

Residential Tenancies Tribunal

Decision 20-0266-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **28 September 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 tenant participated in the hearing. (*Affirmed*)
3. The applicant, [REDACTED], ([REDACTED]) hereafter referred to as the tenant participated in the hearing. (*Affirmed*)
4. The respondent, [REDACTED], ([REDACTED]) hereafter referred to as the landlord participated in the hearing. (*Affirmed*)
5. The details of the claim were presented as a written monthly agreement with rent set at \$1300.00 per month and due on the 1st of each month and a security deposit in the amount of \$650.00 was collected on or about 09 November 2018.
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 landlord [REDACTED] was served with the notice of this hearing on the **21 September 2020** by serving the application for dispute resolution document to the landlord 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 **17 September 2020** by serving the application for dispute resolution document to the tenant to the email
[REDACTED]
9. The affidavit submitted by the landlord shows that the tenant [REDACTED] was served with the notice of this hearing on the **17 September 2020** by serving the application for dispute resolution document to the tenant to the email [REDACTED]
10. The tenants' claim was amended at the onset of the hearing to remove the request for validity of notice as the tenants had moved.

Issues before the Tribunal

11. The tenants are seeking the following:
 - a) Refund of Rent **\$7100.00**;
 - b) Compensation for Inconvenience **\$825.00**;
 - c) Return of Possessions **\$390.00**;
 - d) Hearing Expenses;
 - e) Return of Security Deposit
12. The landlord is seeking the following:
 - f) Rent Owing **\$800.00**;
 - g) Damages **\$550.00**;
 - h) Late Fees **\$75.00**;
 - i) Other **\$1620.00**;
 - j) Hearing Expenses;
 - k) Application of Security Deposit

Legislation and Policy

13. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
14. 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*.
 - d. *The Frustrated Contracts Act*.

Issue 1: Rent Owning - \$7100.00/ Rent Owning \$3401.00

Relevant Submissions

Tenant Position

15. The tenant testified that they are seeking **\$7100.00** as a refund of rent as follows:
 - a. Loss of use of the Garage: \$1200.00
 - b. Broken Heaters Downstairs: \$3800.00
 - c. Broken Heater Upstairs: \$1900.00
 - d. Broken Oven: \$200.00
16. The tenant referred to the rental agreement (**Exhibit L # 1**) and stated that they were living in a full house plus garage. The tenant stated that the heaters in the upstairs and down stairs were tripping out about 6 months into the tenancy. The tenant further stated that the heater down stairs was broken from the beginning. He testified that they advised the landlord and nobody came to look at the issues. There was no evidence presented to substantiate the tenants' claims.
17. In respect of the landlord's claim for rent owing, the tenant had no additional comments only to add that "I assume I owe it".

Landlord Position

18. The landlord disputes this portion of the claim and stated that the rental agreement allows for the winter storage of the landlord's vehicle in the garage as outlined. The landlord further stated that the two parties had agreed that the vehicle could be kept in the garage for the summer as well. The landlord added that there was no heat on in the garage to add to the tenants' electrical bill and the industrial heater in the garage had to be turned on manually in order to operate.

19. The landlord testified that the first he heard of any issues with heaters was in November 2019. He testified that he attempted to enter the property on several occasions and could never get in the property to fix any issues. The landlord submitted affidavits from ■■■ (Exhibit L # 2) and ■■■ (Exhibit L # 3) to demonstrate the discussions between the tenants and landlord's representatives concerning the use of the garage. Both ■■■ and ■■■ indicate that the tenants were fully advised that the garage was for the use of the landlord to store an antique car in the winter along with possible discussion of its use if the car was removed for the summer.
20. ■■■ explained in her statement that the tenants did notify the landlord of a couple issues by way of text but would never provide an opportunity for the landlord to enter the property to fix in a timely fashion. The landlord testified that it is his opinion the claim for the heaters is excessive and should not be allowed.
21. The landlord is claiming for \$3401.00 for the months as outlined below:
 - a. April 2019: \$675.00
 - b. May 2019: \$1300.00
 - c. June 2019: \$1300.00
 - d. July 2019: \$126.00 (3 days July 1 – 3)
22. The landlord submitted a breakdown of the rent owing (Exhibit L # 4).

