

Residential Tenancies Tribunal

Decision 19-0069-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 08 October 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 landlord, participated in the hearing (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the tenant did not participate in the hearing (*Absent and Not Represented*).
4. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$600.00 per month (utilities not included) and due on the 1st of each month. It was stated that there was no security deposit collected on the tenancy. The tenant vacated the property on or about 13 July 2018 and the property was re-rented for 01 August 2018.
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 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 landlord shows that the tenant was served with the notice of this hearing on the **11 August 2019** by serving the documents to the tenant personally to [REDACTED].

The tenant has had **57 days** to provide a response.

There was no contact information available on the application to attempt contact with the respondent in advance of commencing the hearing.

As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.

Issues before the Tribunal

7. The landlord is seeking the following:
 - a) Payment of rent owing **\$600.00**
 - b) Payment of late fees **\$75.00**
 - c) Compensation for damages **\$1620.00**
 - d) Return of Possessions **\$218.44**
 - e) Hearing expenses

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
9. 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 - \$600.00

Relevant Submissions

Landlord Position

10. The landlord stated that he had entered into a verbal rental agreement with the tenant, commencing in 2013. The agreed rent was set at \$600.00 per month and due on the 1st day of each month with no security deposit collected on this tenancy. The tenant vacated on or about 13 July 2018. The landlord stated that rent is outstanding in the amount of \$600.00 for the period ending 31 July 2019 and stated as of the hearing date 08 October 2019 rent remains outstanding.
11. The landlord testified that he advised the tenant that he was thinking of selling the rental unit. The landlord further testified that the tenant notified the landlord verbally he was moving in early July 2018 and additionally added that on 13 July 2018, the tenant advised he was fully moved from the unit and the keys were in the unit. The landlord is seeking rent for the month of July 2018 for lack of notice. The landlord advised that the property was rented for 01 August 2018.

Analysis

12. I have reviewed the testimony and evidence of the landlord 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 landlord actually owed by the tenant.
13. With respect to the rent in lieu of notice being claimed, I accept the testimony of the landlord that no notice was received from the tenant in this matter. I also accept the testimony of the landlord that he was able to mitigate his further loss by re-renting the unit for 01 August 2018. Rent is required to be paid by the tenant for use and occupation of the rented premises as set out in the rental agreement established when the tenancy began. The landlord is entitled to proper notice of termination and I accept that this was not provided by the tenant in this matter. As such, I find that the tenant is responsible for rent in the amount of \$600.00 covering the period of July 1 – 31, 2018 for rent in lieu of notice.

Decision

14. The landlord's total claim for rent succeeds in the amount of \$600.00.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

15. The landlord is seeking payment of late fees as a result of the tenant's failure to pay rent owed.

16. The landlord testified that the tenant has been in arrears since 1 July 2018. The landlord indicated that he is seeking late fees as prescribed under the *Residential Tenancies Regulations, 2018*.

Analysis

17. Established by undisputed fact above, the tenant owes rent for the period ending 31 July 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.
18. Given that the tenant has been in arrears since 01 July 2018, the calculated amount of late fees will exceed the maximum allowable of \$75.00.
19. The issue of rental arrears has been determined above confirming that the tenant owe rent to the landlord.

Decision

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

Issue 3: Compensation for Damages - \$1620.00

Relevant Submissions

Landlord Position

21. The landlord is claiming for several areas of damage as itemized in the claim breakdown (**Exhibit L #3**) as follows:
 - a. Clean the Property (walls, ceiling, fridge, windows, etc.) **(\$260.00)**
 - b. Plaster, paint walls and ceilings **(\$400.00)**
 - c. Replace rear entrance **(\$400.00)**
 - d. Replace back porch window & clean porch **(\$200.00)**
 - e. Replace stove with used stove **(\$200.00)**
 - f. Repair electrical **(\$100.00)**
 - g. Remove Garbage **(\$60.00)**
22. The landlord testified firstly that it took a considerable amount of time to repair the rental property.

23. The landlord testified that the property, when it was recovered, was left in a deplorable condition. The landlord testified that it was filthy and the sheer amount of nicotine stains was extensive. The landlord is claiming **\$260.00** to clean the apartment top to bottom (2 people x 20 hours). The landlord referred to the photos of the property (**Exhibit L # 2**) to demonstrate the extent that cleaning was required.
24. The landlord testified that as a result of the tenant moving a thermostat around and the extensively stained nicotine on the walls, they required plastering and painting after they were cleaned. The landlord referred to the photos (**Exhibit L # 2**) and testified that he is claiming \$400.00 to paint and plaster. He further added that the claim breaks down to \$200.00 for the materials and \$200.00 for labor. The landlord did not provide any receipts for the materials or labor.
25. The landlord testified that the exterior door was virtually destroyed and stated that the photos (**Exhibit L # 2**) clearly demonstrate this fact. The landlord testified that the door was approximately 7 years old and stated he is claiming \$200.00 for the materials (trims included) and \$200.00 for the 4 hours labor to remove the old and install the new door. There were no receipts provided.
26. The landlord testified that the porch window (vinyl slider) was virtually destroyed with only 2 of the 7 panes of glass remaining. The landlord again referred to the photos (**Exhibit L # 2**) to clearly demonstrate this fact. The landlord testified he is claiming \$200.00 for the materials and labor to replace the window. There were no receipts provided.
27. The landlord testified that prior to the tenant vacating the property, he removed all the items he did not want to take with him to the curb side for disposal. The landlord pointed out that the town does not do regular bulk curbside pickups and these sorts of items would have to be taken to the landfill at the individual's expense. The landlord testified that he had to remove the items left by the tenant and referred to the photos (**Exhibit L # 2**) to demonstrate the amount of garbage left by the tenant. The landlord testified he is claiming \$60.00 in labor to remove the items.
28. The landlord testified that the stove was left in an extremely dirty condition as displayed in the photos (**Exhibit L # 2**) and rendered the unit unsafe. The landlord testified that the unit was approximately 15 years old and because he felt it was a safety hazard, he replaced the unit by purchasing a second hand stove for \$200.00. There was no receipts and the landlord is claiming \$200.00 for the replacement.
29. The landlord testified that when he entered and recovered the unit he noticed that the thermostat was changed around, base board heaters were taken apart and removed from the walls. The landlord testified that the heater wires were reconnected, thermostat was repositioned and one heater was replace as it was not salvageable. The landlord referred to the photos (**Exhibit L # 2**) and testified that he is claiming \$100.00 for materials and labor to repair the electrical.

