

## Residential Tenancies Tribunal

Decision 20-0071-03

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **9:30 am on 29 March 2021** 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. (*Affirmed*)
3. The respondent, [REDACTED], hereafter referred to as landlord1 participated in the hearing (*Affirmed*).
4. The respondent, [REDACTED], hereafter referred to as landlord2 participated in the hearing (*Affirmed*).
5. The details of the claim were presented as a verbal monthly agreement with rent set at \$650.00 per month and rent due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$325.00 was collected on or about 01 August 2020.
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 tenant shows that the landlords were served with the notice of this hearing on the **15 January 2021** by serving the application for dispute resolution document to the landlords via email: [REDACTED] and providing a copy of the email sent.
8. The affidavit submitted by the landlords show that the tenant was served with the notice of this hearing on the **26 January 2021** by serving the application for dispute resolution document to the tenant via email: [REDACTED] and providing a copy of the email sent.

## Issues before the Tribunal

9. The tenant is seeking the following:
  - a) Hearing Expenses;
  - b) Refund of Security Deposit **\$325.00**
10. The landlords are seeking the following:
  - c) Compensation for Damages **\$972.99**;
  - d) Hearing Expenses;
  - e) Application of Security Deposit **\$325.00**

## 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:
  - 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 - \$972.99

### Relevant Submissions

#### Landlord Position

13. The landlords testified that the tenant entered into a verbal monthly rental agreement and the landlords provided permission to the tenant to paint in the apartment.
14. The landlords indicated that the tenant did not finish painting the property prior to leaving and the paint job that the tenant did was poorly done showing paint had been spilled on the floor, trims, switch plates, HRV diffusers and toilet accessories.
15. The landlords presented a series of move-in photos (**Exhibit L # 9**) and a series of photos to demonstrate the damages (**Exhibit L # 1**). The landlords are claiming for the replacement of switch and receptacle plates, HRV diffusers, bathroom towel rack and accessories, a broken blind, replacement of a wobbly kitchen faucet, toilet shims and a cabinet piano hinge. The landlords submitted into evidence receipts as follows:
  - a. Kent Building Supplies (Bath Accessories): \$41.26 (**Exhibit L # 6**)
  - b. Kent Building Supplies (Blind): 25.29 (**Exhibit L # 7**)
  - c. Shears Building Supplies (Hinge, shims, diffusers, brushes, rollers): 60.23 (**Exhibit L # 4**)
  - d. Canadian Tire: 105.28 (**Exhibit L # 5**)
  - e. Dulux Paints (Paints and rollers) 85.56 (**Exhibit L # 2**)
  - f. Dulux Paints (Paint) 36.86 (**Exhibit L # 3**)
  - g. Total** **\$354.48**
16. The landlords are further claiming for labor to complete the repairs. The landlords' labor claim is 42 hours @ \$15.00 per hour for a total of **\$630.00**. The landlords provided a breakdown of the labor hours (**Exhibit L # 10**).
17. The landlords testified that the original paint was 1 year old and the bathroom accessories were about 1.5 years old.

#### Tenant Position

18. The tenant acknowledges damaging the blind and painting the switch and receptacle plates, HRV diffusers and bathroom accessories.
19. The tenant does not accept the claim for toilet shims and the replacement faucet as she testified that the sink faucet was wobbly when she moved into the property. The tenant states she had permission to paint and that it needed a paint job. She further added that a toilet that needed shimming is not a tenant's responsibility, but is a landlords' responsibility.

## Analysis

20. I have reviewed the testimony and evidence of the landlords 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
21. Having permission to paint a property and completing the task at hand are certainly two very different things. Upon examination of the before photos and the series of after photos clearly shows that the tenant may have had permission from the landlords to paint the property, but fell short on completion and the portion completed, was poorly executed. The tenant failed to remove the covers and accessories which could have easily avoided a portion of this claim.
22. The tenant has accepted responsibility for painting the accessories, plates and diffusers in addition to damaging the blind. I find the tenant responsible for the replacement of same in the amount of **\$134.80**.
23. The tenant does not acknowledge the replacement of the kitchen faucet or the shimming of a toilet claiming it was wobbly prior to her tenancy and the toilet is not a tenant responsibility. For these items I am inclined to agree with the tenant. There is no evidence to even remotely suggest that the tenant damaged the faucet or the toilet. A wobbly toilet is more of an installation issue for the landlords to deal with. As such, I find that the tenant is not responsible for the shims or the kitchen faucet.
24. Regarding the painting, the tenant took possession of a property that was in good shape as demonstrated by the prior to move-in photos. It was the tenant's request to paint to a color appropriate to her. Once started, it would be reasonably expected that the job be completed. This did not happen and the landlords were required to repaint the property upon recovery. I find the tenant responsible for the repainting costs for materials (**\$122.42**). Labor will be addressed below.
25. The landlords are claiming for just under six 8 hour days of labor to complete the repairs. I find that this quantity of labor is reasonable for a non-professional to complete repairs. The landlords rate being claimed (\$15.00 per hour) is actually under the maximum allowable by Residential Tenancies. However, at least two of the repairs (toilet and faucet) have been disallowed and therefore any associated labor would also have to be disallowed. The landlord breakdown is not clear on how many hours was claimed for the repair to the toilet and faucet so I will assign an arbitrary amount. I find that 2 hours will be deducted from the labor claim leaving 40 hours @ \$15.00/hour the responsibility of the tenant. I find the tenant responsible for the labor to complete all the repairs in the amount of **\$600.00**.

## **Decision**

26. The landlord's claim for damages succeeds in the amount of **\$857.22**.

## **Issue 2: Application/Refund of Security Deposit**

### Landlord Position

27. The landlords testified that a security deposit in the amount of \$325.00 was paid on the property on or about 14 July 2020. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.
28. The landlords acknowledge holding the security deposit in the amount of \$325.00.

### Tenant Position

29. The tenant is seeking a refund of the security deposit paid in the total amount of \$325.00.

## **Analysis**

30. Established by undisputed fact above, the tenant did pay a security deposit to the landlords in the amount of \$325.00.
31. The landlords' claim has been unsuccessful as indicated above. The security deposit plus accrued interest is \$325.00 as the interest rate for 2020 – 2021 is set at 0%.
32. The security deposit is an asset of the tenant to be held against any loss incurred by the landlords attributed to the tenancy. In this matter, it has been determined that there was an attributable loss and as such, the landlords shall offset the security deposit as outlined in the attached order.

## **Decision**

33. The landlords shall offset the security deposit as outlined in the attached order.

**Summary of Decision**

34. The landlords are entitled to the following:

- a) Compensation for Damages .....\$857.22
- b) **LESS: Security Deposit**..... **(\$325.00)**
- c) **Total owing to Landlords** .....**\$532.22**

20 April 2021

**Date**



**Michael Greene**  
**Residential Tenancies Tribunal**