Analysis

23. I have reviewed the testimony and evidence of the landlord and tenant in this portion of the claim. I will address the tenants' portion of the claim first.
24. The tenants are claiming a rebate of rent because heaters were not working. The only indication that the heaters were actually not working (required a reset) was from the landlord witness. The tenants have not substantiated their claim. I accept the evidence of the landlord that the heaters required only a reset with the exception of one, and that there was never an opportunity to get into the property to fix/or reset the units. A tenant cannot create an opportunity where a service is not being provided only to claim compensation at the end of the tenancy for the landlord not providing the service.
25. In respect of the use of the garage, the rental agreement is clear that the garage is for the use of the landlord to store an antique car during the winter months. The sworn statements of the witnesses further clarify that if the car was removed during the summer then discussions could happen concerning its use.
26. There was no discussion on a broken oven. I only add that there are provisions under the Residential Tenancies Act, 2018 which allows for a tenant to seek a formal request to have repairs completed. It is apparent that this process was not undertaken.

27. I accept the landlord's evidence in this matter and find that the heaters were creating issues, but the landlord was not negligent in their duties to reasonably make the repairs in a timely fashion. It is apparent that the heaters required only a reset with the exception of the lower unit. Additionally, the tenants' claim for compensation for the lack of use of the garage, I find is made without any basis. The agreement clearly states there is no use for the winter months. I accept the witness testimony that summer use would be discussed and from that I infer, that it was not guaranteed. As such, I find that the tenants' claim for refund of rent fails.
28. In regard of the landlord's claim for rent owing, the landlord has outlined the amounts owing and the tenant have acknowledged owing the rent. I find rent in the amount of **\$3275.00** owing up to and including 30 June 2020. Rent for the period July 1 – 3, 2020 is outstanding in the amount of **\$127.86** calculated as ($\$1300.00 \times 12 \text{ months} = \$15,600.00 \div 366 \text{ days} = \$42.62 \times 3 \text{ days} = \127.86).
29. The total amount of rent owing by the tenants is \$3402.86.

Decision

30. The landlord's claim for rent owing succeeds in the amount of \$3402.86.

Issue 2: Compensation for Inconvenience - \$825.00

Relevant Submissions

Tenant Position

31. The tenant testified that they felt like they were forced from the property and are now claiming for the following compensation:
 - a. Two nights accommodations at a Hotel (2 @ \$200.00 = \$400.00)
 - b. Cost of a moving truck \$200.00
 - c. Cost of a storage unit \$225.00
32. The tenants did not provide any receipts for the above claimed costs.

Landlord Position

33. The landlord disputes this portion of the claim stating that he simply enacted his rights under the Residential Tenancies Act, 2018 and served the proper notices of termination to the tenants for the non-payment of rent. He claims that the tenants' claim of being forced out is simply not true.

Analysis

34. The evidence is clear in this portion of the claim, the tenant was in arrears and a termination notice was issued (**Exhibit L # 10**) as permitted under the *Residential Tenancies Act, 2018*.
35. The landlord has a legal right to enforce his rights of termination when a tenant is in arrears. I find that the tenants were not forced out of the property as the tenants claim. They were legally terminated and required to vacate the unit. The associated costs would be the responsibility of the tenants in this regard.

Decision

36. The tenants' claim for compensation for inconvenience fails.

Issue 3: Return of Possessions - \$400.00

Relevant Submissions

Tenant Position

37. The tenant is claiming for the return of his possessions (namely a security camera) that he claims were missing.
38. The tenant testified that a security camera on the exterior of the property was removed and can't be located. The tenant added that the unit was 1 year old and couldn't find the receipt for the purchase of the item. He testified that it was a genie night vision and is approximately 1 year old.
39. The tenant testified that it was located over the front door of the rented premises and that he had permission from the landlord to install it.
40. He claims it was tore from the house so he called the Police and advised that no investigation happened. The tenants are claiming \$400.00 for the replacement.

