

Residential Tenancies Tribunal

Decision 20-0253-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **15 February 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 landlord1, participated in the hearing. (*Affirmed*)
3. The applicant, [REDACTED], hereafter referred to as landlord2, participated in the hearing. (*Affirmed*)
4. The Respondent, [REDACTED], hereafter referred to as the tenant did not participate in the hearing. (*Absent and Not Represented*)
5. The details of the claim were presented as a written fixed term agreement with rent set at \$1500.00 per month with utilities included up to \$400.00, due on the 1st of each month and the term set to expire on 30 April 2020. A security deposit in the amount of \$1125.00 was collected on or about 04 October 2019.
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 applicants have to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

7. The tenant, [REDACTED], was not present or represented at the hearing. The Tribunal's policies concerning notice requirements and hearing attendance has been adopted from the *Rules of the Supreme Court, 1986*.
 - a. Rule 29.05(2)(a) states *a respondent to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, and where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he/she has been properly served.*

The affidavit submitted by the landlords show that the tenant was served with the notice of this hearing on the **25 August 2020** by serving the original documents to the tenant by email: [REDACTED] and attaching verification of the email and the sent documents.

A phone call was placed to the tenant at [REDACTED]. No answer and a message left.

8. As the tenant was properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicants, I proceeded in the tenant's absence.
9. The landlords amended the claim by reducing the cost for the repair of the flooring from \$250.00 to \$150.00. The new total claim is \$1250.50

Issues before the Tribunal

10. The landlords are seeking the following:
 - a) Compensation for Damages **\$1250.50**;
 - b) Hearing Expenses;
 - c) 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 - \$1250.50

Relevant Submissions

Landlord Position

13. The landlords testified that this tenancy had several issues throughout the tenancy, cleaning being one of them. When the property was recovered it was noticed that the following items were deficient and of concern:
 - a. The property required a deep cleaning
 - b. Removal of garbage from the back yard
 - c. Replace damaged couch
 - d. Repair of hardwood flooring (Living Room)
14. The landlords testified that when the property was recovered there were cleaning issues. The landlords testified that throughout the tenancy there were cleaning issues and found the same at the conclusion of the tenancy. The landlords testified that the tenant did pay for the regular cleaning (\$120.00 plus HST) but there was a need for a deeper cleaning which cost an extra \$255.00 plus HST for a total of \$293.25. In addition, the landlords indicated that the tenant did not apparently put any garbage to the curb on a weekly basis, but instead tossed the bags in the back yard. The landlords are claiming \$60.00 plus HST for this cleanup and submitted an invoice from Eye for Detail Cleaners (**Exhibit L # 1**). The landlords did not submit any photos of the cleanliness of the property on the interior or exterior after the property was recovered.
15. The landlords stated that they had a discussion with the tenant concerning his two teenage kids and that they are not permitted to occupy the property. The landlords testified that the kids did use the home while their father was away and broke the couch (leg and frame was broke). The landlords further indicated that they attempted to repair the couch with screws the protruded the wood. The landlords indicated that the couch was left on the hardwood and the protruding screws, gouged the hardwood flooring. The landlords presented photos of the damaged couch (**Exhibit L # 3**) along with photos of the property prior to the tenancy (**Exhibit L # 4**). The landlords added that the couch was approximately 1.5 years old.
16. The landlords are seeking \$700.00 for the replacement of the couch and \$150.00 for the repair of the hardwood. The landlords submitted an invoice for the replacement of the couch from Osmond's Furniture (**Exhibit L # 2**) in the amount of \$1120.00 and an invoice from The Firm Property Management Solutions Inc. (**Exhibit L # 6**) in the amount of \$150.00 for the repair of the floors.

