

Residential Tenancies Tribunal

Decision 20-0050-03

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **1:30 pm on 11 February 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], hereafter referred to as the tenant participated in the hearing but was represented by [REDACTED] (*Affirmed*)
3. The respondent, [REDACTED], hereafter referred to as the landlord participated in the hearing and was represented by [REDACTED] (*Affirmed*).
4. The details of the claim were presented as a written fixed term agreement with rent set at \$6500.00 per month. Rent was due on the 1st of each month and a security deposit in the amount of \$4500.00 was collected on or about 14 November 2019.
5. 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

6. The affidavit submitted by the tenant shows that the landlord was served with the notice of this hearing on the **24 November 2020** by serving the application for dispute resolution document to the landlord's representative via email: [REDACTED] and [REDACTED] and providing a copy of the email sent.
7. The affidavit submitted by the landlord shows that the tenant was served with the notice of this hearing on the **21 December 2020** by serving the application for dispute resolution document to the tenant's representative via email: [REDACTED] and providing a copy of the email sent.
8. The tribunal amended the claim of the landlord during the writing process to separate the claim for rent owing to a separate heading from damages as the two items are treated differently.

Issues before the Tribunal

9. The tenant is seeking the following:
 - a) Hearing Expenses;
 - b) Refund of Security Deposit
10. The landlord is seeking the following:
 - c) Compensation for Damages **\$4036.50**;
 - d) Compensation for Inconvenience **\$253.00**;
 - e) Rent Owing **\$723.40**
 - f) Hearing Expenses;
 - g) Application of Security Deposit

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

Issue 1: Compensation for Damages - \$4036.50

Relevant Submissions

Landlord Position

13. The landlord testified that the tenant entered into a written fixed term rental agreement on 14 November 2019 with rent set at \$6500.00 per month inclusive of all utilities and due on the 1st of each month. A security deposit in the amount of \$4500.00 was collected on or about 14 November 2019.
14. This rental was between two commercial companies for the residential housing of employees belonging to [REDACTED].
15. The landlord testified that when the property was recovered it was noticed that there were several deficiencies in the condition of the property itemized as:

a. Cleaning Services	\$887.80
b. Repair Hardwood Flooring	2645.00
c. Repair Master Shower Seal	109.25
d. Repair Master Bath Baseboards	81.65
e. Repair Towel Rack	74.75
f. Replace Queen Sheets	140.30
g. Replace Fridge Shelf	<u>97.75</u>
h. Total	<u>\$4036.50</u>
16. The landlord submitted into evidence a copy of a revised invoice to the tenant from the landlord (**Exhibit L # 4**) as well as referred to the photos of the claimed damages (**Exhibit L # 3**) to demonstrate the condition of the property.
17. Regarding the ages of the damaged items above, the landlord indicated that the items were approximately 4 years old.
18. The landlord stated that the shelf in the fridge was cracked, the seal in the shower was torn and required replacement, the hardwood floors were scratched and dented and the property was smoked in which could be seen because of the cigarette ashes all over the floor.
19. The landlord added that the property was a non-smoking property as outlined in the rental agreement. The landlord added that a walk through was completed between the parties on 03 July 2020 and the results of this walk through was not put in writing. The landlord contends that the property was damaged.
20. The landlord called a witness, [REDACTED] – Affirmed, who testified that he did the walk through on 03 July 2020 which was not put in writing. The witness testified that he took the photos in evidence and they were taken on either 03, 04 or 05 July 2020. He indicated that he authorized extra cleaning (clean the walls and curtains etc.) as the unit was smoked in. Lastly he stated that the obvious damages (towel bar and fridge) were discussed with the representative of the

tenant company on site.

Tenant Position

21. The tenant disputes this claim as presented. The tenant referred to their written submission and stated that the landlord has presented no evidence of the damages nor any receipts for the costs charged. The tenant indicated it is his opinion that the cleaning charges are completely absurd.
22. The tenant called the project manager, [REDACTED] (*Affirmed*), who stated that they finished with the unit on 30 June 2020 and completed a walk through on 03 July 2020. He stated that he was called by [REDACTED] who completed the walk through on a conference call during the said walk through. He stated there was no indication of any smoke damage, hardwood damage or any issues with the bathroom seal.

