

Residential Tenancies Tribunal

Decision 19-0053-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 25 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 landlord1, participated in the hearing – *Affirmed*.
3. The applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing - *Affirmed*.
4. The respondent, [REDACTED], hereafter referred to as tenant1 participated in the hearing – *Affirmed*.
5. The respondent, [REDACTED], hereafter referred to as tenant2 did not participate in the hearing.
6. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$850.00 per month and due on the 1st of each month. It was stated that there was a security deposit in the amount of \$225.00 collected on the tenancy on or about 07 September 2018. The landlord issued a termination notice dated 22 April 2019 for the intended termination date of 22 July 2019 under no particular section of the *Residential Tenancies Act, 2018*. A further termination notice was issued on 16 May 2019 for the date of 21 July 2019 under section 19. (**Exhibit L # 4**).
7. 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

8. The tenant, [REDACTED], was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, and where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he/she has been properly served.*

The affidavit submitted by the landlords show that the tenants was served with the notice of this hearing on the **01 June 2019** by serving the documents to the tenants personally at the rental unit address. Tenant2 has had **24 days** to provide a response.

Tenant1 advised that tenant2 was working and unable to attend the hearing.

9. As tenant2 was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlords applicant, I proceeded in the tenant's absence.
10. The landlord amended the claim to replace colonial doors by reducing the number of doors being claimed from three down to two doors. New amount for materials is \$124.18.

Issues before the Tribunal

11. The landlords are seeking the following:
 - a) Payment of rent owing **\$850.00**
 - b) Compensation for damages **\$569.07**
 - c) Hearing expenses

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. Also relevant and considered in this case are Sections 19, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Rent Owing - \$850.00

Relevant Submissions

Landlord Position

14. Landlord1 stated that they had entered into a verbal rental agreement with the tenants, commencing 15 August 2018. The agreed rent was set at \$850.00 per month and due on the 1st day of each month with a security deposit in the amount of \$225.00 collected on this tenancy on or about 07 September 2018. The landlords issued a termination notice (**Exhibit L # 4**) on 16 May 2019 for the intended date of 21 July 2019 (section 19). Landlord1 stated that rent was outstanding in the amount of \$850.00 and stated as of the hearing date 25 June 2019 rent remains outstanding. There was no rental records presented by the landlords at the hearing.

Tenant Position

15. Tenant1 testified that they only owe \$400.00 rent. Tenant1 submitted a series of text messages where the landlord has forgiven the last 2 weeks rent (**Exhibit T # 1**).

Analysis

16. I have reviewed the testimony and evidence of the landlords and tenant in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the rent that is being claimed by the landlords actually owed by the tenants.
17. With respect to the arrears being claimed, there has been no records presented to support any amount of arrears being owed. The only evidence of the tenants owing any rent is the acknowledgement from tenant1 that they owe \$400.00. Tenant1 supported this with the text messages from the landlords forgiving the last 2 weeks rent.
18. In this matter I am obliged to agree with tenant1 that rent is owed in the amount of \$400.00. Rent is required to be paid by the tenants for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. Rent for the period ending 18 May 2019 is outstanding in the amount of **\$400.00**.

Decision

19. The landlords' total claim for rent succeeds as follows:
 - a) Rent owing up to 18 May 2019..... \$400.00

Issue 2: Compensation for Damages - \$506.98

Relevant Submissions

Landlord Position

20. The landlords are claiming for several areas of damage as itemized in the claim breakdown (**Exhibit L #1**) as follows:
 - a. Damaged Colonial Doors (**\$240.58**)
 - b. Repair Holes in Walls (**\$77.60**)
 - c. Remove Household Garbage left by Tenants (**\$38.80**)
 - d. Replaced Refrigerator (rotten Moose Meat left inside) (**\$150.00**)
21. Landlord1 testified that when the property was recovered, it was noted that two colonial doors in the property were damaged with holes in them. The landlords submitted photos of the damaged doors (**Exhibit L # 2**) and testified that they were approximately 7-8 years old. Landlord1 stated that the doors were not damaged when the unit was rented to the tenants. The landlords submitted a Quote from Castle Building Centre (**Exhibit L # 3**) in the amount of \$124.18 for 2 colonial doors. The landlords are further claiming labor to remove and install the new doors at \$116.40 (6 hours @ \$19.40 per hour) (**Exhibit L # 1**).
22. Landlord1 testified that on recovery of the unit he noted a large hole in the wall of the rec room which required gyproc replacement and a hole in the entrance area. Landlord1 referred to the photos (**Exhibit L # 2**) to demonstrate the damages. The landlords are claiming \$77.60 in labor (4 hours @ \$19.40 per hour) to repair the drywall (**Exhibit L # 1**).
23. Landlord1 testified that when the unit was recovered, it was noted that there was household garbage left around the unit outside and inside that had to be removed and discarded to the local landfill. Landlord1 referred to the photos presented (**Exhibit L # 2**) and stated they are claiming labor in the amount of \$38.80 (2 hours @ \$19.40 per hour) to clean up the garbage (**Exhibit L # 1**).
24. The landlords are claiming for the replacement of a fridge that the landlords claim the tenants left moose meat in rotting, leaving an unbearable smell of rotten meat through it. Landlord1 testified that he attempted to clean the unit but could not get rid of the rotten smell and opted to replace it with a used fridge for \$150.00. There was no receipt as the unit was purchased used and there was no pictures of the damages (rotting meat left in the fridge) presented.

