

Residential Tenancies Tribunal

Decision 20-0246-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **18 November 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], ([REDACTED]) hereafter referred to as the landlord participated in the hearing. (*Affirmed*)
 - a. The applicant was represented by, [REDACTED], ([REDACTED]) and participated in the hearing. (*Affirmed*)
3. The respondent, [REDACTED], ([REDACTED]) hereafter referred to as tenant1 did not participate in the hearing but was represented by their solicitor [REDACTED] of [REDACTED].
4. The respondent, [REDACTED], ([REDACTED]) hereafter referred to as tenant2 did not participate in the hearing but was represented by their solicitor [REDACTED] of [REDACTED].
5. The details of the claim were presented as a written fixed term agreement set to expire on 31 August 2020 and rent set at \$2400.00 per month. The landlord testified that utilities were included up to \$500.00 and rent was due on the 1st of each month. A security deposit in the amount of \$1800.00 was collected on or about 25 July 2019 and remains with the landlord.
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 the tenant [REDACTED] was served with the notice of this hearing on the **06 November 2020** by serving the application for dispute resolution document to tenant1 to the email address:
[REDACTED]
8. The affidavit submitted by the landlord shows that the tenant [REDACTED] was served with the notice of this hearing on the **06 November 2020** by serving the application for dispute resolution document to tenant2 ([REDACTED]) at the email address:
[REDACTED]
9. The landlord's claim was amended during the hearing to remove the request for compensation for inconvenience.

Issues before the Tribunal

10. The landlord is seeking the following:
 - a) Rent Owing **\$2400.00**;
 - b) Damages **\$1367.80**;
 - c) Utilities **\$584.86**;
 - d) Other **\$658.43**;
 - e) Hearing Expenses;
 - f) 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: Rent Owing - \$4100.00

Relevant Submissions

Landlord Position

13. The landlord testified that they are seeking **\$4100.00** as rent owed for the period of 01 March 2020 to 30 April 2020.
14. The landlord testified that the tenants submitted a notice to terminate in January 2020, to terminate the tenancy at the end of March 2020. The landlord advises that the tenants were notified that it was a fixed term agreement and that termination in this manner was not acceptable.
15. The landlord further advised that to mitigate any potential loss, they posted an ad on 05 February 2020 and secured a new tenant on 17 February 2020 to take possession on 01 May 2020. The landlord testified that this left the property vacant for the month of April 2020.
16. The landlord testified that they placed a notice of abandonment on the property 19 March 2020 and no response from the tenants was received so the property was recovered on 20 March 2020.
17. The landlord submitted a copy of the rental agreement (**Exhibit L # 1**), a copy of the rental Ledger (**Exhibit L # 2**) and a copy of the notice of abandonment (**Exhibit L # 3**) as evidence in this matter.

Tenant Position

18. The tenants dispute this claim stating that a notice to terminate the tenancy was provided on 29 January 2020 for the required 2 months covering February and March 2020. Further the tenants added that the landlord took possession of the property on 20 March 2020 thereby preventing the tenants from having use or occupation of the unit. It is the position of the tenants that rent was not outstanding based on the conduct of the landlord.

Analysis

19. I have reviewed the testimony and evidence of the landlord and tenants in this portion of the claim.
20. The basis of this claim is the issuance of a termination notice under a fixed term agreement. The applicable section under the legislation involved is section 18 of the *Residential Tenancies Act, 2018* and reads:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

(a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week;

(b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.

21. The appropriate section refers to “not less than 2 months before the end of the term.....”. The end of the term in a fixed term agreement is the last day of the agreement and thus the notice period for the tenants is the last two months of the agreement.
22. The landlord mitigated as required by law and secured a new tenant for 01 May 2020 as demonstrated with a copy of the new rental agreement. I find that the tenants did not provide a notice to terminate as required under section 18 of the RTA, 2018 and abandoned the rental agreement earlier than was agreed. I find the tenants responsible for rent for the period ending 30 April 2020 in the amount of **\$4100.00** as part of their contractual obligations to the rental agreement originally signed between the parties.

