

Residential Tenancies Tribunal

Decision 19-0112-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on 20 January 2020 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 the tenant, did not participate in the hearing.
5. The details of the claim were presented as a written monthly rental agreement with rent set at \$625.00 per month (utilities excluded) and due on the 1st of each month. It was stated that there was a security deposit in the amount of \$400.00 collected on the tenancy on 31 May 2019 and this has been formally ordered to be returned by way of an Order originating from claim [REDACTED] and has been refunded. The tenant issued a termination notice by way of a text message.
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 claim was amended at the onset of the hearing to update the legal first name of landlord2 as [REDACTED].
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 tenant was served with the notice of this hearing on the **20 November 2019** by serving the documents to the tenant by registered Mail ([REDACTED]). The tenant has had **60 days** to provide a response.

Contact was made with the tenant on the day of the hearing and the tenant indicated she was unable to attend.

As the tenant was 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 in the tenant's absence.

Issues before the Tribunal

9. The landlords are seeking the following:
 - a) Compensation for Inconvenience **\$166.40**
 - b) Payment of Utilities **\$14.43**
 - c) Compensation for damages **\$1485.92**
 - d) Storage Costs **\$160.00**
 - 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 42 of *the Act*, Policy 9-3: *Claims for Damages to Rented 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 - \$1485.92

Relevant Submissions

Landlord Position

12. The landlords are claiming for several areas of damage as itemized in the claim breakdown (**Exhibit L #1**) as follows:
 - a. Replace Living Room Carpet (**\$1124.25**)
 - b. Replace Baseboards (**\$13.52 + \$36.06 + \$23.00 = \$72.58**)
 - c. Repair Porch Wall (**\$100.00**)
 - d. Clean Kitchen Floor (**\$29.10 for 1.5 hrs labor**)
13. The landlords testified that when the property was vacated, they entered and noticed that the carpet in the living room had an odor of cat urine. The landlords testified that the tenant did have the carpet cleaned but it didn't take care of the urine smells. The landlords further added that they as well attempted to clean the carpet but to no avail. The landlords decided to replace the carpet. The landlords submitted into evidence a series of text messages between the tenant and landlords concerning several topics including the cat urine on the carpet (**Exhibit L # 11**).
14. The landlords testified that the living room was approximately 12 x 16 and the carpet was approximately 10 years old. They further added that the carpet was a low pile commercial grade carpet but was in good condition prior to the tenant.
15. The landlords testified that they are claiming for the **\$724.25** for the flooring and submitted an invoice from Kent Building Supplies (**Exhibit L # 3**). The landlords are also claiming **\$400.00** as installation labor for the flooring to [REDACTED] (**Exhibit L # 4**).
16. The landlords referred to a letter from the current tenant (**Exhibit L # 10**) which indicates that they could not move into the property as a result of a smell of cat urine from the carpet. This is not a sworn statement and the author was not present at the hearing to testify to its authenticity.
17. The landlords testified that as a result of the replacement of the carpet, the baseboards had to be removed and when this was done, they split and had to be replaced. The landlords testified that they used what they had on hand (12ft @ \$0.98/lin ft = **\$13.52** Hst included) and purchased the additional baseboards from Shears Building Supplies (**Exhibit L # 5**) in the amount of **\$36.06**. Additionally,

the landlords testified that they used paint that they had on hand to paint the baseboards at a cost of **\$23.00** for equivalent of a quart of paint.

18. The discussion for the cause of baseboard replacement relates to the carpet issues above.
19. The landlords are claiming for repairs to the wall in the porch. The landlords testified that when the tenant vacated it was noticed that there was a hole in the wall behind the door that requires plastering and painting. The landlords are claiming \$100.00 inclusive of 2 hours labor to repair and testified that as of the hearing was not repaired. There were no estimates submitted for the costing of materials associated with the damages. The landlords submitted photos of the damages (**Exhibit L # 12**) and a copy of the incoming inspection report/rental agreement (**Exhibit L # 2**) which indicated there was no damage.
20. The landlords are claiming for 1.5 hours of labor to clean the kitchen floor at a cost of \$29.10. The landlords testified that there was a sticky residue on the floor and it had to be cleaned by scrubbing it with a cloth. The landlords submitted into evidence a video of the kitchen floor condition (**Exhibit L # 13**) showing that the floor was dirty and that it required scrubbing.

Analysis

21. The relationship between the landlords and tenant 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 at some point toward the end of the tenancy.
22. The largest portion of the claim relates to the replacement of living room flooring from the existing carpet to laminate flooring. The landlords have presented an incoming inspection report to establish that there was no apparent issues with the living room flooring prior to the tenant taking possession of the property. Additionally, the landlords have provided a series of text messages which tend to lead toward the tenant acknowledging both having a cat and that the cat did void in an area of the carpet just outside the laundry room. The landlords have costed the replacement with a laminate product which is certainly the landlords choice as long as it equates to the cost of what it is replacing. Carpet is a depreciable item and in a rental unit the Residential Tenancies Division assess that a commercial grade carpet has a useful life of 8 years. The carpet in question is at least 10 years old and I am unable to assess the general condition as there were no pictures of the carpet submitted into evidence. As it is the landlords burden to adequately support the claim and there are no pictures of the carpet to allow me to extend the useful life based on condition, I find that the carpet has fully depreciated and as such the landlords' claim to replace fails in this regard.

