was amended to update the current mailing address of the tenants which will be reflected on the attached Order.
8. The tenants acknowledged the following items in this claim:
 - a. Rent Owing - **\$850.00**
 - b. Late Fees - **\$75.00**
 - c. Oil Expenses - **\$475.00**

Issues before the Tribunal

9. The landlord is seeking the following:
 - a) Return of Possessions **\$624.99 + HST**
 - b) Compensation for damages **\$4179.39**
 - c) Hearing expenses
 - d) Application of Security Deposit **\$500.00**

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 Sections 19, 34, 35 and 42 of *the Act*, and Policy 9-3: *Claims for Damages to Rented Premises*, Policy 9-5: *Life Expectancy of Property* Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Return of Possessions - **\$624.99 + HST**

Relevant Submissions

Landlord Position

The landlord stated that the dryer in the unit was missing when the tenants vacated the property. The landlord added that his dryer was on the back patio and was replaced with an older unit which wasn't working. The landlord submitted a photo of the broken dryer (age unknown) (**Exhibit L # 1**) and a photo of the dryer on the back patio (age 6 years) (**Exhibit L # 4**), along with a copy of the estimate from Stan Dawe Limited (**Exhibit L # 5**) in the amount of \$718.74 and a copy of the rental agreement (**Exhibit L # 2**). The landlord is seeking the replacement of the dryer or the associated value.

Tenant Position

12. The tenants testified that when they took possession of the unit, there was no washer and dryer in the unit. The tenants testified that the dryer pictured in **Exhibit L # 1** was provided by the tenants' parents from [REDACTED] and the dryer picture in **Exhibit L # 4** was purchased by the tenants' parents for the tenants use. The tenants' witness ([REDACTED]) testified that they purchased one of the dryers for the tenants and the older one was obtained from [REDACTED], the witnesses' place of employment.

Analysis

13. I have reviewed the testimony and evidence of the landlord and tenants in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) did the tenants remove possessions belonging to the landlord (dryer) from the premises.
14. In analyzing the evidence and statements presented at the hearing, both parties are entrenched firmly in their positions that there was a dryer in the premises at the onset of the tenancy (landlord) and there was no dryer in the property at the onset of the tenancy (tenants). The pictures of the older dryer and the dryer on the patio depicts only that there were two dryers on the property at that point in time. The pictures do not show any ownership of the units. The last piece of evidence to analyze then becomes the rental agreement submitted by the landlord (**Exhibit L # 2**). This document establishes the tenancy at the outset of the tenancy. I reference section 7 of the agreement "Services/Facilities" as it relates to this portion of the claim. Washer and dryer are not a service that is identified as included in the rent provision. Additionally, in the section which identifies facilities and services that are the exclusive responsibility of the tenants it identifies that "*washer and dryer not included*". I interpreted from this that a washer and dryer are not included and therefore in all probability would not be on site. As such, and taking the totality of the evidence into consideration, I find that on the balance of probabilities, it is more likely that there was no dryer on site at the onset of the tenancy, therefore the landlord's claim for return of possessions fails.

Decision

15. The landlord's claim for return of possessions fails.

Issue 2: Compensation for Damages - \$4179.39 + HST

Relevant Submissions

Landlord Position

16. The landlord testified that the tenants were permitted to have one dog during the tenancy with the conditions that the property is maintained respective of the pet.
17. The landlord is claiming for several areas of damage as itemized in the claim breakdown (**Exhibit L # 3**) as follows:
 - a. Replace Hardwood Floor & Kitchen Flooring with Vinyl Plank Flooring (Living Room, Hall, Kitchen & Bedroom) (**\$2688.63**)
 - i. Flooring: **\$1793.70**
 - ii. Underlay: **\$118.93** (*** no invoice to itemize this cost*)
 - iii. Labor: **\$776.00** (40 hours @ \$19.40/hour)
 - b. Replace Porch Flooring (**\$155.93**)
 - c. Replace Bedroom Laminate Flooring
 - d. Replace Baseboards (**\$231.61**: 8 hours @ \$19.40 + 76.41 materials) **
 - e. Replace Living Room Window Sill
 - f. Replace Exterior Door (**\$559.14**) (including materials & labor)
 - g. Paint/Plaster Bedroom/Living Room Walls (**\$627.88**: Materials - \$336.88, Labor - \$291.00)
 - h. Replace a tub water overflow cover (**\$81.19**) (\$22.99 + 3 hours Labor @ \$19.40 = \$58.20)
 - i. Clean the property (**\$194.00** : 10 hours @ \$19.40/hour)
18. The tenants have acknowledged the following portions of the damage section of this claim:
 - a. Damage to Kitchen Flooring:
 - b. Damage to the Bedroom Flooring:
 - c. Replace Exterior Door: **\$559.14**
 - d. Plaster/Paint bedroom & Living room walls: **\$627.88**
19. The landlord testified that when the property was recovered it was noted that the hardwood floors were soaked with pet urine causing the edges of the wood to swell and discolor. The landlord submitted photos of the damages to the wood (**Exhibit L # 6**) along with a photos of the wood prior to the tenants taking possession (**Exhibit L # 9**). The landlord testified that the hardwood was in the property when it was purchased 6-7 years previous and did not appear to be re-finished. The landlord testified that he will be replacing the flooring with a vinyl plank flooring (Living Room 22 X 16 and Hall 4 X 10) at a cost of \$2.99 per ft². The landlord submitted an estimate from Stan Dawe Limited (**Exhibit L # 7**) with the flooring priced at \$1559.74.

