

Residential Tenancies Tribunal

Decision 19-0058-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 19 September 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, did not participate in the hearing (*Absent and not Represented*).
3. The applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing (*Sworn*).
4. The respondent, [REDACTED], hereafter referred to as tenant1 did not participate in the hearing (*Absent and not Represented*).
5. The respondent, [REDACTED], hereafter referred to as tenant2 did not participate in the hearing (*Absent and not Represented*).
6. The details of the claim were presented as a written monthly rental agreement with rent set at \$1100.00 per month (utilities not included) and due on the 1st of each month. It was stated that a security deposit in the amount of \$825.00 was collected on the tenancy on or about 25 February 2018. The landlords issued an Abandonment notice dated 02 August 2018 for the intended recovery date of 03 August 2018. The unit was recovered on 03 August 2018.
7. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicants have 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 applicants have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

8. The tenants [REDACTED] & [REDACTED], were 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 **tenant1** was served with the notice of this hearing on the **10 June 2019** by serving the application for dispute resolution documents the **tenant1** at her place of employment [REDACTED]. **Tenant1** was also served with a Notice of Rescheduled Hearing from the Residential Tenancies Office on 30 July 2019 by Registered mail ([REDACTED]) which was returned unclaimed.

The affidavit submitted by the landlord shows that **tenant2** was served with the notice of this hearing on the **10 June 2019** by serving the application for dispute resolution documents to **tenant1** at her place of employment [REDACTED]. **Tenant2** was also served with a Notice of Rescheduled Hearing from the Residential Tenancies Office on 30 July 2019 by Registered mail ([REDACTED]) which was returned unclaimed.

The tenants have had **51 days** to provide a response for the scheduled hearing on 19 September 2019.

There was no contact information available on file for the tenants.

As the tenants were properly served in accordance with the *Residential Tenancies Act, 2018*, with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlords applicant, I proceeded with the hearing.

Issues before the Tribunal

9. The landlords are seeking the following:
 - a) Payment of rent owing **\$1012.48**
 - b) Payment of late fees **\$75.00**
 - c) Compensation for damages **\$3191.19**
 - d) Application of Security Deposit
 - e) Hearing expenses

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 and 35 of *the Act*; Policy 9-3: *Claims for Damages to the Rented Premises* and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Compensation for Damages - \$3191.19

Relevant Submissions

Landlord Position

12. The landlords are claiming for the following damages to the rented premises and presented a claim breakdown (**Exhibit L # 3**) into evidence:
 - a. Carpet Cleaning - **\$247.25 (Invoiced Services)**
 - b. Lawn Cutting - **\$368.00 (Invoiced Services)**
 - c. Paint Walls and ceiling – **\$307.14 (Invoiced)**
 - d. Repair three interior door holes
 - e. Replace Towel Bar
 - f. Replace Dishwasher Utensil Basket
 - g. Repair Plumbing in Bathroom Sink
 - h. Clean Property/Remove Garbage
 - i. Labor for Repairs Claimed - **\$1552.00 (80 hrs @ \$19.40/hr)**
13. Landlord2 testified that after the tenants vacated the property, there were several areas noted of concern including the carpets in the property. The carpets were extensively soiled and required a professional cleaning. Landlord2 submitted into evidence photos of the property (**Exhibit L # 8**) and referred to them to demonstrate the condition of the carpets. The age of the carpets was not discussed but it is important to note that they appear to be a modern medium pile carpet. Landlord2 submitted into evidence an invoice from Fibre Tech (**Exhibit L # 4**) in the amount of **\$247.25** for the carpet cleaning in 3 bedrooms, hallway and stairs at the rented premises.
14. Landlord2 testified that after the tenants vacated the property, there were several areas noted of concern including the exterior of the unit and more specifically the lawns. Landlord2 testified that the rental agreement with the tenants (**Exhibit L # 2**) clearly indicated that the tenants are responsible for the lawn maintenance of the property. Landlord2 testified that the tenants did not maintain the lawns of the property and after the property was recovered, the landlords contracted the services of Etheridge Maintenance (**Exhibit L # 5**) to take care of the grounds of

the property in the amount of \$368.00. Landlord2 did not submit any photos, videos or witness statements to demonstrate the condition of the exterior grounds once the tenants vacated the property.

