

Residential Tenancies Tribunal

Decision 20-0002-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 9:30 am on **27 February 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 the landlord participated in the hearing and was represented by Dr. Dale Reardon and Tracey Reardon (*Affirmed*).
3. The respondent, [REDACTED], hereafter referred to as the 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 monthly rental agreement with rent set at \$675.00 per month (utilities extra) and due on the 1st of each month. It was stated that a security deposit in the amount of \$500.00 was collected on the tenancy on or about 01 July 2019.
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 shows that tenant1 was served with the notice of this hearing on the **23 January 2020** by serving the application for dispute resolution document to the tenant [REDACTED] at the rental premises, who is at least 16 years of age and resides with the tenant.
8. The affidavit submitted by the landlord shows that tenant2 was served with the notice of this hearing on the **23 January 2020** by serving the application for dispute resolution document to the tenant personally at the rental premises.
9. The landlord called a witness, [REDACTED] – Building Manager (*Affirmed*).

Issues before the Tribunal

10. The **landlord** is seeking the following:
 - a) Compensation for Damages **\$2300.00**

Legislation and Policy

11. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
12. 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 - \$2300.00

Relevant Submissions

Landlord Position

13. The landlord testified that as a result of a fire that occurred at the rented premises, as a result of actions of the tenants, the landlord is claiming for several areas of damage as follows:
 - a. Clean, prime and paint kitchen
 - b. Replace fire damaged range hood

14. The landlord testified that on or about 15 November 2019 there was a fire at the rented premises located at [REDACTED]. The landlord advised that the tenants were cooking on the stove and a pot over heated creating extensive damages to the unit from smoke. The landlord submitted photos of the damages into evidence (**Exhibit L # 2**) and stated that he asked and notified the tenants to repair the damages as it was their responsibility. The landlord testified that after 1 week it was noted that the repairs were not done, so the landlord engaged a contractor to make the necessary repairs to the unit.
15. The landlord testified that this unit was newly renovated immediately prior to the tenants taking possession of the property including new paint, flooring, fridge, etc. The landlord submitted an invoice from [REDACTED]. (**Exhibit L # 3**) in the amount of \$2300.00. The landlord testified that he offered the tenants a couple of options for re-payment, but the tenants didn't want to listen to his suggestions.
16. The landlord further testified that it was of the utmost importance that the repairs be completed in a quick fashion. He stated that the repairs were completed within 2 weeks (28 November 2019) of the incident date.
17. The landlord called a witness ([REDACTED]) who indicated she was called to the building as the smoke detectors were going off. She stated that when she arrived and knocked on the tenants' door, smoke belled from the tenants' apartment when the door was opened. She further added that there was a frying pan in the snow bank upon her arrival.

Tenant Position

18. The tenants disputed the landlord's claim stating that the amount being charged is too much for the damages incurred. The tenants acknowledged that there was a fire at the residence which resulted from the tenants cooking supper and a pan overheating. The tenants testified that there was quite a bit of smoke in the unit and the pictures shown by the landlord are an accurate reflection of the unit as a result.

Analysis

19. The question of the tenants liability has been answered by the tenants themselves as they have indicated that they caused a fire incident while attempting to cook supper. The landlord has demonstrated the extent of the damages with the photos and a valuation for the repairs by submission of the invoice.

20. The only concern I have here is the invoice presented by the landlord. My concerns are raised from three fronts; 1) the mark-up charge of 20% and 2) the lack of physical invoices for the materials outlined in the receipt and 3) the amount of hours (four) billed for removal and installation of a range hood by a carpenter.
21. I will deal with the physical invoices themselves first. The costing of materials appear to be very much an estimate as every number on the invoice is a rounded number. This practice might very well suffice for a person seeking the contractors' service and paying for these services themselves, however, when the invoice is being used to charge a third party, then specific and detailed invoices are required to ensure an accurate costing for the third party.
22. Secondly, the 20% mark-up charge billed from the contractor is suspicious. There is no indication on the invoice for exactly what this charge is for other than pure profit to the contractor. Again, this might very well be an accepted practice for an insurance claim project, but detailed invoicing and explanations are required when billing to a third party for clarity.
23. Lastly, the issue of 4 hours being billed for the removal and installation of a range hood. A first point to note is that a range hood is an electrical device which is connected to the electrical system of the property. By law, only a licensed electrical contractor (Electrician) is permitted to alter or make installations of electrical units under a permit issued by Service NL.

Section 18 the *Public Safety Act* reads:

Certificates etc. required

18. A person shall not sell, construct, install, control or operate a system or device or supervise, operate or undertake any process or activity of a system or device unless the person holds the appropriate validated certificate, licence, or permit required by this Act or the regulations.

Section 4(1) Electrical Regulations under the *Public Safety Act* reads:

Electrical work qualifications

4. (1) A person shall not do electrical work unless he or she
 - (a) is a registered contractor who holds an installation and repair permit;
 - (b) holds an electrical certificate and is an employee of a registered electrical contractor who holds an installation and repair permit;
 - (c) holds an electrical certificate and is an employee or agent of the holder of a maintenance permit;
 - (d) is the employee or agent of a company hired to supply and maintain highly specialized electrical equipment like medical equipment, computer systems and controls

and instrumentation, including the commissioning, maintenance and repair of this equipment, and applies in writing to the chief inspector for permission under subsection (2) and is granted that permission;

(e) is a registered apprentice working under the direct supervision of the holder of an electrical certificate where the holder of that certificate

(i) is a registered contractor who holds an installation and repair permit,

(ii) is an employee of a registered contractor who holds an installation and repair permit, or

(iii) is an employee or agent of the holder of a maintenance permit; or

(f) has been authorized by the chief inspector to complete all or portions of electrical work as provided for by the provisions of subsection 12(1).

24. There is no indication in the evidence to suggest that a permit was acquired or even that the work was completed by a certified electrical contractor registered with the Province. This is probably an explanation why it took a carpenter 4 hours to complete a task that should reasonably take less time. A further question would be was the range hood replaced because it was damaged electrically or merely dirty? If it's the former, then all the more reason to have an electrical professional make the assessment.
25. There is no question that the tenant caused damage to the unit from the fire incident which resulted in the required cleaning and painting. I do question the invoice as indicated above. The photos show that the area including the range hood does have black soot on it. This indicates only that it was dirty. Whereas it may very well have been easier to replace, it may not have been necessary and unlikely could have been cleaned to a useable standard for less.
26. I do not accept the markup charge as indicated at 20% as a charge attributable to the tenant without justification. Further, I do not accept the labor charge for the installation of an electrical unit by a carpenter when the Provincial Law prohibits such. Lastly, I do not accept the additional miscellaneous charge of \$20 as this has not been explained anywhere.
27. I do reluctantly accept the other labor and materials charges as there were damages caused at the hands of the tenants who ultimately accept that level of responsibility.

28. As such I find that the tenants are responsible for the following:

a. Invoiced amount -	\$1998.00
b. Less Mark-up Charge -	(333.00)
c. Less: Miscellaneous Charge -	(20.00)
d. Less: Range Hood Labor -	(200.00)
e. Subtotal	\$1445.00
f. HST	<u>216.75</u>
g. Total owing by Tenants	<u>\$1661.75</u>

Decision

29. The landlord's claim for damages succeeds in the amount of **\$1661.75**.

Summary of Decision

30. The landlords are entitled to the following:

a) Compensation for Damages	\$1661.75
c) Total owing to Landlords	\$1661.75

08 April 2020

Date



Michael Greene
Residential Tenancies Tribunal