Tenant Position

25. Tenant1 provided no testimony regarding the colonial doors.
26. Tenant1 testified that the large hole in the rec room was the result of a TV wall mount installed by the tenants. Tenant1 testified that she was told not to worry about it by a text message from the landlord. A copy of this text was not presented.
27. Tenant1 testified that the garbage the landlords are referring to is not belonging to them. She stated that the outside was cleaned up during clean up week. Tenant1 further acknowledged some of the items in the photos presented by the landlords.
28. Tenant1 testified that she couldn't comment of the fridge other than to state that the landlords allowed for the use of the fridge. She stated that she was not aware of any meat left in the fridge. Tenant1 went on at that point to refer to only 2 bags of moose meat there.

Analysis

29. The relationship between the landlords 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 later in the tenancy.
30. With regard to the colonial door replacement, the photos are clear that there were holes in the doors at the time the pictures were taken. There was no incoming inspection report completed or submitted and there were no baseline series of photos establishing the condition of the property prior to the tenants taking possession. These would clearly establish if the damages occurred during the tenancy or if they were pre-existing. The valuation for the repairs has been established and I have no issues with this. Tenant1 has remained silent on this issue and that raises some flags, but the bottom line is that it is the burden of the applicant to establish that the tenants are liable for the damages on the balance of probabilities. The applicants in this portion of the claim has failed in this regard and as such, the claim to replace the colonial doors fails.
31. In regards to the repair of the holes and replacement of drywall, again the damages exist from the photos presented. This portion of the landlords' claim is for the labor only as the landlord used materials on hand to complete the repairs. Tenant1 acknowledged that they installed a TV wall mount which is installed with larger bolts, and thereby creating some holes. This then establishes liability and existence of the damages. The landlords' claim for labor I find to be reasonable and as such I find in favor of the landlords and award compensation in the amount of \$77.60 for the labor to complete the repairs.

32. Regarding the household garbage and items left behind, tenant1 had stated that the items did not belong to them and as the conversation around the items progressed, she acknowledged that some of the items did belong to them. These statements are a contradiction to each other and raises the level of suspicion on exactly what is the truth in this portion of the claim. There is an obvious reason for a tenant to simply say that the items were not theirs; it's the financial responsibility to clean the items up. The landlords have clearly shown that there was items left around the property (inside and out) and by virtue of tenant1 acknowledging some of them, I find that it is more likely than not that the items as presented by the landlords are belonging to the tenants. I find that the labor being claimed is well within reason and as such, the claim for removal of household items and garbage is successful in the amount of \$38.80.
33. In regards to the damage to the fridge. I feel compelled to state here that by virtue of the landlords providing permission to use an appliance does not negate any liability of the person using said appliance and it is damaged due to a level of negligence. Tenant1 was quick to state that she had no comment on the claimed damages to the fridge and that she wasn't aware of any meat in the shed, yet she pointed out that there was only 2 bags of moose meat. Even though the landlords did not show any pictures of the fridge with the meat in the unit, I find that tenant1's contradictions and the notion that the landlords allowed them to use the fridge support that the fridge was there. I do not accept that any landlord would throw out a fridge only to replace it with a used unit. If there was any sort of dishonesty in this, the replacement would have been with a new fridge. Based on the evidence and testimony and on the balance of probabilities, I find that the landlords acted in a reasonable manner to replace a fridge that was left with rotting meat in it such that it was not cleanable. I further find that the landlords acted reasonably by replacing it with a used unit at \$150.00. I award the landlords compensation for the replacement fridge in the amount of \$150.00

Decision

34. The landlords' claim for damages succeeds in the amount of \$266.40.

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 # 4**). The landlords are seeking this cost.

Analysis

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

Decision

37. The tenants shall pay the reasonable expenses of the landlords in the amount of \$20.00.

Issue 4: Application of Security Deposit

Landlord Position

38. Landlord1 stated that they had entered into a written monthly rental agreement with the tenants commencing 15 August 2018. The agreed rent was set at \$850.00 per month and due on the 1st day of each month. Tenant1 testified that a security deposit in the amount of \$225.00 was paid on 07 September 2018 which was confirmed by the presentation of a copy of the e-transfer (**Exhibit T # 2**).

Tenant Position

39. Tenant1 was in agreement to have the landlords retain the security deposit against any amount owing.

Analysis

40. I have reviewed the testimony and evidence of the landlords & tenant in this matter. Both parties have agreed to dispose of the security deposit in this decision.
41. Established by undisputed facts above, the tenants did pay a security deposit to the landlords in the amount of \$225.00. Both parties have agreed to dispose of the security through the attached order. The landlords' claim has been successful and the tenants owe the landlords for rent, damages and hearing expenses. The interest rate set out by the Minister on security deposits for 2018 - 2019 is set at 0%. The security deposit plus accrued interest then is \$225.00.

Decision

42. The landlords shall apply the security deposit as outline in the attached order.

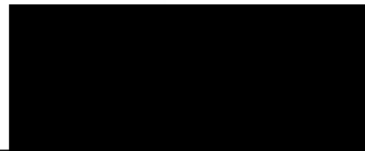
Summary of Decision

43. The landlords are entitled to the following:

a)	Rent Owing (up to and including 18 May 2019)	\$400.00
b)	Damages	266.40
c)	Hearing Expenses	<u>\$20.00</u>
d)	Sub-total	<u>\$686.40</u>
e)	LESS: Security Deposit	<u>(\$225.00)</u>
f)	Total Owing to Landlords	<u>\$461.40</u>

10 February 2020

Date



Michael Greene
Residential Tenancies Tribunal