Analysis

23. I have reviewed the testimony and evidence of the landlord and tenant in this portion of the claim. 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
24. The landlord could not provide a move out inspection report signed by both parties as one does not exist. Similarly, there was no move in inspection report submitted and I can only assume that none also exists. There were no photos presented to establish the condition of the property prior to the tenant taking possession. This would be referred to as the baseline condition for the tenancy.
25. The burden of proof rest solely with the applicant for the claim and in this case for the damages, rests with the landlord. The burden of proof is referred to as "on the balance of probabilities" which is 50% + 1.
26. I accept that the landlord's photos of the damages that were taken at some point before what it indicates in the meta data (20 December 2020). The landlord's own witness wasn't even sure if it was 03, 04 or 05 July 2020.
27. The landlord's invoice for repairs is an invoice from the company (landlord) to the tenant. It is very much a summary of the claim and not an invoice this tribunal can depend on as an independent valuation of the replacement. There has been no invoices, receipts or estimates presented to establish the valuation of the repairs (ie: cleaning receipts, receipts for the purchase of supplies, hardwood repair, seal replacement, etc.)

28. The evidence that has been presented shows that there was some deficiencies and the time the photos were taken. There is no indication of the need for any extra cleaning other than a picture with some ashes on the floor. This indicates only that a cigarette was in the house but not that the home was continually smoked in to create extensive nicotine damage. Further, this tribunal has no baseline to establish what the condition was like at the onset of the tenancy. Was there damage to the hardwood prior to the tenant, was the seal broken prior to the tenant.

29. In addition section 10(1) (2) of the *Residential Tenancies Act, 2018* deals specifically with the obligations of a tenant and reads;

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

30. The tenant in their defense indicates that they were not under contract for cleaning but I defer them to the above section of the legislation which dictates the obligations of a tenant even though it may not be specifically in their lease agreement. The tenant is responsible only for damage caused by a willful or negligent act meaning normal and reasonable wear and tear is not considered.

31. I address one item of damage and specifically the dents on the hardwood. First, there is no baseline to establish if this was present prior to the tenant taking possession. Secondly, the property was furnished by the landlord and there was no indication if the landlord had applied felt pads or some other protective pads on the furniture that may have created this damage through the normal use of the furniture. These are just two questions raised around this portion of the claim.

32. After consideration of the totality of the evidence and review of the lease and legislation, I find that the landlord has failed to substantiate the claim against the tenant for the claimed damages. As such, the landlord's claim for damages does not succeed.

Decision

33. The landlord's claim for damages fails.

Issue 2: Rent Owing - \$723.40

Relevant Submissions

Landlord Position

34. The landlord stated that the tenant had over stayed their tenancy for the period of July 1 -3, 2020 and they are claiming \$241.13 per day for the period. The landlord referred to the invoice from the company (**Exhibit L # 4**) showing rent charged at \$629.04 plus HST for a total of \$723.40.

Tenant Position

35. The tenant testified that they were moved from the unit on 30 June 2020 and did the walk through inspection with the landlord on 03 July 2020. The tenant disputes the charge for rent as they were not living in the unit and submitted a copy of the daily log report (**Exhibit T # 3**). The tenant indicates that this report clearly indicates the activities of the employees on that day and that the house was vacated in the morning of 30 June 2020.