20. The landlord further added that the kitchen flooring was torn and as such required replacement. He submitted photos of the damages (**Exhibit L # 11**) and indicated that he will be replacing the flooring with the same flooring for the living room and hall. The kitchen is estimated to be 8 X 10 at a cost of \$2.99 ft². As indicated above the tenant has acknowledged the damage to the kitchen flooring.
21. Similarly, the landlord testified that the bedroom flooring laminate was also damaged and submitted a photo of the damage (**Exhibit L # 10**) estimating the room to be a 10 X 12 room. The landlord testified that the flooring is at least 6 years old and is being replaced with the same flooring as the living room indicated on **Exhibit L # 7** estimate. As indicated above the tenants have acknowledged the damage to the bedroom flooring.
22. The landlord testified that the fiber flooring in the porch had to be replaced as a bag of garbage left by the tenant, leaked and ran under the flooring creating an unbearable stench. The landlord submitted a photo of the garbage (**Exhibit L # 12**). The landlord referred to **Exhibit L # 5** for the costing of the flooring in the amount of \$155.93 HST Included.
23. The landlord testified that as a result of the flooring having to be replaced, the baseboards will have to be removed and repositioned. The landlord testified that the baseboards are older and will likely split once removed, thus requiring replacement. The landlord has two entries for a claim for baseboards as follows:
 - a. 15 Hours @ \$19.40 per hour = \$291.00
 - b. 8 Hours @ \$19.40 per hour = \$155.20
 - c. Total of 23 Hours @ \$19.40 per Hour = \$446.20

The landlord is seeking **\$446.20** for the replacement of baseboards.

24. The landlord is claiming labor in the amount of 40 hrs @ a rate of \$19.40 per hour for a total of \$776.00 to install the flooring in the living room, kitchen, bedroom, porch and hallway.
25. The landlord has claimed an amount for underlay respective of the flooring. There was no invoice presented by the landlord to substantiate the cost of this portion of the claim.
26. The landlord testified that upon recovering the property it was noted that the window sill was clawed and scratched from the dog and had to be replaced. The landlord submitted a photo of the damages (**Exhibit L # 8**) and referred to **Exhibit L # 7** for the cost of the board to replace the window sill in the amount of \$25.29.

27. The landlord testified that upon recovery of the property, it was noted that the tub overflow water cover was detached. The landlord submitted into evidence a photo of the damage (**Exhibit L # 14**) and stated that he had to replace the entire unit (**Exhibit L # 7**) in the amount of \$22.99 HST Included and is claiming labor in the amount of \$58.20 (3 hrs @ \$19.40).
28. The landlord has testified that the property was left in a complete state of disrepair and dirty. The landlord submitted into evidence photos of the condition the property (**Exhibit L # 15**) both interior and the shed was left in when the tenants vacated. The landlord testified that the photos clearly establish a need for extensive cleaning and is claiming labor in the amount of \$194.00 (10 hours @ \$19.40 per hour).