Analysis

17. I have reviewed the testimony and evidence of the landlords in this portion of the claim. 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
18. On the matter of cleaning in the property, the landlords have stated that the property was left unclean and required a deeper clean other than just a regular cleaning. The landlords have demonstrated the condition of the property prior to the tenancy beginning with photos and the unit presents as a new modern style rental unit furnished with new modern fixtures and accessories. The landlords have also indicated that the tenant paid for the regular cleaning but didn't pay for the extra cleaning and removal of garbage items from the back yard. However, the landlords did not provide any photos to demonstrate the condition of the unit and the back yard that would require the extra charges for cleaning and garbage removal. The landlords have supplied an invoice for the extra cleaning for the amounts claimed.
19. It is incumbent of the landlords to satisfy the three legal tests as itemized in the outset of this analysis section. The landlords have failed to substantiate that the damage actually exists as claimed and, therefore, has failed to fully establish this portion of the claim. As such, the claims for extra cleaning and garbage removal fails.
20. On the replacement of the couch and repair of the hardwood, the photos presented of the unit prior to the tenancy shows a very modern and newly renovated apartment with the couch in question in the unit. The photos taken after the tenancy ended clearly shows that the couch structure is damaged beyond repair and there are deck screws in the couch as an attempt to repair the damage. The screws are protruding and certainly if laid on the hardwood, would indeed scratch the wood. The landlords have presented invoices for the replacement of the couch (\$1120.00 HST Included) and the repair of the floor (\$150.00 HST Included).
21. It is not this tribunal's role to determine who created the damage, but that the damage was done during the tenancy which establishes tenant liability. The evidence supports that the tenant is liable for the damages. The costs have been documented and I accept these costs that have been submitted into evidence. The couch is a depreciable item and the Residential Tenancies Section assess the life expectancy of a couch as 10 years. Any award for the replacement has to reflect depreciation. The depreciated award for the couch replacement is **\$700.00** calculated as $(\$1120.00 \div 10 \text{ years} = \$112.00 \text{ per year} \times 8.5 \text{ years remaining} = \$952.00)$. The landlords have claimed only \$700.00 for this portion of the claim and as such the maximum award is then that of the claimed amount of \$700.00.
22. Further to the damage to the hardwood flooring, it is apparent that the screws did create damage as one would expect it would. The landlords testified that the flooring was approximately 1.5 years old and again the before photos establish a new condition unit with the after photos clearly displaying the damage resulting from the screws on the bottom of the couch. The landlords have costed the

repairs with an invoice of which is an extremely fair price. However, the surface of the flooring is a depreciable item and is assessed to have a life expectancy of 5 years for the finish. Any award for the repair has to reflect depreciation. The depreciated award for the flooring repair is **\$105.00** calculated as $(\$150.00 \div 5 \text{ years} = \$30.00 \text{ per year} \times 3.5 \text{ years remaining} = \$105.00)$.

Decision

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

- a. Extra Cleaning **\$0.00**
- b. Garbage Removal **\$0.00**
- c. Replace Couch **\$700.00**
- d. Repair Floor **\$105.00**

- e. **Total \$805.00**

Issue 2: Hearing Expenses

Landlord Position

24. 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 # 5**). The landlords are seeking this cost.

Analysis

25. 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

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

Issue 3: Application/Refund of Security Deposit

Landlord Position

27. The landlords testified that a security deposit in the amount of \$1125.00 was paid on the property on or about 04 October 2019. 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 \$1125.00.

Analysis

- 29. Established by undisputed fact above, the tenant did pay a security deposit to the landlords in the amount of \$1125.00.
- 30. The landlords' claim has been successful in part as indicated above. The security deposit plus accrued interest is \$1125.00 as the interest rate for 2019 – 2021 is set at 0%.
- 31. As the landlords' claim is successful in part as indicated above, the claim against the security deposit being held by the landlords also succeeds. 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 against the amount outstanding as determined in this decision and the attached order.

Decision

32. As the landlords' claim above has been successful, the landlords shall offset the security deposit as indicated in the attached order.

Summary of Decision

33. The tenant is entitled to the following:

a)	Security Deposit.....	\$1125.00
b)	LESS: Compensation for Damages	(\$805.00)
c)	LESS: Hearing Expenses	(\$20.00)
c)	Total owing to tenant.....	<u>\$300.00</u>

26 February 2021

Date



Michael Greene
Residential Tenancies Tribunal