15. Landlord2 testified that after the tenants vacated the property, there were several areas noted of concern including the walls and ceilings in the property. Landlord2 testified that the tenants damaged virtually every wall in the property and referred to the submitted photos (**Exhibit L # 8**) to demonstrate this. Landlord2 stated that the tenants applied adhesive decals to the walls that when removed took the paint from the walls. The removal of the paint required plastering, priming and re-painting. Landlord2 submitted into evidence invoices from Dulux Paints (**Exhibit L # 6**) in the amount of **\$260.91** and (**Exhibit L # 7**) in the amount of **\$46.23** for the purchase of wall paint, ceiling paint and primer sealer.
16. Landlord2 testified that after the tenants vacated the property, there were several areas noted of concern including holes in three of the interior doors of the property. Landlord2 referred to the photos (**Exhibit L # 8**) to demonstrate the damages. Landlord2 testified that there are no receipts for this repair as it is primarily labor.
17. Landlord2 testified that after the tenants vacated the property, there were several areas noted of concern including replacing a towel bar, replacing a dishwasher basket, and making repairs to plumbing in the bathroom. Landlord2 referred to the photos (**Exhibit L # 8**) and testified that he did not have any receipts associated with the repairs to the towel bar, the dishwasher basket or the plumbing of the bathroom sink.
18. Landlord2 testified that after the tenants vacated the property, there were several areas noted of concern including the cleaning of the property and removal of garbage from the property. Landlord2 testified that he did not have any receipts for the purchase of cleaning supplies or for the removal of garbage from the property including any associated landfill fees. Landlord2 referred to the photos submitted (**Exhibit L # 8**) and stated that there was no photos of the exterior or shed showing garbage left around.
19. As part of the landlord's claim involves labor to effect the repairs, the landlords has put forth a claim for 80 Hours @ \$19.40 per hour for a total of \$1552.00. Landlord2 stated that this labor is for the required repairs, cleaning, painting, and the removal of garbage. There is no allocated amount of hours for each section but simply a total claim for hours.

Analysis

20. I will deal with this claim in an itemized fashion as the claim is not clear cut. Firstly, with respect to the carpet cleaning. The photographic evidence in this section is clear. The carpets were relatively newer and in what appears to be good condition. It is also apparent that after the tenants vacated, the carpets

were left in a condition that would require a professional cleaning. As such, I find that the tenants are responsible for the costs associated with cleaning the carpets in the rental unit in the amount of **\$247.25** as invoiced by Fibre Tech.

21. With respect to the exterior maintenance of the property, it is incumbent on the applicants to establish on the balance of probabilities that the damage/loss exists, provide a valuation for the repair/replacement and to establish liability for the loss. In this section the landlords have established a valuation from a contractor, however, the landlord has not provided any evidence that the lawns were not maintained and in a failure to do this have not shown the tenants liability for a potential loss. As the landlords have failed to establish the required criteria for a successful claim, this section of the claim fails.
22. With regard to the damages to the walls and ceilings in the property, this section of the total claim is again not clear cut. After the review of the evidence, it is clear that the walls were damaged that would require some plastering and painting. What is not clear, it the claimed damages to the ceiling. The photographic evidence does not support damages to the ceiling and as such any associated repairs would be at the cost of the landlords and not that of the tenants. The landlords have submitted two invoices for materials associated with painting totaling \$307.14. Of these invoices, there is a total of \$54.32 HST included associated with materials for painting a ceiling. I find the tenants responsible for the costs of materials to paint in the amount of \$252.82. Additionally, there was no allotment of labor specific to painting and repairs so I will make an arbitrary assessment on these issues. There is no information of the square footage of area which required painting so the arbitrary assessment will be difficult at best. As the landlords have indicated a claim for self-labor, I will use personal experience as well to determine a best award for the number of hours of labor. It is apparent from the photos that there are at least two rooms affected. Allowing for two hours per coat of paint and two rooms for a total of 4 hours. As a side allowance, an additional 2 hours will be permitted as well for smaller unknown areas.
23. As such, I find that the tenants are responsible for the painting of the walls in the property in the amount of **\$369.22** (Materials - \$252.82 and Labor - \$116.40).
24. The landlords have made a claim for several items that I will deal with under one section. The items as identified on **Exhibit L # 3** are:
 - a. Two Boxes of Plaster - **\$50.00**
 - b. Paint rollers and brushes - **\$30.00**
 - c. Replace a bathroom Towel bar – **\$29.00**
 - d. Replace a dishwasher basket - **\$65.00**
 - e. Repair bathroom Plumbing - **\$70.00**
 - f. Cleaning Supplies - **\$60.00**
 - g. Remove garbage/Landfill Fees - **\$30.00**

With each of the items listed, the landlords have not provided any receipts to establish any associated costs for any award of each item. As such, the landlords' claim for these items do not succeed.