23. As the replacement of the baseboards are directly attached to the replacement of the carpet which has failed above, the claim for the baseboard replacement also fails.
24. The landlords' photos clearly show a hole which was attempted to have been repaired at some point and given the cracking shown, incorrectly repaired at best. There is no issue mentioned in the condition report as it relates to a porch wall so I can assume that there was no issue at the onset of the tenancy. The landlords have not submitted any invoices or estimates for the repair other than to estimate 2 hours labor. Based on the evidence presented I can conclude that the damage occurred during the tenancy and find that a total of two hours would be reasonable to repair from plaster to paint the hole in the wall @ the self-labor rate of \$19.40/hour totaling \$38.80. The landlords' claim succeeds for the porch hole repair in the amount of **\$38.80**.
25. The landlords are claiming for the cleaning of the kitchen vinyl floor in the amount of \$29.10 representing 1.5 hours of labor to scrub the floor. The video evidence presented is clear and the floor was left in an unclean condition. There was no indication of a problem on the incoming condition report and thus the issue must have been the result of the tenancy. I find the claim to be reasonable in cost and find that the landlords' claim for cleaning succeeds in the amount of **\$29.10**.

Decision

26. The landlords' claim for damages succeeds in the amount of \$67.90.

Issue 2: Payment of Utilities - \$14.43

Relevant Submissions

Landlord Position

27. The landlords testified that the tenant failed to immediately change the power into her own name thereby incurring charges in the landlord's name totaling \$14.43. The landlords submitted into evidence two NL Power Invoices (Exhibit L # 6 and 7) and testified that the tenant is responsible for 4 days of Exhibit L # 6 and 1 day of Exhibit L # 7 as follows:

- a. **Exhibit L # 6:**

- i. $\$25.35 \div 8 \text{ days of billing} = \$3.17/\text{day}$
- ii. $\$3.17/\text{day} \times 4 \text{ days} = \12.68

- b. **Exhibit L #7:**

- i. $\$3.53 \div 2 \text{ days of billing} = \1.76
- ii. $\$1.76 \times 1 \text{ day} = \1.76

Analysis

28. I have reviewed the testimony and evidence of the landlords in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) is the utilities being claimed by the landlords actually owed by the tenant.
29. With respect to the utilities being claimed, I agree with both the landlords that utilities are owed. Utilities are required to be paid by the tenant for the rented premises as set out in the rental agreement established when the tenancy began. The calculated amount of utilities owing is demonstrated in evidence and calculated correctly. I find the tenant responsible for the utilities at the beginning and at the end of the tenancy totaling \$14.43. The landlords' claim succeeds.

Decision

30. The landlords' total claim for utilities succeeds in the amount of \$14.43.

Issue 3: Compensation for Inconvenience - \$166.40

Landlord Position

31. The landlords are seeking payment of the inconvenience of organizing the repairs and overseeing the repairs (\$116.40) in addition to a mileage charge of (\$50.00) for the running around.

Analysis

32. The rental business is like no other in general terms. The expenses that the landlords are seeking are generally considered a cost of doing business for a landlord and would normally be recovered in the normal setting of rent or the annual increases that may occur. Additionally, the majority of the claimed damages have failed in this claim. As such, these cost are not directly attributable to the tenant and as such fails.

Decision

33. The landlords' claim for compensation for Inconvenience fails.

Issue 4: Storage of new tenants' belongings - \$160.00

Landlord Position

34. The landlords are seeking payment of the costs to store the current tenants' belongings as a result of repairs required in the property.

35. The majority of the landlords claim for repairs has been not successful. The biggest section is the flooring which would have been fully depreciated.

Analysis

36. As the flooring would have caused the largest delay for the new tenants to move in, the landlords should have considered same and postponed the move in date of the new tenants, it is not reasonable to consider a charge to the former tenant for the storage of the current tenants' belongings. As such, this section of the landlords' claim fails.

Decision

37. The landlords' claim for storage of current tenants' belongings fails.

Issue 5: Hearing Expenses

Landlord Position

38. 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 # 8**). The landlord also paid a fee to Canada Post in the amount of \$14.51 for registered mail services. The landlords are seeking these cost.

Analysis

39. I have reviewed the testimony and evidence of the landlord 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 tenant is responsible to cover these reasonable expenses.

Decision

40. The tenant shall pay the reasonable expenses of the landlords in the amount of \$34.51.

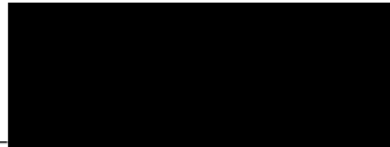
Summary of Decision

41. The landlords are entitled to the following:

a)	Compensation for Damages	\$67.90
b)	Payment of Utilities	14.43
c)	Hearing Expenses	<u>\$34.51</u>
d)	Total owing to Landlords	\$116.84

03 April 2020

Date



Michael Greene
Residential Tenancies Tribunal