Landlord Position

41. The landlord testified that there was a camera located over the front door which he did not give permission to install. He testified that he did remove the camera from the house and placed it on the step.
42. The landlord disputes the claim.

Analysis

43. The evidence is such that there was a camera located over the front door as the landlord indicated he removed it from the house. There is no indication of the quality of the camera, there was no receipts, invoices or estimates for the replacement of the unit. There are conflicting stories of what permission was given to have it installed on the property.
44. The question that needs to be answered here is did the landlord take reasonable caution to secure the property once removed from its anchoring position, regardless if permission was provided or not. The landlord states that he placed it on the steps and left the property. Leaving property on a front step is not typically what would be considered a reasonable method of securing personally property. I find that the landlord did not act reasonably in this regard.
45. It is the burden of the tenants in this matter to show and provide a valuation for the items in question. In today's market, there are security cameras of varying costs and quality. This unit could be either and we simply don't know. There were no pictures, estimates or receipts provided.
46. As the tenants has not supported the claim with proper valuation or evidence of the camera, I find that the claim for return of a camera fails.

Decision

47. The tenants' claim for return of possessions fails.

Issue 4: Compensation for Damages - \$10,873.13

Relevant Submissions

Landlord Position

48. The landlord testified that when the property was recovered it was noticed that the following items were damaged as outlined:
 - a. Door Knob Replacement
 - b. Subfloor/Flooring in bathroom
 - c. Paint/Plaster Apartment
 - d. Replace Truck Cap
 - e. Garbage Removal
 - f. Rat Removal

49. The landlord testified that there was a leak in the toilet flush box that the tenants failed to notify the landlord of, so a repair could be made. The landlord testified that the result of the leak going not repaired was extensive with mold on and under the subfloor in the bathroom and with mold growing behind the baseboards. The landlord submitted photos of the damage (**Exhibit L # 6**) along with a breakdown of the cost for damages (**Exhibit L # 5**) for all the claimed damages to the property.
50. The landlord further testified that there were holes in the walls that required gyproc replacement, plastering and repainting. He added that the tenants smoked in the unit as well and the resulting smoke required that the apartment be painted. The landlord again referred to the photos submitted (**Exhibit L # 6**) and testified that the painted surface was 1 ½ years old.
51. The landlord testified that there was a back of a truck on the property with a fiberglass cap attached. The landlord testified that the tenants filled this cap with household garbage instead of putting it to the curb for pickup, which attracted rats and the rotting smell permanently damaged the fiberglass cap. The landlord testified that the cap was 10 years old and submitted an estimate from ██████████ in the amount of \$3944.50 (**Exhibit L # 9**) along with the photos of the garbage in the cap (**Exhibit L # 7**).
52. The landlord further added that there was an extensive amount of garbage to remove and contracted ██████████ (**Exhibit L # 8**). The landlord again referred to the photos (**Exhibit L # 6 & 7**) to demonstrate the condition.
53. Lastly, the landlord is claiming for a missing door knob on an interior door in the amount of \$18.95. The landlord referred to the photos (**Exhibit L # 6**). There was no receipt for the purchase of the door knob.

Tenant Position

54. The tenant disputes the claim stating that the toilet was leaking from around the base of the toilet and the seal was gone. The tenant takes the position that the landlord was aware of the mold as the landlord provided the tenants with a dehumidifier. The tenant referenced a message from the landlord dated 17 June 2020 that he would enter to complete some repairs (**Exhibit T # 2**).
55. The tenant testified that he supplied the landlord with a notice to effect repairs (**Exhibit T # 4**) on 10 June 2020. *(It should be noted here that the landlord challenges this statement and indicates that no such notice was received from the tenants).* The tenant further added that the repairs were never attended too by the landlord.

