

Residential Tenancies Tribunal

Decision 20-0014-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:00 pm** on **04 November 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador and via Bell Teleconferencing System.
2. The applicant, [REDACTED] ([REDACTED]), hereafter referred to as landlord1, participated in the hearing. (*Affirmed*).
3. The applicant, [REDACTED] ([REDACTED]), hereafter referred to as landlord2, participated in the hearing. (*Affirmed*).
4. The respondent, [REDACTED] ([REDACTED]), referred to as the tenant, participated in the hearing. (*Affirmed*).
5. In a proceeding under the *Residential Tenancies Act*, 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 affidavit submitted by the landlords show that the tenant was served with the notice of this hearing on the **26 February 2020** by serving the original documents to the tenant at the email: [REDACTED].

There were several re-scheduling's of this file and parties were served by the Residential Tenancies Office.

Issues before the Tribunal

7. The landlords are seeking the following:
 - a) Payment of rent owing **\$1300.00**;
 - b) Payment of late fees **\$75.00**;
 - c) Damages **\$3560.75**
 - d) Apply Security Deposit
 - 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:
 - a. Sections 19, 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 9-3: *Claims for Damages to Rental Premises*, and;
 - d. Policy 9-5: *Life Expectancy of Property*.

Issue 1: Rent Owning - \$1300.00

Relevant Submissions

Landlord Position

10. The landlords stated that they had entered into a written fixed term tenancy with the tenant with rent set at \$650.00 per month and due on the 1st day of each month and a security deposit in the amount of \$500.00 collected on this tenancy on or about 01 August 2018. The tenancy was set to expire on 31 January 2020. The landlords testified that rent is outstanding in the amount of **\$1300.00** up to and including 31 January 2020. The landlord issued a termination notice on 04 January 2020 for the intended termination date 15 January 2020 but did not submit a copy into evidence.
11. The landlords submitted into evidence rental records (**Exhibit L # 2**) along with the rental agreement (**Exhibit L # 1**).
12. The landlords are claiming rent for the period ending 31 January 2020 in the amount of **\$1300.00**. The landlords' claim for rent for January 1 – 31, 2020 is claimed as lost rent due to the requirement for damages to be repaired and personal items abandoned, to be removed.

Tenant Position

13. The tenant testified that he did not pay for rent in December 2019 nor did he pay for January 2020. The tenant testified that he vacated on 31 December 2019 and was sinking in debt. The tenant testified that a friend went back to the property and found a notice of abandonment on the door.

Analysis

14. I have reviewed the testimony and evidence of the landlords and tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the rent that is being claimed by the landlords actually owed by the tenant.
15. With respect to the arrears being claimed, the tenant has acknowledged he did not pay for December 2019 as he was sinking in debt.
16. 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.
17. The landlords are claiming for the month of December 2019 claiming rent was not paid as indicated by the rental records. I accept the landlords' records as accurate.
18. Rent for January 1 – 31, 2020 is being claimed as lost rent due to damages and removal of personal items. It has been determined below that the landlords' claim for damages has succeeded and thus there would be a valid claim for lost rent for repairs.

Decision

19. I find the landlords' claim for rent is successful in the amount of **\$1300.00**.

Issue 2: Payment of Late Fees - \$75.00

Landlord Position

20. The landlords are seeking payment of late fees as a result of the tenant's failure to pay rent on time.
21. The landlords testified that the tenant owes rent for December 2019. The landlords indicated that they are claiming late fees allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

22. Established by undisputed fact above, the tenant does owe rent for the period ending 31 December 2019 as arrears. 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.
23. As the tenant owed rent for December 2019 and rent remains outstanding as of the hearing, a late fee is applicable. A calculated amount of late fees for the month of December 2019 to the hearing date of 04 November 2020 would exceed the maximum allowable of \$75.00. As such, the landlords' claim succeeds in the amount of \$75.00.

Decision

24. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 3: Compensation for Damages - \$3560.75

Relevant Submissions

Landlord Position

25. The landlords testified that on or about 15 January 2020 the property was recovered and damages were noted. The landlords testified that the following was noted:
 - a. Clean Property and Removed Belongings **(\$620.80)**
 - b. Repair and Plaster Holes in Walls **(\$504.40)**
 - c. Painting the property **(\$1202.80)**
 - d. Replace Broken Window **(\$1132.75)**
 - e. Waste Management Fee **(\$100.00)**
26. The landlords submitted photos of the damages being claimed (**Exhibit L # 4**) along with a breakdown of the claim (**Exhibit L # 3**) and a quote from Val-U Construction Ltd. (**Exhibit L # 6**) in the amount of **\$1132.75** for the installation of the living room window.
27. The landlords testified that there were fist holes in the walls from some sort of a fight. They further added that the tenant smoked in the property and because of this the property required a complete painting. The landlords are claiming for 26 hours of labor to repair the holes in the walls along with 62 hours to paint the entire house both at a labor rate of \$19.40 per hour.

