

Residential Tenancies Tribunal

Decision 20-0057-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **18 February 2021** 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], hereafter referred to as tenant1, participated in the hearing. (*Affirmed*)
3. The applicant, [REDACTED], hereafter referred to as tenant2, participated in the hearing. (*Affirmed*)
4. The respondent, [REDACTED], hereafter referred to as landlord1, participated in the hearing. (*Affirmed*)
5. The respondent, [REDACTED], hereafter referred to as landlord2, participated in the hearing. (*Affirmed*)
6. 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 applicants have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

7. The claim was inadvertently double booked for a 9:30 am slot. This hearing was postponed to 10:00 am and at that time all parties logged into the teleconference and the hearing proceeded.

8. The affidavit submitted by the landlords show that tenant1 and tenant2 were served with the notice of this hearing on the **22 December 2020** by serving the documents to the tenants at the email address: [REDACTED] and attaching a copy of the sent documents to confirm service.
9. The affidavit submitted by the tenants show that landlord1 and landlord2 were served with the notice of this hearing on the **22 December 2020** by serving the documents to the tenants at the email address: [REDACTED] and attaching a copy of the sent documents to confirm service.

Issues before the Tribunal

10. The tenants are seeking the following:
 - a. Refund of Security Deposit
11. The landlords are seeking the following:
 - a. Compensation for damages **\$849.59**
 - b. Hearing expenses **\$25.00**
 - c. Application of Security Deposit

Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. Also relevant and considered in this case are:
 - a. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF.*
 - b. Policy 9-2: *Claims and Counterclaims;*
 - c. Policy 9-3: *Claims for Damages to Rental Premises;*
 - d. Policy 9-5: *Life Expectancy of Property;*
 - e. *Study of Life Expectancy of Home Components.* National Association of Home Builders/ Bank of America Home Equity. February 2007

Issue 1: Compensation for Damages - \$849.59

Relevant Submissions

Landlord Position

14. The landlords testified that when the property was recovered it was noticed that the following items were damaged as outlined:

- a. Replace Window Screen (Back Door)
 - b. Replace Vinyl Flooring
 - c. Replace Fire Extinguisher
 - d. Replace Carbon Monoxide Detector
 - e. Replace Crisper in the Fridge
 - f. Paint Living Room & Dining Room
15. The landlords submitted into evidence a copy of the breakdown of the damages (**Exhibit L # 1**) along with photos of the claimed damages (**Exhibit L # 2**). The landlords testified that the photos were taken on 20 December 2019 and 17 November 2020.
 16. The landlords testified that the screen insert in the back door was missing when the property was recovered. The landlords referred to the photos (**Exhibit L # 2**) and submitted a copy of an estimate for the replacement (**Exhibit L # 7**) from Home Hardware in the amount of \$189.75. The landlords testified that the door itself was approximately 10 years old.
 17. The landlords testified that there was a burn hole in the vinyl in the back portion of the house and is claiming for the replacement of same. The landlords stated that the vinyl was 10 years old (installed July 2011) and submitted a receipt for the original cost of \$280.00 (**Exhibit L # 3**) and referred to the photos to demonstrate the damages.
 18. Further, the landlords testified that the crisper in the fridge was broken when the tenants vacated and referred to the photos (**Exhibit L # 2**) and presented an online quote for the replacement (**Exhibit L # 4**) in the amount of \$124.63.
 19. The landlords are claiming for a missing carbon monoxide detector and stated that the unit would be approximately 10 years old. The landlords submitted an estimate for the replacement of the unit (**Exhibit L # 6**) from Home Hardware.
 20. The landlords are claiming for the repainting of the living room and dining room because the tenants applied decals and when they were removed, the paint came off the wall. The landlords referred to the submitted photos to demonstrate the damages and referred to an online estimate from Home Hardware for the purchase of 4 Gallons of paint (**Exhibit L # 10**) in the amount of \$137.95.
 21. The landlords testified that there was a fire shortly after the tenants moved into the property which involved the usage of the Fire Extinguisher on site. The landlords are claiming tenants' negligence and, therefore, responsibility to replace the extinguisher. The landlords presented an online estimate in the amount of \$74.73 from Home Hardware (**Exhibit L # 5**). The landlords further added that the extinguisher was 10 years old and there was no insurance claim as a result of the fire. There was no details related to the fire, its cause, or the ensued damage.