Decision

23. The landlord’s claim for rent owing succeeds in the amount of **\$4100.00**.

Issue 2: Payment of Utilities - \$584.86

Relevant Submissions

Landlord Position

24. The tenants testified that the rental agreement include utilities up to a value of \$500.00 per month and anything over this amount is the responsibility of the tenants. The landlord submitted copies of the NL Power Invoices for January, February and March 2020 (**Exhibit L # 4**) showing the overage of \$584.86.
25. The landlord referred to the rental agreement (**Exhibit L # 1**) to demonstrate the conditions of the signed agreement. The landlord is seeking compensation for utilities not paid for January, February and March 2020 in the amount of **\$584.86**.

Tenant Position

26. The tenants dispute this portion of the claim stating that the original ad was posted as utilities included without a cap. There was nothing submitted to support this version of the rental requirements. Additionally, the tenants advised that the agent of the landlord arrived with an agreement which read \$250.00 cap but both parties agreed to a \$500.00 cap on the utilities.
27. The tenants hold the position that the electrical account is on an Equal Payment Plan of \$466.00 per month which is below the cap and therefore they would not be responsible for any overages.

Analysis

28. There appears to be some confusion on averaged costs versus actual costs of electrical usage. It is accurate that the electrical account was on an equal payment plan, however, this amount is averaged over the previous usage in the past 12 months of the property. This is not the amount we would use to calculate any overages. The amount used to calculate overages would be the actual usage as this is an accurate reading of energy used and the overages will affect the EPP rate for the following year. As such, I accept the landlord's evidence in the NL Power invoices.
29. I find that the landlord's calculations to be accurate and find the tenants responsible for the overage of power as outlined in the rental agreement in the amount of **\$584.86**.

Decision

30. The landlord's claim for utilities succeeds in the amount of **\$584.86**.

Issue 3: Compensation for Damages - \$1367.81

Relevant Submissions

Landlord Position

31. The landlord testified that when the property was recovered it was noticed that the following items were damaged as outlined:
 - a. Interior bedroom door
 - b. Plaster/paint living room, bedroom walls & kitchen ceiling
32. The landlord testified that there was holes left in the living room wall from what appears to have been a TV mount. The landlord testified that there was no mount on the wall at the beginning of the tenancy. The landlord referred to the photos

(Exhibit L # 6) and stated that the unit was last painted in 2014. Additionally, the landlord stated that the walls in the bedroom required repair and painting as depicted in the photos along with the ceiling in the kitchen.

33. The landlord further is claiming for the replacement of an interior bedroom door that was left with a hole on the inside of the door and multiple knife holes on the exterior of the door. The landlord again referred to the photos **(Exhibit L # 6)** and supplied a receipt for the purchase of the new door **(Exhibit L # 5)** in the amount of \$117.81 and \$50.00 to install.

Tenant Position

34. The tenants dispute the claim stating that the toilet was leaking from around the base of the toilet and the seal was gone. The tenants takes the position that the landlord was aware of the mold as the landlord provided the tenants with a dehumidifier. The tenants referenced a message from the landlord dated 17 June 2020 that he would enter to complete some repairs **(Exhibit T # 2)**.
35. The tenants accepted responsibility for the replacement of the interior door.
36. The tenants disputes the balance of the damage claim stating that when they took possession of the property, the ceiling in the kitchen was like the picture shown by the landlord and as such, would be the responsibility of a previous occupant.
37. Similarly, when they took possession there was a headboard screwed to the wall which they removed and placed in the basement. This is not a damage that was caused by them.
38. Lastly, the tenants sees the screw holes in the wall from the mounting of a TV to be normal wear and tear of a property. The tenants acknowledges mounting a TV in this area.

Analysis

39. I have reviewed the testimony and evidence of the landlord and tenants in this portion of the claim. The landlord 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
40. There has been no incoming inspection reports or photos presented to establish the condition of the property prior to these tenants taking possession. This sort of evidence would establish a baseline of the condition of the unit and establish liability.