28. The landlords testified they were advised by the tenant that the window was broken as the result of a wind storm.
29. The landlords are also seeking compensation for the cleaning of the property and removal of personal belongings in self-labor in the amount of **\$620.80** for 32 hours labor at a rate of \$19.40 per hour. The landlords referred to the photos to demonstrate the cleanliness and the belongings left behind belonging to the tenant.
30. The landlords testified that they did file an affidavit of Abandoned Personal Property seeking permission to dispose of the belongings as per section 32 of the *Residential Tenancies Act, 2018*. They further added that the tenant gave permission to dispose of the personal items left in the property.
31. The landlords are seeking \$100.00 for the disposal fees at the landfill but has failed to provide any receipts for this cost.

Tenant Position

32. The tenant testified that he accepted responsibility for the damages of the interior of the property. He stated that he has severe mood swings as he is bi-polar. He further added that some of the damages were the result of a fight between friends at the property and noted that the RCMP were involved with the altercation.
33. The tenant further added that the window was broken as a result of a wind storm in the area so he does not accept responsibility for this claimed damage.

Analysis

34. The basis of determining awards for any damage claim is the same. The applicant holds the burden of proof and in cases associated with Residential Tenancies is “on the balance of probabilities”.
35. In presenting a claim the applicant is required to
 - a. show that a damage exists;
 - b. show that the respondent is liable for the damages and;
 - c. show a cost for the repair or replacement of the damages.
36. On the matter above, all items of the test have been determined and I am satisfied that the landlords have met the burden of on the balance of probabilities as it relates to the damages to the walls, painting, cleaning and labor to remove items abandoned at the property. The tenant has acknowledged responsibility for interior damages. I do, however, find that the amount of labor being claimed for the cleaning, removal of items, plastering and painting to be excessive based on

the photos presented in evidence. In addition, there is no clear evidence to indicate how old the painted surface was at the end of the tenancy. We only know that the landlord purchased the property in August 2017 making it approximately 3 ½ years old at the end of the tenancy.

37. The claim for cleaning and removal of items is excessive. The photos show a fair amount of items left in the property, but 32 hours exceeds what the evidence depicts would be reasonably necessary. I find that 20 hours is more within reason to clean the unit and remove the items remaining. The landlord is claiming a rate of \$19.40 per hour which is an allowable labor rate and thus the total claim for cleaning and item removal is successful in the amount of **\$388.00**.
38. The claim for repairs, gyproc and plastering is 26 hours which I find to be excessive for the work depicted by the evidence photos. I find that 15 hours is more reasonable and still provides time to complete the work. I find the tenant responsible for plastering in the amount of **\$291.00** (15 hours @ \$19.40 per hour).
39. The claim for painting is similarly excessive at 62 hours. There was no indication that any ceilings had to be painted so if they were, that would be at the landlords' discretion. Painting bare walls (after repairs to the gyproc) in an empty apartment is considered basic painting and can move quickly. This is subject to of course that painting of the full apartment is required. The landlord claims that the tenant smoked in the unit which forced him to paint the entire apartment. There is no clear evidence of this. I find that ½ this labor claim (31 hours) is considered reasonable based on the evidence presented at the hearing.
40. Further, paint is depreciable and we know that the painted surface was at least 3 ½ years old at the conclusion of the tenancy. Given there is no clear indication of the age, I find that any depreciate award with reflect 1/5th of any reasonably adjusted claim cost noted.
41. The depreciated award for painting then is 1/5th of \$601.40 (31 hours X \$19.40) = **\$120.28**.
42. The claim for replacing a broken window and the cost of dump fees have not been established or supported with evidence. I find that the landlords have not established liability of the tenant for the breakage of the window through a willful or negligent manner. In addition, the landlords have not provided any valuation in the form of receipts for the waste management fees and as such, these claims fail.

Decision

43. The landlords' claim for damages succeeds in the amount of **\$799.28** (\$388.00 + \$291.00 + \$120.28).

Issue 4: Hearing Expenses

Landlord Position

44. 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 # 4**). The landlords are seeking this cost.

Analysis

45. I have reviewed the testimony and evidence of the landlords 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

46. The tenant shall pay the reasonable expenses of the landlords in the amount of \$20.00.

Issue 5: Application of Security Deposit

Landlord Position

47. The landlords testified that a security deposit in the amount of \$500.00 was paid on the property on or about 01 August 2018. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.

Analysis

48. Established by undisputed fact above, the tenant did pay a security deposit to the landlords in the amount of \$500.00. The landlords' claim has been successful. The security deposit plus accrued interest is \$500.00 as the interest rate for 2018 - 2020 is set at 0%.

Decision

49. As the landlords' claim above has been successful, the landlords shall offset the security deposit being held as determined in the attached Order.

Summary of Decision

50. The landlords are entitled to the following:

a)	Damages	\$799.28
b)	Rent	1300.00
c)	Late Fees.....	75.00
d)	Hearing Expenses	<u>20.00</u>
d)	Subtotal.....	\$2194.28
e)	LESS: Security Deposit	<u>(\$500.00)</u>
f)	Total owing to Landlords	<u>\$1694.28</u>

11 January 2021

Date



Michael Greene
Residential Tenancies Tribunal