Analysis

56. I have reviewed the testimony and evidence of the landlord and tenant 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
57. I will address an issue regarding the notice to effect repairs mentioned above by the tenant. There is no evidence to suggest that such a notice was ever served to the landlord or filed with the office of Residential Tenancies. At the time of filing such a claim, the tenants would have had to have been up to date with all monies owing in order for such a claim to be accepted. It is clear from the records and finding above, that rent was indeed outstanding and as such, this becomes a point that cannot be addressed.
58. The landlord testified that the toilet leaked and ruined the flooring and subfloor within the bathroom. The landlord's photos show a bathroom that was completely gutted and the fixtures and flooring removed. These photos do show a wet concrete floor indicating water came from somewhere. It also shows that some of the remaining wood left behind from the cleanup indicates that perhaps some of the strapping of the subfloor was in a rotting condition which clearly indicates that the leaking water was ongoing for a period of time. Both parties dispute the source of the leak with the landlord stating it was from the flush box and the tenant indicating it was from the seal on the floor. Regardless of the source, the result is the same, a rotten subfloor and an environment ripe for mold growth.
59. A landlord can't repair what they are not made aware of and it is certainly the responsibility of the tenants whom is living in the unit to notify the landlord of issues that could compromise the integrity of the building. Equally, it is incumbent on the landlord to regularly maintain and inspect the property for such situations that could compromise the integrity of the building. The landlord cannot simply rest on the notion that the tenants wouldn't make adequate arrangements and therefore couldn't assess the repairs required. This notion would not hold any sort of defense as the landlord need only provide the required notice and enter with or without the tenants present.
60. The landlord has valuated and demonstrated that repairs were required, however there are no photos of the bathroom prior to the tear out to give a full picture of the damage and allow for more complete conclusions to be drawn. The issue of a leak does not automatically determine liability. The leak would be a mechanical issue but a lack of action to notify the owner of a leak would be a negligent action and would determine liability. To this end I examine the evidence regarding the liability issue.
61. I noted above that there are no photos of the bathroom prior to the tear out to gage the condition of the toilet (to see where the leak was coming from if it could

be seen at all), there were no photos of the leaking area of the toilet to assist the landlord with his version of events in his claim, there was no photos of under the sub-floor to demonstrate the extent of damage and determine if it was water from the flush box or the toilet bowl. Both would lead to very different cleanup processes. I do know that the leak was happening for a period of time as the mold was growing up behind the baseboards. I question if the mold was visible. The concrete was wet so it is clear there was water under the subfloor, but not clear if it was on the top of the floor or did the toilet malfunction at the wax seal and leaking directly under the subfloor.

62. It is the applicants' responsibility to substantiate the claim. The evidence presented supports that a leak occurred, but from where we do not clearly know. The cost to repair is clearly demonstrated, but this cost would be incurred whether the tenants are liable or not. I find that the landlord presenting only one photo of after the cleanup does not show that the tenants were liable or even negligent. A series of photos from prior to tear out, during tear out and after would have made the full picture much clearer. I find the landlord has not shown tenants liability as opposed to the very possible mechanical failure of the toilet for the damages. As such the claim for the bathroom repair fails.
63. Regarding the painting and plastering of the walls in the property, the landlord has indicated that there were holes in the gyproc that needed repair and painting as a result. The evidence is clear with respect to holes in the walls, they are certainly there and the evidence also shows that they were covered with a poster in an effort to hide the damage. The landlord also indicates that the tenants smoked in the unit and there was some yellowing on the walls. Whereas this is not readily seen on the walls, there is some indication of yellowing on the appliances. The landlord indicated that the painted surface was 1.5 years old prior to the tenants moving in and they lived there for approximately 1.5 years. The landlord submitted an invoice for the painting from [REDACTED] in the amount of \$2198.00 materials and labor included. I note here that the evidence indicates that the landlord was prepared to paint the apartment for the tenants only charging labour as the landlord had access to free paint. I question the charge of purchased paint now and contractor labour at this point.
64. I find that the tenants are responsible for the repainting and gyproc repair of the walls. A painted surface is a depreciable item and any award must reflect depreciation. A painted surface has a useful life of 5 years in a rented premises. The surface in question would have been approximately 3 years old from the evidence. As such I find the tenants responsible for **\$879.20** calculated as $(\$2198.00 \div 5 \text{ years} = \$439.60/\text{year} \times 2 \text{ years remaining} = \$879.20)$
65. The landlord's claim for garbage removal raises some questions as well related to the receipting. There is no question that there was garbage left by the tenants and I question as to why someone would even store household garbage when it is easier to drop it at the curb weekly. The photo evidence presented only depicts a truck pan of garbage bags. The transport of this amount of garbage including any levied waste management fees would not come close to the amount claimed of \$400.00. Further, the receipt presented for the payment of the \$400.00 is not