41. As such, I have no way to determine if the tenants are responsible for the bedroom wall damage nor the kitchen ceiling. The applicant has simply failed to support the claim and failed to show that the tenants are liable. As such, the claim for damages to the bedroom wall and kitchen ceiling fails.
42. The installation of a TV mount is a different claim. The tenants have acknowledged installing the TV. Alterations to a property require the permission of the landlord and normally, any alterations would vest with the property or if removed, repairs would be completed to reasonably restore the property. There is no doubt that the tenants made an alteration and installed a TV and mount. This created some damage to the wall which wasn't repaired upon departure. I do not find this to be normal or reasonable wear and tear and as such, the tenants would be responsible for its restoration upon departure.
43. The landlord's claim did not specifically breakdown different areas of repair and paint in the claim so I am left with making a reasonable arbitrary award. We know that the property was last painted in 2014 making the painted surface to be at least 6 year old and therefore fully depreciated. As the painted surface is depreciated, any award will only reflect repairs of the wall to the point of a painted surface can be applied. I find that this is a minimal repair and award **\$50.00** to complete the repairs of the TV wall.
44. The tenants has acknowledged the repairs to the door and as such I award **\$167.81** for the replacement of the interior door.

Decision

45. The landlord's claim for damages succeeds in the amount of **\$217.81** (\$50.00 + \$167.81)

Issue 4: Other - \$658.43

Landlord Position

46. The landlord is seeking payment for cleaning of the unit in the amount of \$350.00, re-keying of the home at a cost of \$221.38 and the replacement of the garage door openers at a cost of \$63.90.
47. The landlord submitted into evidence a text message concerning the cleaning (**Exhibit L # 9**), an invoice from Tulk's for the locks (**Exhibit L # 7**) and an invoice from Overhead Doors for the garage door openers (**Exhibit L # 8**).

Tenant Position

48. The tenants dispute this portion of the claim stating that the cleaning was done 45 days after the tenants vacated and after the plasters and painters where in the property.
49. The tenants added that the garage door openers were left in the property as they vacated.

Analysis

50. I have reviewed the testimony and evidence of the landlord and tenants in this portion of the claim.
51. The security of a tenant in a rental property is the responsibility of the landlord. A landlord cannot be reasonably assured that a particular tenant did not cut many copies of a key and as such it is seen as a cost of ensuring the security of a new tenant that a landlord either re-key a lock or replace the locking mechanism for a new tenant. As such, the cost to re-key the unit, I find not to be the responsibility of the tenants and as such, this portion fails.
52. Regarding the claim for cleaning and replacement of the garage door openers, the landlord has failed to establish proof that this loss actually occurred. Again, I find that the landlord has failed to support this portion of the claim and as such fails.

Decision

53. The landlord's claim for Other fails.

Issue 5: Application/Refund of Security Deposit

Landlord Position

54. The landlord testified that a security deposit in the amount of \$1800.00 was paid on the property on or about 25 July 2019. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
55. The landlord acknowledges holding the security deposit in the amount of \$1800.00.

Tenant Position

56. The tenants stated that the security deposit was to be applied against rent owing by the tenants for the month of March 2020.

Analysis

57. Established by undisputed fact above, the tenants did pay a security deposit to the landlord in the amount of \$1800.00.
58. The landlord's claim has been successful as indicated above. The security deposit plus accrued interest is \$1800.00 as the interest rate for 2019 – 2020 is set at 0%.
59. The security deposit is an asset of the tenants to be held against any loss incurred by the landlord attributed to the tenancy. In this matter it has been determined that there was attributable loss and as such, the landlord is entitled to offset the security deposit against the rent, damages and Utilities as outlined in the attached order.

Decision

60. As the landlord's claim above has been successful, the landlord shall offset the security deposit being held against the damages as outlined in the attached order.

Issue 6: Hearing Expenses

Landlord Position

61. The landlord paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████████) (**Exhibit L # 11**). The landlord paid a fee for the process server to serve claim documents in the amount of \$88.00 (**Exhibit L # 12**). The landlord is seeking these costs.

Analysis

62. I have reviewed the testimony and evidence of the landlord in this matter. The expenses incurred by the landlord 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

63. The tenants shall pay the reasonable expenses of the landlord in the amount of \$108.00

Summary of Decision

64. The landlord is entitled to the following:

a)	Rent Owing	\$4100.00
b)	Compensation for Damages	217.81
c)	Utilities	584.86
d)	Hearing Expenses	<u>108.00</u>
d)	Subtotal	\$5010.67
e)	LESS: Security Deposit	<u>(\$1800.00)</u>
g)	Total owing to Landlord	<u>\$3210.67</u>

11 January 2021

Date



Michael Greene
Residential Tenancies Tribunal