

Residential Tenancies Tribunal

Decision 20-0284-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am on 08 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], ([REDACTED]) hereafter referred to as tenant1, did not participate in the hearing. (*Absent and Not Represented*)
3. The applicant, [REDACTED], ([REDACTED]) hereafter referred to as tenant2, did not participate in the hearing. (*Absent and Not Represented*)
4. The respondent, [REDACTED], ([REDACTED]) hereafter referred to as the landlord participated in the hearing and was represented by [REDACTED]. (*Affirmed*)
5. The details of the claim were presented as a written fixed term rental agreement with rent set at \$2100.00 per month and due on the 1st of each month and a security deposit in the amount of \$1575.00 was collected on or about 04 April 2019. The agreement was set to expire on 30 April 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 tenants, [REDACTED] & [REDACTED], were 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 landlord shows that tenant1 was served with the notice of this hearing on the **08 September 2020** by serving the original documents to tenant1 by email to the address [REDACTED] and supplying a copy of the email along with verification that the email was provided to the landlord on the rental agreement.

The affidavit submitted by the landlord shows that tenant2 was served with the notice of this hearing on the **16 December 2020** by serving the original documents to tenant2 by email to the address [REDACTED] and supplying a copy of the email along with verification that the email was provided to the landlord on the rental agreement.

Phone calls were placed to the tenant applicants as follows:

[REDACTED]: No answer and message left
[REDACTED]: No answer and message left

8. As the tenants were properly served with the application for dispute resolution, and as any further delay in these proceedings would unfairly disadvantage the landlord applicant, I proceeded in the tenant's absence.

Issues before the Tribunal

9. The tenants are seeking the following:
 - a) Return of Security Deposit
10. The landlord is seeking the following:
 - b) Compensation for Damages **\$212.75**
 - c) Hearing Expenses;
 - d) 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 - \$1869.25

Relevant Submissions

Landlord Position

13. The landlord testified that when the property was recovered there were several areas of concerns noted as follows:
 - a. Clean the Unit
 - b. Yard Repair
 - c. Damaged Flooring
14. The landlord presented into evidence a copy of the breakdown of the claimed damages (**Exhibit L # 1**) along with a series of photos of the property showing the damages (**Exhibit L # 2**). The landlord further presented, to establish the condition of the unit prior to the tenants, a move in inspection report (**Exhibit L # 6**) and again the condition outgoing with an outgoing inspection (**Exhibit L # 8**).
15. The landlord testified that the unit was not clean when the tenants vacated and referred to the photos to demonstrate this fact (**Exhibit L # 2**). The landlord testified that they engaged a third party cleaner, *11631322 Canada Inc.*, and submitted an invoice from the company (**Exhibit L # 3**) in the amount of **\$212.75**.
16. The landlord indicated that there were multiple holes in the back yard which were created by pets on the property. The landlord referred to the photos presented (**Exhibit L # 2**) and further indicated that a maintenance contractor was engaged to complete the repairs. The landlord presented an invoice from [REDACTED] *Services* (**Exhibit L # 4**) in the amount of **\$150.00** HST included for the repair of the backyard at the rented premises.
17. Lastly, the landlord noted that the animals in the property had damaged the carpet on the stairs as they were hooked and hitched from what appears to be cats. The landlord stated that the carpet was a commercial carpet and approximately 5 – 6 years old. Additionally, the landlord testified that the smell of

urine was strong and as such the carpet and laminate flooring had to be replaced. The landlord referred to the photos (**Exhibit L # 2**) and further indicated that the laminate flooring was also 6 years old. The landlord presented an estimate from Baker Flooring (**Exhibit L # 5**) in the amount of **\$1506.50**.

