

## Residential Tenancies Tribunal

Decision 19-0096-03

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at 1:30 pm on **29 Oct 2019** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The originating applicant, [REDACTED], hereafter referred to as the tenant participated in the hearing. (*Affirmed*)
3. The countering applicant, [REDACTED], hereafter referred to as Landlord1 participated in the hearing. (*Sworn*)
4. The countering applicant, [REDACTED], hereafter referred to as Landlord2, did not participate in the hearing. (*Absent and Represented*)
5. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$800.00 per month and due on the 1<sup>st</sup> of each month beginning on 01 April 2017 and vacated on 26 August 2019. It was stated that a security deposit in the amount of \$400.00 was paid on or about 07 March 2017.
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 tenant shows that the landlords were served with the notice of hearing on the **18 September 2019** by serving the Application for Dispute Resolution to the landlords by email:

[REDACTED]

The email address was an address used to communicate between parties. The landlord, [REDACTED], appeared at the hearing and acknowledged the email address and receipt of the documents.

As the landlords were properly served in accordance with the *Residential Tenancies Act, 2018*, with the Application for Dispute Resolution, the hearing proceeded.

## Issues before the Tribunal

8. The tenant is seeking the following:
- a) Return of Possessions **\$300.00**;
  - b) Hearing Expenses;
  - c) Refund of Security Deposit
9. The landlords are seeking the following:
- d) Damages **\$701.10**;
  - e) Hearing Expenses;
  - f) Application of Security Deposit (***Landlords claim it was never received***)

## 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:
- a. Sections 34 and 35 of *the Act*; and
  - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
  - c. *Policy 9-2 Claims and Counter Claims*, and;
  - d. *Policy 9-3 Claims for Damage to Rental premises*.

## Issue 1: Compensation for Damages - \$701.10

### Relevant Submissions

#### Landlord Position

12. Landlord1 testified that when the property was recovered it was noticed that the following items were damaged. The damages were outlined as follows:
  - a. Remove Cat Litter and waste from water drainage ditch (Quote)
  - b. Clean the property from pet hair (Labor)
13. Landlord1 testified that there were no physical damages done to the property by the tenant. Landlord1 stated that this claim is related to cleanliness and the sheer amount of cat hair left in the property.
14. Landlord1 testified that his wife is allergic to cats and could not assist with the cleaning in the property. Landlord1 stated that the fridge, the oven, bathroom and furnace duct work were covered with cat hair and required cleaning. Landlord1 testified that they were aware that the tenant had one cat but learned later in the tenancy that there was actually two in the property. Landlord1 submitted into evidence videos of the property showing the amount of cat hair throughout the property in the areas claimed (**Exhibit L #3**). The landlord are claiming 6.5 hours of labor at the self-labor rate of \$19.40/hour for the total of **\$126.10**.
15. Additionally, landlord1 testified that during the construction of a shed in the yard, there was a drainage issue on the property and a drainage ditch was constructed across the back of the property to divert the water from coming onto the property. When the tenant vacated, it was noted that the tenant had been using the ditch to dispose of the cat litter from his cats instead of properly disposing of it in the garbage. This disposal method chosen by the tenant filled in the ditch which is counter to the purpose of the ditch in the first place. The landlord referred to the videos submitted (**Exhibit L # 3**) as well to show the condition of the ditch.
16. The landlord submitted into evidence a quote from Ambstemel Trucking Ltd. (**Exhibit L # 1**) in the amount of **\$575.00** to clear the ditch.

#### Tenant Position

17. The tenant testified that the landlords were aware that we had two cats and that the cats did not have access to the bathroom. This would make it impossible for the cat hair to be located in the bathroom.
18. The tenant testified that it is his opinion that when the walkthrough was completed, the landlords had an onus to do and complete a full inspection at that time.

19. The tenant testified that the ditch was done when the landlords built the shed on the property. He stated that he may have left a windshield in the ditch when he vacated the property.