signed and is not from a company of any sort. This receipt could have been written by anyone and as such I do not accept this receipt as supporting evidence. As the landlord has failed to adequately document the removal and disposal of the garbage, the claim for same fails.

66. The landlord's claim for the replacement of a truck cap as a result of the smell of garbage lingering in the cap. In review of the evidence, I note that the cap is installed on an old pan of a truck being used as a storage device. It is possible that it could be reinstalled on a functioning truck and used in a different capacity. There is no indication that any sort of chemical deodorant was used to rid the fiberglass of any smells. The garbage was left there by the tenants and they are responsible for the resultant smells, however, this would not constitute a total replacement of the item in question. I find then tenants responsible for an arbitrary amount of \$250.00 for materials and labor to rid the fiberglass of smells via chemical means. Further, it is very likely that this storage of garbage did attract rodents and as such I award the landlord the costs of the purchase of poison to rid the area of rodents. The landlords claim succeeds in the amount of $\$250.00 + \$28.15 = \mathbf{\$278.15}$.

Decision

The landlord's claim for damages succeeds in the amount of **\$1157.35**.

Issue 5: Payment of Late Fees - \$75.00

Landlord Position

67. The landlord is seeking payment of late fees as a result of the tenants' failure to pay rent on time.
68. The landlord testified that the tenants have been in arrears on an ongoing basis since April 2020. The landlord indicated that any calculated amount of late fees would exceed the maximum allowable under the *Residential Tenancies Regulations, 2018*.

Analysis

69. Established by undisputed fact above, the tenant was in arrears since January 2020. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period.
70. The issue of rental arrears has been determined above confirming that the tenants owe rent to the landlord.

Decision

71. The landlord's claim for late fees succeeds in the amount of the maximum allowable of \$75.00.

Issue 6: Application/Refund of Security Deposit

Landlord Position

72. The landlord testified that a security deposit in the amount of \$650.00 was paid on the property on or about 09 November 2018. The landlord's claim is seeking to apply the security deposit against the order issued by the tribunal.
73. The landlord acknowledges holding the security deposit in the amount of \$650.00.

Tenant Position

74. The tenant is seeking a refund of the security deposit paid in the total amount of \$650.00.

Analysis

75. Established by undisputed fact above, the tenant did pay a security deposit to the landlord in the amount of \$650.00.
76. The landlord's claim has been partially successful as indicated above. The security deposit plus accrued interest is \$650.00 as the interest rate for 2018 – 2020 is set at 0%.
77. The landlord's claim is partially successful. 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 damages as outlined in the attached order.

Decision

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

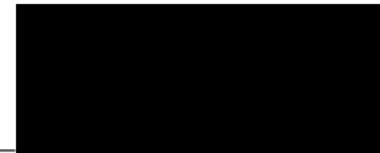
Summary of Decision

79. The landlord is entitled to the following:

a)	Rent Owing	\$3402.86
b)	Compensation for Damages	1157.35
c)	Late Fees	<u>75.00</u>
d)	Subtotal	\$4635.21
e)	LESS: Security Deposit	<u>(\$650.00)</u>
g)	Total owing to Landlord	<u>\$3985.21</u>

15 December 2020

Date



Michael Greene
Residential Tenancies Tribunal