Analysis

18. I have reviewed the testimony and evidence of the landlord 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
19. The evidence presented by the landlord in the form of the move-in inspection clearly establishes that the property was in a good condition. Similarly, the photos also demonstrate that the property was not left clean as would normally be expected. I find that the tenants are responsible for the cleaning of the property based on the evidence provided by the landlord and further find that the claim of \$212.75 is more than reasonable to clean and entire rented premises. The landlord's claim for cleaning succeeds in the amount of **\$212.75**.
20. With regard to the exterior damages, holes dug in the yard, the photo evidence is clear in this regard. There is no indication that there was yard damage on the move in inspection and thus the damage had to have occurred during the tenancy and thus the tenants' responsibility. I find that tenants responsible for the yard repair and award the claimed amount of **\$150.00** as invoiced.
21. I will deal with the flooring issue (carpet and laminate) as two separate issues. First, I will address the carpet. The move in inspection report does not identify and damage to the flooring and more specifically, the carpet. The photos clearly show that the carpet is scratched by a cat and would most definitely require replacement. The landlord's estimate from Baker Flooring is acceptable, however, flooring is a depreciable item and therefore depreciation must be applied on any award.
22. Evidence is clear that the carpet in question is a commercial carpet and the replacement is a berber carpet which is an upgrade from a quality perspective. Commercial carpet is assessed as having a useful life span in a rented premises of 8 – 10 years. With Commercial Carpet being on the low end of the grading, I will assess the useful life to be 8 years. The age at the time of vacancy was approximately 6 years leaving approximately 2 years of useful life remaining.
23. To address the difference in quality of the quoted replacement carpet I will allow for a costing of \$100.00 less than the quote and for ½ of the removal charge of existing flooring (\$75.00) plus HST. Therefore the calculation is: $\$891.25 \div 8 \text{ years} = \$111.41/\text{year} \times 2 \text{ years remaining} = \mathbf{\$222.82}$.

24. In respect of the laminate replacement, the burden of proof on the balance of probabilities, remains on the landlord. The estimate to replace laminate indicates a small room (6X6). It is clear that there were animals in the property and that the tenants did not take care to clean the unit before leaving. The landlord has stated that there was a significant odor of animal urine on both floorings and had to be replaced. An odor is impossible to see, however the landlord has been consistent in the balance of the evidence for this claim. As such, I accept the landlord evidence of the landlord regarding odor in this matter. When a cat urinates or “sprays” on flooring, it is next to impossible to get rid of the smell without flooring replacement. I find the tenants responsible for the replacement of the laminate flooring at a depreciated value.
25. Laminate flooring is assessed to have a useful life expectancy of 15 – 25 years. For this case I will assess the quality to the low end of the range at 15 years. The age as stated by the landlord was 6 years. As such, allowing for ½ the cost of flooring removal at \$75.00 plus HST and the cost of the flooring from the estimate at \$360.00 plus HST, the depreciated value of replacement is calculated as **\$300.15** ($\$500.25 \div 15 \text{ years} = 33.35/\text{year} \times 9 \text{ years} = \300.15)

Decision

26. The landlord’s claim for damages succeeds in the amount of \$885.72 determined as follows:

| | |
|--------------------------|------------------------|
| i. Cleaning | \$212.75 |
| ii. Yard Repair | 150.00 |
| iii. Carpet Replacement | 222.82 |
| iv. Laminate Replacement | <u>300.15</u> |
| v. Total | <u>\$885.72</u> |

Issue 2: Application/Refund of Security Deposit

Landlord Position

27. The landlord testified that a security deposit in the amount of \$1575.00 was paid on the property on or about 04 April 2019. The landlord’s claim is seeking to apply the security deposit in the amount of \$1575.00 against the order issued by the tribunal.
28. The landlord acknowledges holding the security deposit in the amount of \$1575.00.

Analysis

29. Established by undisputed fact above, the tenants did pay a security deposit to the landlord in the amount of \$1575.00 which is currently being retained by the landlord.
30. The landlord's claim has been successful in part as indicated above. The security deposit plus accrued interest is \$1575.00 as the interest rate for 2019 – 2020 are set at 0%.
31. The landlord's claim is 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 such a loss and as such, the landlord is entitled to apply the security deposit against the order issued as outlined in the attached order.

Decision

32. As the landlord's claim above has been successful, the landlord shall apply the security deposit being held as outlined in the attached order.

Issue 5: Hearing Expenses

Landlord Position

33. 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 # 9**). The landlord is seeking this cost.

Analysis

34. 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*. The landlord's claim has been successful and as such, I find the tenants are responsible to cover the reasonable expenses of the landlord.

Decision

35. The tenants shall pay the reasonable expenses of the landlord in the amount of \$20.00.

Summary of Decision

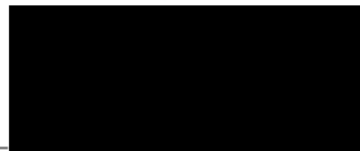
36. The tenants are entitled to the following:

- a) Security Deposit.....\$1575.00
- b) LESS: Compensation for Damages (\$885.72)
- b) LESS: Hearing Expenses (\$20.00)

- c) **Total owing to Tenants**.....**\$669.28**

12 February 2021

Date



Michael Greene
Residential Tenancies Tribunal