## Analysis

20. I have reviewed the testimony and evidence of the landlord and tenant in this matter. The applicant is required to establish three criteria for a successful claim as follows:
  - a. Show that the damage exists
  - b. Show that the respondent is liable
  - c. Show a valuation for the repair or replacement
21. The claim for cleaning the property is purely a labor based claim with no materials involved. The tenant denies the claim based on the notion that the landlords should have noticed the claimed damages during an inspection with the tenant. I do not concur with this idea of a claim for a loss. It is true that obvious damages such as holes or destroyed property could have reasonably been seen, however, the areas we are talking about may reasonably not have been seen during a quick walk through type of inspection. Thus I will allow the landlords' claim to proceed.
22. The videos of the property are the clearest evidence that is available in this claim. They depict the property having been left in good structural condition free from physical damage. It is apparent, however, that there were cats in the property and they certainly left behind an abundance of hair. A pet was permitted by the landlord but this permission does not absolve the tenant from cleaning up after the animal prior to vacating. Landlord1 showed the largest air duct in the video which is the cold air return. This return duct will be the duct that will catch all the loose hair, dust, and light particles in the air that is removed from the air to the furnace. As such, I would reasonably expect it to be somewhat dirty. I would expect however that the tenant would have reasonably made an effort to remove the obvious accumulation of cat hair in the grate and duct work itself immediately below the grate.
23. There are also areas of the property that were missed by the tenant prior to vacating also related to the cat hair and small items (cat treat bags, tooth picks etc.) that were left in the property. Noticed in the videos as well were various windshield wash containers left behind the shed.
24. I find that the tenant is responsible for the cleaning of the property. Given the sheer amount of cat fur left in the property, the time being claimed by the landlords are seen as more than reasonable. The landlord's claim of **\$126.10** for 6.5 hours of cleaning succeeds.

25. The portion of the landlords' claim for the cleaning of the drainage ditch involves having heavy equipment (Backhoe and Truck) to remove the refuge. The video shows that the ditch does have cat litter in the ditch along with being over grown with vegetation. The cost of the heavy equipment also involves the transportation of the equipment to the site and removal of the debris. These are real charges to be expected with the introduction of heavy equipment.
26. Whereas there was cat litter there, it was also over grown and I can't help but think that the cleaning with heavy equipment will allow for an advantage to the landlord to clear a ditch 100% on the back of the tenant. I think that this would be the best time to have the entire ditch cleaned to reduce ultimate costs. After reviewing the evidence, and with the knowledge that the ditch was placed there during the tenancy, I do find that the tenant deposited cat litter in a drainage ditch and in doing so was irresponsible and could very well have caused a back of ground water and flooding. Luckily this did not happen. However, there is some overgrowth there as well which cannot be attributed to the tenant. As such, I find the tenant responsible for 50% of the cost to clear the drainage ditch in the amount of \$287.50.

## Decision

27. The landlords' claim for damages succeeds as follows:

a. Cleaning	\$126.10
b. Clear Drainage ditch	<u>287.50</u>
<b>c. Total Damages</b>	<b><u>\$413.60</u></b>

## Issue 2: Refund/Application of Security Deposit

### Tenant Position

28. The tenant testified that a security deposit in the amount of \$400.00 was paid on the property to the landlords on or about 07 March 2017. The tenant supplied a verification of an Interac Payment (**Exhibit T # 1**) from the Bank of Montreal in Winnipeg. The tenant testified that this transfer was for the security deposit and it was sent to the landlord's email address (██████████). The tenant is seeking to have the security deposit returned.
29. The tenant additionally presented a copy of a text message from ██████████ (**Exhibit T # 2**) who indicated there was no deposit of a security deposit but will check with the banks in an effort to clear up any confusion.

## Landlord Position

30. Landlord1 testified that they did not receive a payment for the security deposit on this property. Landlord1 stated that they hold accounts at The Canadian Imperial Bank of Commerce (CIBC) and TD Canada Trust (TD Bank). Landlord1 submitted copies of the account transactions from CIBC (**Exhibit L # 5**) for the period in question which shows that there was no deposit into the account from the tenant in the amount of \$400.00. In addition, landlord1 submitted a letter from the CIBC Branch Manager (**Exhibit L # 4**) who indicates that a review of the landlord's bank accounts was completed for the period 01 Jan 2017 to 31 December 2017 and could not find any deposit into the landlords' accounts from the tenant in the amount of \$400.00. Landlord1 further testified that a similar process was taken on at TD Bank (**Exhibit L # 6**) and copies of the account transactions were presented along with a verifying letter from a bank official indicating no deposits were received.
31. Landlord1 stated under oath that no other bank accounts are held by the landlords' for deposits.