25. Landlord2 testified that after the tenants vacated the property, there were several areas noted of concern including damage to three interior doors in the property. The photographic evidence of this portion of the claim is clear in that the interior doors were damaged and it is in an area that one would not reasonably expect the damage unless it was a willful act. I find that a reasonable person would conclude that the tenants in this matter were responsible for the damages as described. The landlords are claiming an unspecified amount of labor for the repairs and as such I will allow an arbitrary allotment of 1 hour per door to effect the repairs. As such the landlords' claim to repair three interior doors succeeds in the amount of **\$58.20** (3 hours X \$19.40 per hour = \$58.20).
26. The balance of the claim for labor is associated with cleaning the property. Keeping in mind that the landlords have been awarded costs for contracted services to clean the carpets, have been awarded costs to paint the property and reasonable labor has been associated with these items, a double claim for labor of cleaning cannot be awarded. I have reviewed the photos presented by the landlords and find that items of concern including the bathroom, kitchen including appliances and areas like the porch and windows did require a cleaning. I would estimate that it would take a reasonable person upwards of 3 days at 10 hours per day to effect the repairs. As such, I find the tenants responsible for the cleaning of the property and award the landlords cleaning labor of 30 hours at \$19.40 per hour for a total of **\$582.00**. This is seen as an amount consistent with a commercial operation completing the task.

Decision

27. The landlords' claim for damages succeeds in the amount of \$1256.67.

Issue 2: Rent Owing - \$1012.48

Relevant Submissions

Landlord Position

28. Landlord2 stated that they entered into a written monthly rental agreement with the tenants, commencing 01 March 2018. The agreed rent was set at \$1100.00 per month and due on the 1st day of each month with a security deposit collected on this tenancy on or about 25 February 2018 in the amount of \$825.00. The landlords issued an abandonment notice on 02 August 2018 for the intended recovery date of 03 August 2018 and the property was recovered on this date. Landlord2 stated that rent was outstanding in the amount of \$1012.48 for the period ending 31 August 2018 and stated as of the hearing date 19 September 2019 rent remains outstanding.

29. Landlord2 submitted into evidence copies of the rental records (**Exhibit L # 1**) outlining the payments and outstanding rent along with a copy of the rental agreement (**Exhibit L # 2**) and the notice of abandonment (**Exhibit L # 3**).
30. Landlord2 testified that he is claiming for rent for the balance of August (04 – 31), 2018 as the property was not rentable or saleable due to damages caused by the tenants. Landlord2 calculated rent at a daily rate of **\$36.16** per day for 28 days for a total of \$1012.48.

Analysis

31. I have reviewed the testimony and evidence of Landlord2 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.
32. It has been determined above that the tenants were responsible for damages to the rental unit that were extensive in nature and would have reasonably taken several weeks to complete to ready the property for rent or sale.
33. With respect to the arrears being claimed, I agree with the landlords that rent is owed. The tenants’ careless disregard for the property has forced the landlords to be down rent for the month of August 2018. This places the liability for the balance of the months’ rent for August 2018 on the tenants.
34. I find the tenants responsible for rent for the period of 04 August 2018 to 31 August 2018 in the amount of **\$1012.48** calculated as: *(\$1100.00 per month X 12 months = \$13,200.00 ÷ 365 days = \$36.16 per day X 28 days = \$1012.48).*

Decision

35. The landlords’ total claim for rent succeeds as follows:
 - a) Rent owing up to 31 August 2018 \$1012.48

Issue 3: Payment of Late Fees - \$75.00

Landlord Position

36. The landlords are seeking payment of late fees as a result of the tenants’ failure to pay rent on time.
37. Landlord2 testified that the tenants have been in arrears since 1 August 2018. Landlord2 indicated that he is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

38. Established by undisputed fact above, the tenants were in arrears for the period beginning 04 August 2018. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
39. Given that the tenants have been in arrears since 04 August 2018, the calculated amount of late fees will exceed the maximum allowable of \$75.00.
40. The issue of rental owing has been determined above confirming that the tenants owe rent to the landlords.

Decision

41. The landlords' claim for late fees succeeds in the amount of \$75.00 as per the regulations established under the *Residential Tenancies Act, 2018*.

Issue 4: Hearing Expenses

Landlord Position

42. 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 # 10**). The landlords are seeking this cost.

Analysis

43. 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

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

Issue 5: Application of Security Deposit

Landlord Position

45. Landlord2 testified that a security deposit in the amount of \$825.00 was paid on the property on or about 28 February 2018. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.

Analysis

46. Established by undisputed fact above, the tenants did pay a security deposit to the landlords in the amount of \$825.00. The landlords' claim has been successful in part. The security deposit plus accrued interest is \$825.00 as the interest rate for 2018 – 2019 is set at 0%.

Decision

47. As the landlord's claim above has been successful, the landlord shall apply the security deposit being held against the attached Order as outlined in the attached.

Summary of Decision

48. The landlords' are entitled to the following:

a)	Rent Owing (up to and including 31 August 2018).....	\$1012.48
b)	Late Fees.....	75.00
c)	Damages	1256.67
c)	Hearing Expenses	\$20.00
d)	Sub-Total	\$2364.15
e)	LESS: Security Deposit	<u>(\$825.00)</u>
f)	Total Owing to Landlords.....	<u>\$1539.15</u>

30 March 2020

Date


Michael Greene
Residential Tenancies Tribunal