Analysis

36. I have reviewed the testimony and evidence of the landlord 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 landlord actually owed by the tenant.
37. Before the question of rent owing is addressed, I will address the charging of rent as claimed by the landlord. Residential rent is not a taxable item as is the case with commercial rent on commercially let spaces. In this regard the HST applied by the landlord would not be permissible. Additionally, daily rent is calculated based on annual rent and calculated as follows:
- a. $(\text{Rent} \times 12 \text{ months} = \text{the annual amount of rent} \div 366 \text{ days of the year} = \text{the daily rate of rent} \times \text{number of days in question} = \text{the amount of rent owed})$
 - b. The calculated amount for this claim to be addressed is: $\$6500.00 \times 12 \text{ months} = \$78,000.00 \div 366 \text{ days} = \$213.11 \times 3 \text{ days} = \mathbf{\$639.33}$.
38. 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.
39. The landlords claim for the three days of July (July 1 – 3, 2020) as extra days the tenant occupied the property is again only a claim of the landlord. There has been no evidence led to indicate that the tenant was occupying the unit, or that a termination notice was or was not provided. The landlord has presented a claim

in hopes that statements of the landlord will be accepted as fact and accurate. This is not how a claim works. The tenant has in the very basic form show a daily log entry that seem to indicate that they vacated on the 30 June 2020. Still at the basics is the question, was the tenancy terminated as required. Neither party supplied a copy of the termination notice into evidence on the day of the hearing to make the argument for or against.

40. I do note that a termination notice was submitted to be added to the file of possible evidence to be submitted by the tenant, but was never led into evidence at the hearing. It is not this tribunal's job to build or consider evidence not addressed at the hearing. It is only the role of the tribunal to examine all evidence submitted at the hearing.
41. Based on the totality of the evidence submitted, I find that the landlord has again not substantiated their claim that any rent is owed by the tenant for this tenancy. As such, the landlord's claim for rent fails.

Decision

42. I find the landlords' claim for rent fails.

Issue 3: Compensation for inconveniences - \$253.00

Relevant Submissions

Landlord Position

43. The landlord stated that the management had to spend time facilitating the move out process and for this is charging \$253.00. The landlord referred to the invoice from the company (**Exhibit L # 4**) showing the management charged at \$220.00 plus HST for a total of \$253.00.

Tenant Position

44. The tenant stated that they were never under contract for any management fees and thus disputes the claim.

Analysis

45. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) is the management fee that is being claimed by the landlord actually owed by the tenant.

46. There are basic duties of a landlord that are required as part of actually being a landlord. These include but certainly not limited to the completion of inspections, collections of rents, organizing and completing regular maintenance and organizing move outs including inspections. The arranging of a move out of a tenant is seen as a cost of doing business for a landlord and a regular task normally completed by the landlord. This is not a charge that would be attributable back to the tenant as an inconvenience. As such, I find that the landlord's claim for inconvenience does not succeed.

Decision

47. I find the landlord's claim for inconvenience fails.

Issue 4: Application/Refund of Security Deposit

Landlord Position

48. The landlord testified that a security deposit in the amount of \$4500.00 was paid on the property on or about 14 November 2019. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
49. The landlord acknowledges holding the security deposit in the amount of \$4500.00.

Tenant Position

50. The tenant is seeking a refund of the security deposit paid in the total amount of \$4500.00 and submitted a copy of the receipt for the security deposit payment **(Exhibit T # 1 and 2)**.

Analysis

51. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$4500.00.
52. The landlord's claim has been unsuccessful as indicated above. The security deposit plus accrued interest is \$4500.00 as the interest rate for 2019 – 2021 is set at 0%.
53. As the landlord's claim is not successful, there is no claim against the security deposit being held by the landlord. The security deposit is an asset of the tenant to be held against any loss incurred by the landlord attributed to the tenancy. In this matter, it has been determined that there was not an attributable loss and as such, the tenant is entitled to a refund of the security deposit in the amount of \$4500.00.

Decision

54. As the landlord's claim above has been unsuccessful, the landlord shall refund the security deposit being held to the tenant.

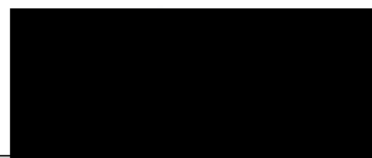
Summary of Decision

55. The tenant is entitled to the following:

- a) Refund of Security Deposit\$4500.00
- b) **Total owing to Tenant**.....**\$4500.00**

25 February 2021

Date



Michael Greene
Residential Tenancies Tribunal