## **Analysis**

32. There is an obvious dissenting opinion on the payment of a security deposit by both parties. It must be stated up front that neither of the evidentiary documents presented by either party relating to an interac e-transfer did not originate from the company **Interac**, but from the individual parties banks.
33. The tenant's bank (BMO) is able to establish that an amount of money (\$400.00) was taken from the tenant's account on 07 March 2017 and SENT to the landlords' email address ( [REDACTED] ). The individual record indicates "Completed" but does not establish that it was deposited into the landlords' account.
34. The landlords' records establishes that there were no deposits in either of the landlords' accounts in the amount of \$400.00 from the tenant. This is verified with transaction histories and bank official verifications.
35. From the totality of the evidence presented, the following is what can be determined and deduced:
  - a. An amount of \$400.00 was sent from the tenant's account on 07 March 2017. This was not established with transaction histories.
  - b. An amount of \$400.00 was NOT deposited into the landlords' accounts at either CIBC or TD Bank.

- c. There is no way to determine if the money which was sent on 07 March 2017, was returned to the tenant's account after the stale date period with all e-transfers. A complete record of the transaction histories of the tenant's account was never presented into evidence.
36. It is common general knowledge that emails can from time to time arrive in the receivers account and be placed in a "Spam" folder. It is likely that the recipient may not have realized that an email for a deposit was there. It is also likely, that the email may have been lost due to some technical glitch. In any regard, the e-transfer would have been returned to the sender's account after a stale date period. This could have been confirmed with the tenant's transaction histories.
37. It is the burden of the tenant in this matter to substantiate that a security deposit was paid to the landlords. Based on the totality of the evidence presented, it cannot be determined beyond the balance of probabilities that a security deposit of \$400.00 was ever paid to the landlords. As such, the tenant's claim for refund of security deposit fails.

### **Decision**

38. The tenant's claim for refund of security deposit fails.

### **Issue 3: Return of Possessions**

#### Tenant Position

39. The tenant is claiming for the return of his possession listed as:
  - a. (1) 2' Faux Wood Blind
  - b. Blackout Blind Rod
  - c. Rat Traps/Poison
  - d. Dual Shower Head
40. The tenant did or could not provide any receipts or estimates for the costs associated with the items above. He testified that he left the items behind by choice and advised the landlords of this.
41. Regarding the blinds, the tenant stated that the blinds that were there were cheap blinds and were broken, so he opted to replace them. Similarly he chose to replace the shower head.

## Landlord Position

42. Landlord1 testified that the tenant opted to leave the items described above in the apartment when he decided to move. Landlord1 further testified that the tenant is welcome to these items by simply replacing the items he removed to add his own personal touch.
43. Landlord1 further stated that in addition to the listed items, the tenant also had a clothes line on the property and he is welcome to that as well as it remains on the property.
44. Landlord1 stated that he was never asked to replace or pay for the replaced items and added that the blinds that were there were in good condition and it was likely that his cats chewed them up.

## **Analysis**

45. The normal thing to happen when a tenancy ends is for the tenant to remove all belongings they had in the property. With regard to items that a tenant should choose to add to a property, if these items form a part of the structural nature of the building, then the items or additions would become vested with the property and remain with the property after the tenancy is terminated. The items in discussion are not of a structural nature of the building but were left by the tenant at the discretion of the tenant. It is my opinion that the tenant either did not have the room, time or capacity to change out the items in question, or decided to leave them as it was not worth the effort. Further, the tenant did not provide any receipts or estimates to establish a value.
46. Landlord1 stated that the items are there on the property for the tenant if the original items can be returned.
47. I have serious reservations about this portion of the claim and they seem only to have arisen when the issue of the security deposit arose. I actually agree with the landlords that the tenant opted to replace certain items and the original items are no longer available. I find that the landlord is under no obligation to return the items in question as a matter for this decision. Should both parties wish to cordially exchange old items for the replaced items then that is something between the two parties.
48. It is the burden of the tenant in this matter to substantiate that items being claimed were retained by the landlords against the will of the tenant. In this matter the tenant's evidence is that he left them by his choice. As such, I find that the tenant's claim for return of possession fails.



**Decision**

49. The tenant's claim for return of possessions fails.

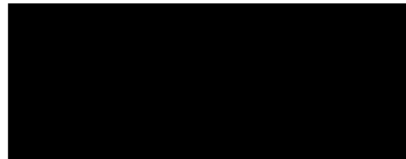
**Summary of Decision**

50. The landlords are entitled to the following:

- a) Damages .....\$413.60
  
- b) **Total owing to Landlords .....\$413.60**

27 March 2020

**Date**



**Michael Greene**  
**Residential Tenancies Tribunal**