Tenant Position

29. The tenants testified that they did have two dogs in the premises (one without permission) and also housed a cat there for a week when his mother was in [REDACTED]. The tenants claim that the dogs did not use the living room as a bathroom.
30. The tenants acknowledge the damages to the kitchen flooring as claimed by the landlord.
31. The tenants acknowledge the damages to the bedroom flooring as claimed by the landlord.
32. The tenants dispute the claim for replacing the flooring in the porch and stated that they find it hard to believe that a bag of garbage could have possibly ruined the flooring.
33. The tenants dispute the claim for replacing all the baseboards. The tenants stated that they don't feel responsible for all the baseboards as in their opinion, not all the flooring needed to be replaced.
34. The tenants dispute the portion of the install labor claim regarding the porch flooring and the living room floor as they claim their dogs didn't use the living room as a bathroom.
35. The tenants had very little to say on the specifics of the underlay.
36. The tenants indicated very little about the specifics on the windowsill.
37. The tenants disputed this portion of the claim of the landlord regarding the tub overflow water cover stating that the cover simply re-attaches with two screws and the landlord's claim seem to be excessive.

38. The tenants did not provide any defense on the cleanliness of the property.

Analysis

39. The relationship between the landlord and tenants was evident at the scheduled hearing. It is clear that the relationship started out as a cordial landlord/tenant relationship and appears to have gone off the rails at some point during the tenancy. It is apparent that the tenants disregarded the conditions of the rental agreement when they brought a second dog into the property without permission or consent of the landlord. From the evidence, it is apparent that the dog(s) were responsible for at least a portion of the damages to the property and the tenants have acknowledged this.
40. The flooring in the living room is a contentious issue between the parties. The landlord stands firm that the tenants' dogs urinated on the floor and the tenants' position is firm that this did not happen. The photographs from the landlord show there is indeed some sort of liquid damage to the hardwood, but the picture itself cannot say it was the result of the dogs urinating. We do know that the dogs are responsible for other damages as acknowledged by the tenants and demonstrated in the cleaning photos with dog fecal matter left in the basement. This does leave me pause to consider that the dogs were left unattended and perhaps did urinate in the house as well.
41. It is apparent that the before photos do not show the damage which can only lead to one conclusion that the condition of the floor was created during the tenancy and thereby the responsibility of the tenant or someone permitted on the property by the tenants. The landlord is seeking to replace the flooring with a vinyl product. Replacement might very well be the choice of the landlord, but this hearing process is only designed to bring parties back into balance respective of the damage and not to place one party in a better situation. The hardwood was in the property when purchased 6 – 7 years ago and its true age is unknown. I sincerely doubt it has outlived its useful life as a product, but a least cost option may very well be to re-surface the floor, but there was no evidence presented to demonstrate this option.
42. It is equally possible that the dogs or simple continuous usage from the tenants with little care to liquid on the floor from shoes etc, could have caused the same damage to the flooring. In any regard, I find it the responsibility of the tenants. I cannot determine if a urine smell will require the floors to be removed. The replacement product in question can also be installed over the existing flooring creating less destruction. My concern is not what will be done, but how to fairly restore the landlord based on the damage created by the tenant. Given I do not know the accurate age of the floors, nor the exact cause of the liquid, I will make an arbitrary award of 50% based on the cost estimate of materials and installation presented by the landlord deducting the cost of underlay as there was no invoice/estimate presented for this cost. Further, the amount of hours claimed

for installation labor seems excessive and in a similar fashion, I will assess the labor would take three 8 hour days (24 hours) and asses based on this figure. Additionally, as it all relates to flooring, I will deal with the porch here as well. The cost of the materials for the flooring (\$155.93) is added here.

Table # 1:

Area	Dimensions	Square Ft	% of Total	Cost	% Award	Award
Living Room	22 X 16	352	55.00%	\$ 1,328.38	50%	\$ 664.19
Hallway	4 X 10	40	6.25%	\$ 150.95	50%	\$ 75.48
Kitchen	8 X 10	80	12.50%	\$ 301.90	100%	\$ 301.90
Bedroom	10 X 12	120	18.75%	\$ 452.86	100%	\$ 452.86
Porch	6 X 8	48	7.50%	\$ 181.14		\$ -
		640				
Total		\$ 2,415.23		\$ 2,415.23		\$ 1,494.43

The cost is comprised of the following:

- a. Vinyl Flooring - \$1793.70
- b. Labor - \$465.60 (24 Hrs @ \$19.40 per hr)
- c. Fiber Flooring - \$155.93
- d. **Total - \$2415.23**