Tenant Position

22. The tenants testified that the fire in the property was not their fault and therefore they are not responsible. The tenants dispute the claim for the fire extinguisher.
23. The tenants testified that the house was not painted prior to them moving into the unit and that there were people living in the unit 7 years prior to them. The tenants dispute the claim to repaint the property. The tenants acknowledged under questions from the board that they did apply decals to the wall and paint came off as they were removed.
24. The tenants took responsibility for the replacement of the door screen. They explained that it was an oversight when they were taking a load of garbage to the dump, it ended up in the pile for garbage and apologized for that.
25. The tenants testified that the crisper being claimed was already damaged when they moved into the property.
26. The tenants lastly testified that they did not damage the vinyl flooring. They question the claim as they moved from the property and it wasn't until 3 months after they moved out that the landlords claimed for damages.

Analysis

27. I have reviewed the testimony and evidence of the landlords and tenants in this matter. The applicants are 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
28. The landlords in this matter have not established a baseline of the condition of the property through either an incoming inspection report or a series of photos/videos showing the condition of the property prior to the tenants taking possession of the property.
29. Similarly, the landlords speak of a fire in the property yet do not provide any details on the fire and claims that it resulted from the negligence of the tenants. The tenants deny responsibility for the fire and the majority of the claim with the exception of the door screen. As the tenants have taken responsibility for this item in the claim, I find them responsible. A door has a useful life expectancy of 15 years in a rented premises and as such a depreciated replacement value will be calculated for this item based on the life expectancy as follows: $(\$189.75 \div 15 \text{ years} = \$12.65/\text{year} \times 5 \text{ years remaining} = \$63.25)$. The depreciated replacement value of the screen door insert is **\$63.25**.

30. I also note that the majority of the items being claimed are 10 years old and for the most part have outlived their useful life expectancy. The tenants have acknowledged applying decals to the walls and when removed, paint was also removed. The landlords are claiming for only the painted surface and not plaster repair. Paint in a rented premises is assessed to have a useful life of 5 years. Evidence is such that the tenants were there for approximately 1 year and indications are that previous tenants were there for 5 years previous to that. There was no indication that the unit was painted prior to the current tenants taking possession. As such, I find that the painted surface has outlived its useful life and would be considered fully depreciated and in need of replacement. This portion of the landlords' claim fails.
31. For the balance of the claim including the crisper damage, the carbon monoxide detector, the vinyl flooring and the fire extinguisher, the landlords have failed to establish that the tenants are liable for the damages either by not establishing a baseline of the condition of the property or by showing tenants' negligence respective of the fire. As such, the balance of the landlords' claim for damages does not succeed.

Decision

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

a. Door Screen Replacement	\$63.25
b. Total	<u>\$63.25</u>

Issue 2: Application of Security Deposit

Landlord Position

33. The landlords testified that a security deposit in the amount of \$350.00 was paid on the property on or about 01 November 2019. The landlords are seeking permission to apply the security deposit against the order issued by the tribunal.

Tenant Position

34. The tenants are seeking the refund of the security deposit.

Analysis

35. Established by undisputed facts above, the tenants did pay a security deposit to the landlords in the amount of \$350.00. The landlords' claim has been only partially successful and the tenants owe the landlords for damages. The interest rate set out by the Minister on security deposits for 2019 - 2020 is set at 0%. The security deposit plus accrued interest then is \$350.00.

Decision

36. As the landlords' claim above has been partially successful, the landlords shall apply the security deposit being held against any amount outstanding as directed in the attached order.

Issue 3: Hearing Expenses

Landlord Position

37. 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 landlords paid a fee to the swearing of documents in the amount of **\$5.00 (Exhibit L # 9)** The landlords are seeking these costs.

Analysis

38. 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 tenants are responsible to cover these reasonable expenses.

Decision

39. The tenants shall pay the reasonable expenses of the landlords in the amount of **\$25.00**.

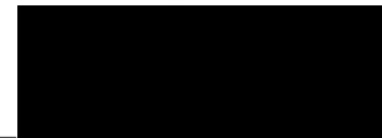
Summary of Decision

40. The tenants are entitled to the following:

a)	Security Deposit.....	\$350.00
b)	LESS: Damages	(63.25)
c)	LESS: Hearing Expenses	<u>(25.00)</u>
d)	Total owing to the tenants	<u>\$261.75</u>

03 March 2021

Date



Michael Greene
Residential Tenancies Tribunal