Analysis

30. There is a basic requirement in analyzing the claim for damages. The applicant in the claim holds the entire burden to fully support the claim being presented. That is that the applicant is required to:
- Show that the damages being claimed actually exist;
 - Show that the respondent in the matter is liable for the claimed damages;
 - Show a demonstrated valuation for the costs of the repair or replacement of the damaged items.
31. The landlord in this claim has failed to support most sections of this claim in failing to provide invoices, receipts or even estimates for the items being claimed. The exceptions being the areas of cleaning, garbage removal, painting (labor only) and door replacement (labor only).
32. There is no question that the tenant left the property in a total disarray and obviously failed to clean or maintain the property during the tenancy. In regard to the labor portion of the claim I am able to make an award, however, where the landlord has failed to demonstrate the materials portion with receipts, invoices or estimates, I am unable to make any such award.
33. Specific to the electrical portion of this claim, it is a legal requirement within this Province that all electrical work is to be conducted by a certified electrical contractor under permit. As there was no invoice or permit from such a contractor presented, the electrical portion of this claim fails in its entirety as the landlord has not substantiated that portion of the claim.
34. The claim itself was lacking much evidence and as such I will make a general arbitrary award for the labor for cleaning, garbage removal, painting labor and labor to replace the door and window.
35. The following table is the basis of the award for each item based on an award of 50% depreciation:

Item	Labor @ \$19.40	Depreciation	Award
Exterior Door	4 hrs \$77.60	50%	\$ 38.80
Porch Window	2 Hrs \$38.80	50%	\$ 19.40
Cleaning	20 Hrs \$388.00	50%	\$ 194.00
Painting	10 Hrs \$194.00	50%	\$ 97.00
Garbage Removal	1 Hr \$19.40	50%	\$ 9.70
Total Award			\$ 358.90

36. I find that the landlord's claim for damages succeeds at the depreciated rate of \$358.90 as indicated in the table above.

Decision

37. The landlord's claim for damages succeeds in the amount of \$358.90.

Issue 4: Return of Possessions - \$112.00

Relevant Submissions

Landlord Position

38. The landlord is claiming for the return of a wiper snipper belonging to the landlord that was removed from the property or broken and never replaced by the tenant. The landlord claimed \$112.00 on the initial claim (**Exhibit L # 3**) however at the hearing presented an estimate from Robert's Home Hardware (**Exhibit L # 1**) in the amount of \$218.44.
39. The landlord testified that the tenant looked after the grass on the property and the landlord supplied the wiper snipper. He stated that the unit was a gas powered "Weed Eater" brand. The landlord is seeking the cost to replace the unit as it is nowhere in sight.

Analysis

40. In this portion of the claim I would not expect a landlord in the normal and reasonable course of conducting business to itemize each and every tool that may be left at a property for a tenant to maintain the grounds. The landlord has testified under oath that the weed eater unit was there for the tenant to utilize in the normal course of the tenancy. I accept this evidence of the landlord. What is unknown is the concerning part. I have no idea if the unit was removed by the tenant, or if the unit ceased to function and the tenant did not advise the landlord, or if the unit was stolen. There are a number of scenarios that are possible. For the latter two I would have reasonably expected the tenant to advise the landlord that something was stolen or broke and as such I will discount these as possible explanations. That then would leave to obvious explanation that the unit was removed. As such, I find that the tenant is responsible for the replacement of the wiper snipper.
41. The landlord has presented an estimate from Roberts Home Hardware (**Exhibit L # 1**) showing a cost to replace the unit at \$218.44. The age of the unit is unknown in this case and is an intrigal part of determining an accurate depreciated cost of replacement. To that end, I am left to again make an arbitrary award for the depreciated cost to replace the unit in question. I will acknowledge

that some use of the unit would have happened. I find that \$100.00 is a fair and reasonable award as a depreciated cost to replace the wiper snipper.

Decision

42. The landlord’s claim to replace the possessions removed succeeds in the amount of **\$100.00**.

Issue 5: Hearing Expenses

Landlord Position

43. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL ([REDACTED]) (**Exhibit L # 4**). The landlord is seeking this cost.

Analysis

44. 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 tenant is responsible to cover these reasonable expenses.

Decision

45. The tenant shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Summary of Decision

46. The landlord is entitled to the following:

a)	Rent Owing	\$600.00
b)	Late Fees	75.00
c)	Damages	358.90
d)	Return of Possessions	100.00
e)	Hearing Expenses	<u>\$20.00</u>
f)	Total owing to Landlord	\$1153.90

01 April 2020

Date


Michael Greene
Residential Tenancies Tribunal