43. Regarding the porch flooring, the landlord has shown that there was a garbage bag left there and the clean-up of that will be looked after in another section. The landlord has not demonstrated that there was any damage to the floor or sub-floor or anything that would cause the requirement of replacing the floor. As such, I make now award for the portion of the flooring claimed as it relates to the porch which is reflected in the table above.
44. The tenants have acknowledged damaging the kitchen floor and the landlord is awarded 100% of the associated claim in the amount of **\$301.90** as seen in Table # 1 above.
45. The tenants have acknowledged damaging the bedroom floor and the landlord is awarded 100% of the associated claim in the amount of **\$452.86** as seen in Table # 1 above.
46. The landlord is further awarded on a 50% basis for the damages to the flooring in the living room and hallway in the amount of **\$739.67** as seen in Table # 1 above.
47. The landlord is seeking costs associated with the replacement of the baseboards. The landlord has stated that when the floors are replaced, the baseboards will have to come off and be repositioned. In the claim breakdown (**Exhibit L # 3**) there are two separate claims for baseboard replacement with differing hours associated. I do not see any logical reasoning for two separate claims and therefore will address the lesser hours (8) claimed plus the materials of \$76.41 + HST. (\$87.87). Regarding the merits of the claim, there is no

certainty of loss in the removal of the baseboards and once the project is undertaken, the replacement could be less. Working off estimates and guesses requires assumptions that may or may not be accurate. From the evidence presented I am not convinced that there would be a loss incurred to the extent claimed and given the uncertainty, I find that the landlord's claim has been not substantiated and as a result fails.

48. With regard to the replacement of the windowsill. The evidence as a whole indicates that the tenants did have two dogs contrary to the agreement and that these dogs did scratch the walls of the bedrooms. Given the photo evidence and the already acknowledged and exhibited behavior of the animals, I find it likely beyond the balance of probabilities that the dogs as well clawed and scratched the windowsill requiring replacement. As seen in **Exhibit L # 7**, the landlord is claiming for a length of MDF board in the amount of \$25.29 HST included. There is no allotted portion for labor and as such I find that the landlord's claim succeeds in the amount of **\$25.29**.
49. The tenants have acknowledged the damage to the exterior door requiring replacement (\$559.14) and for the plaster and paint of the bedroom and living room walls (\$627.88) inclusive of all materials and labor. As the tenants have accepted the responsibility and has not challenged the costs, I find that the claim for door replacement and paint and plaster is successful in the amount of **\$1187.02** (\$559.14 + \$627.88).
50. The landlord is claiming for the replacement of a complete overflow water unit in the tub as the cover was off when the unit was recovered. The photos are clear that the cover was off and it can be seen that it is attached by two screws. The landlord's claim for the replacement of a complete water over flow unit for what appears to be missing two screws seems excessive. There is no clear and visible physical damage. Let's assume that the screws rusted from the exposure to water. I cannot attribute this sort of damage to the responsibility of the tenants. Thus given there is not obvious physical abuse or malicious damage, I find that the claim of a complete replacement and associated 3 hours labor to be wildly excessive and vexatious. As such, this portion of the claim fails.
51. The landlord is claiming for cleaning the unit after the tenants vacated the property. The photos are self-evident. The unit was left in a condition that would have required cleaning well beyond what would be normally expected between tenants. I find the claim of the landlord for 10 hours at \$19.40 per hour to be well within reason. This portion of the landlord's claim to be successful in the amount of **\$194.00**.

Decision

52. The landlord's claim for damages succeeds is determined as follows:

- a. Flooring Replacement - \$1494.43
- b. Replace Baseboards - \$0.00
- c. Replace Window Sill - \$25.29
- d. Replace Door - \$559.14
- e. Paint/Plaster - \$627.88
- f. Replace Tub over Flow - \$0.00
- g. Clean Property - \$194.00

The landlord's claim for damages succeeds in the amount of **\$2900.74**.

Issue 3: Hearing Expenses

Landlord Position

53. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████████) (**Exhibit L # 16**), and a fee in the amount of \$31.40 for the development of evidence photos at Wal-Mart (**Exhibit L # 17**). The landlord is seeking these costs.

Analysis

54. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord is 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 such, I find the tenants are responsible to cover these reasonable expenses.

Decision

55. The tenants shall pay the reasonable expenses of the landlord in the amount of **\$51.40**.

Issue 4: Refund of Security Deposit

Landlord Position

56. The landlord testified that a security deposit in the amount of \$500.00 was collected on the tenancy on or about 25 September 2018. The landlord is seeking that this deposit be applied against any order derived from this application and claim.

