

Residential Tenancies Tribunal

Decision 19-0085-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 07 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 tenant1, participated in the hearing (*Affirmed*).
4. The respondent, [REDACTED], hereafter referred to as tenant2 participated in the hearing – (*Affirmed*).
5. The details of the claim were presented as a written fixed term rental agreement commencing on 01 August 2018 and set to expire on 31 July 2019 with rent set at \$1300.00 per month (utilities extra) and due on the 1st of each month. It was stated that a security deposit in the amount of \$650.00 was collected on the tenancy on or about 05 June 2018. The tenants issued a termination notice through text message for which the landlord had no issue with this.
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 affidavit submitted by the landlord show that the tenant, [REDACTED], was served with the notice of this hearing on the **21 August 2019** by serving the application for dispute resolution document to the tenant at the email address: [REDACTED] and providing the copy of the sent email and an email of correspondence between the parties showing the tenant's email was a good email.
8. The tenant, [REDACTED], acknowledged that he was a tenant of the property in addition to [REDACTED] and agreed to be added to the file. [REDACTED] further waived his right of service.

Issues before the Tribunal

9. The **landlord** is seeking the following:
 - a) Compensation for Damages **\$580.00**
 - b) Application of Security Deposit **\$650.00** (Tenants claim **\$350.00** being held)

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 Section 42 of *the Act*, Policy 9-3: *Claims for Damages to the Rental 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 - \$580.00

Relevant Submissions

Landlord Position

12. The landlord is claiming for several areas of damage as follows:
 - a. Replace screen in the main door **(\$26.80)**
 - b. Replace hardwood floorboard **(\$150.00)**
 - c. Clean dishwasher **(\$25.00)**
 - d. Replace moldings (entrance & hallway) **(\$60.00)**
 - e. Replace kitchen drawer **(\$200.00)**
 - f. Paint & Plaster downstairs bathroom **(\$118.20)**

13. The landlord testified that when the premises was recovered, it was noted that the screen in the main door was torn and it couldn't be fit back in place. The landlord submitted photos (**Exhibit L # 2**) showing the torn screen. The landlord is seeking the cost of the purchase of the new screen. The landlord testified that she did not have any receipts to submit for the materials purchased.
14. The landlord testified that when the property was recovered it was noted that a single board in the hardwood flooring in front of the master bedroom was scratched and she has no idea what caused the scratches. The landlord stated that this damage is a new damage with this tenancy. The landlord referred to the photos of the damage (**Exhibit L # 2**) and stated that there are no invoices as her brother in law completed the work to replace the board.
15. The landlord testified that when the property was recovered it was noted that the dishwasher was not clean and there was mold along the edges of the door. The landlord is claiming \$25.00 of labor to clean the door. The landlord referred to the photos (**Exhibit L # 2**).
16. The landlord testified that when the property was recovered it was noted that moldings surrounding the door in the porch and moldings in the hallway were cracked and required replacing. The landlord referred to the photos submitted (**Exhibit L # 2**). The landlord testified that there was no receipts for the purchase of the materials to submit into evidence.
17. The landlord testified that when the property was recovered it was noted that the kitchen drawer was cracked. The landlord testified that the damage wasn't done prior to the tenants taking possession and that the cupboards were installed about 6 months before the tenants moved into the property. The landlord referred to the photos of the property (**Exhibit L # 2**) and testified that there were no receipts or estimates other than hearsay verbal quote from an unknown contractor.
18. The landlord testified that when the property was recovered it was noted that there was a water leak in the bathroom downstairs as a result of a build-up of snow on the back deck, which the landlord claims the tenants did not clear as required. The landlord is claiming for the cost of the materials and labor at a self-labor rate for 6 hours. The landlord testified that there was no receipts presented to substantiate the costs. The landlord further testified that there was no photos of the damages being claimed.

Tenant Position

19. The tenants disputed the landlord's claim for the replacement of the screen in the door. The tenants claimed that this would be considered normal wear and tear and not the result of a negligent or willful behavior. The tenants testified that this could very well have occurred because of a teenager.

20. The tenants dispute the scratch on the hardwood floor claiming they have no idea what it is.
21. The tenants dispute the portion of the claim concerning the cleaning of the dishwasher stating that it was spotless when they vacated the unit. They stated that it occurred sometime between it was last used and when the photo was taken.
22. Regarding the damages to the moldings, the tenants concede that they were responsible for the damages in the porch as claimed but state that the molding was already present when a walk through was completed with the landlord at move in.
23. The tenants concede to the damage to the kitchen drawer stating that it occurred during their tenancy.
24. The tenants dispute this portion of the claim testifying that the people who were hired by the landlord to remove snow from the roof, dumped the snow on the deck. They feel this is not their responsibility to remove. The tenants testified that they completed their obligations under the rental agreement as required.

Analysis

25. The analysis of this claim is best done on its entirety as there are common elements across all sections that have to be addressed.
26. As a first point, it is incumbent on the applicant to meet the three legal tests as described below:
 - a. To show that the damage exists;
 - b. To show a demonstrated valuation for the repair or replacement of the item in question;
 - c. To show on the balance of probabilities that the respondent is liable for the damages.
27. For the entire claim as presented by the landlord, the landlord has failed to present a demonstrated valuation for the repair or replacement of the items in question by way of presenting receipts, invoices or estimates for the repairs. For the item related to the plaster and painting of the bathroom, the landlord has also failed to show if the damage existed as no photos were presented.
28. The tenants have conceded to at least two areas of damages and for those I will make an arbitrary award as to the cost to repair or replace. The photos of the damaged moldings do not support an award anywhere near the cost of \$60.00 as proposed by the landlord. As the tenants only concedes to the porch area, I find that an arbitrary award of **\$25.00** is more than reasonable to replace what

appears to be one piece of molding in the evidence. With respect to the repair of the kitchen drawer, we are faced again without the benefit of receipts or invoices so another arbitrary award is required. I find that **\$100.00** is a reasonable depreciable award given the lack of available receipts.

29. As these are they only areas of the claim where the landlord has substantiated the claim, I find that the balance of the claim for damages fails.

Decision

30. The landlord's claim for damages succeeds in the amount of **\$125.00**.

Issue 2: Application of Security Deposit

Landlord Position

31. The landlord testified that a security deposit in the amount of \$650.00 was collected on the tenancy on or about 05 June 2018. The landlord is seeking that this deposit be applied against any order derived from this application and claim.

Tenant Position

32. The tenants submitted a copy of an e-transfer receipt for the refund received from the landlord for a portion of the security deposit (**Exhibit T # 1**) and is seeking to have the security deposit in the amount of \$350.00 still being held by the landlord.

Analysis

33. I have reviewed the testimony and evidence of the landlord and tenants in this matter. It is apparent that the landlord currently retained only \$350.00 of the security deposit. The tenants have provided a copy of an e-transfer receipt (**Exhibit T # 1**) which clearly indicates that a portion of the security has been refunded by the landlord and received by the tenants.
34. The landlord filed a claim seeking damages against the security deposit being held. The landlord's claim has been successful in part. As such, I find that the landlord shall offset the damages against the security deposit paid and refund to the tenants that portion of the security deposit as determined below which is in excess of the amount of awarded damages.

Decision

35. The landlords claim for application for security deposit succeeds.

Summary of Decision

36. The tenants are entitled to the following:

- a) Security Deposit.....\$350.00
- b) **LESS: Compensation for Damages** **(\$125.00)**
- c) **Total owing to tenants**.....**\$225.00**

30 March 2020

Date



Michael Greene
Residential Tenancies Tribunal