

Residential Tenancies Tribunal

Decision 20-0363-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **08 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 tenant1, participated in the hearing. (*Affirmed*)
3. The applicant, [REDACTED], hereafter referred to as tenant2, participated in the hearing. (*Affirmed*)
4. The applicant, [REDACTED], hereafter referred to as tenant3, participated in the hearing. (*Affirmed*)
5. The Respondent, [REDACTED], hereafter referred to as landlord1 participated in the hearing. (*Affirmed*)
6. The Respondent, [REDACTED], hereafter referred to as landlord2 participated in the hearing. (*Affirmed*)
7. The details of the claim were presented as a written fixed term agreement with rent set at \$1400.00 per month with utilities excluded, due on the 1st of each month and the term set to expire on 28 February 2021. A security deposit in the amount of \$1050.00 was collected on or about 01 March 2020.
8. 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

9. The affidavit submitted by the tenants show that landlord1 and landlord 2 were served with the notice of this hearing on the **23 February 2021** by serving the original documents to the landlord by email: [REDACTED] and attaching verification of the email and the sent documents.
10. The affidavit submitted by the landlords show that tenant1 was served with the notice of this hearing on the **24 February 2021** by serving the original documents to tenant1 by email: [REDACTED] and attaching verification of the email and the sent documents.
11. The affidavit submitted by the landlords show that tenant2 was served with the notice of this hearing on the **24 February 2021** by serving the original documents to tenant2 by email: [REDACTED] and attaching verification of the email and the sent documents.
12. The affidavit submitted by the landlords show that tenant3 was served with the notice of this hearing on the **24 February 2021** by serving the original documents to tenant3 by email: [REDACTED] and attaching verification of the email and the sent documents.
13. As the service requirements were met by all parties to this hearing, I proceeded with the hearing.

Issues before the Tribunal

14. The tenants are seeking the following:
 - a) Refund of security Deposit;
15. The landlords are seeking the following:
 - b) Compensation for Damages **\$1331.70**;
 - c) Other (Property Management Fees) **\$1250.63**
 - d) Hearing Expenses;
 - e) Application of Security Deposit

Legislation and Policy

16. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
17. 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 - \$1331.70

Relevant Submissions

Landlord Position

18. The landlords testified that the tenants broke their rental agreement early in a fixed term rental agreement. They claim they received a text message on or about 27 May 2020 as a termination notice. The landlord testified that they secured a new tenant for 01 July 2020 thereby mitigating any rental loss. The landlords further added that the property was left in an unclean condition and damages to the property. When the property was recovered it was noticed that the following items were deficient and of concern:
 - a. The property required a cleaning
 - b. Paint & plaster walls in the property
19. Cleaning: The landlords testified that when the property was recovered there were cleaning issues. The landlords testified that the fridge and oven were not cleaned, the bathrooms needed cleaning along with the floors, windows, etc. The landlords testified that they received a text from the tenants (**Exhibit L # 8 & 9**) stating that they had done only a surface clean in anticipation of a professional cleaner attending the property.
20. The landlords submitted a series of photos (**Exhibit L # 1**) of the property showing the cleanliness along with videos (**Exhibit L # 2**) to demonstrate the detail of the cleanliness. The landlords further referred to the incoming condition report (**Exhibit L # 10**) demonstrating the condition of the property at the onset of the tenancy.
21. The landlords submitted an invoice from [REDACTED] (**Exhibit L # 15**) for the cleaning and plastering/painting of the property in the amount of \$1331.70.

22. Plastering/Painting: The landlords testified that there were some screw holes in the wall where a TV Mount and mirror were that required plastering and as a result painting of the wall. The landlords stated that the damage is not normal wear and tear and that's why they are seeking the costs of repair. The landlords referred back to the invoice presented above along with the photos.

Tenant Position

23. The tenants dispute the claim of the landlords indicating that the landlords have presented no independent invoicing for the repairs and has only submitted an invoice from his own company. The tenants testified that the landlords by doing this gets to state the damages and charge the price making it completely unfair to the tenants.
24. The tenants stated that the property was left in good condition and submitted a video of the exit day (**Exhibit T # 1**). The tenants acknowledged not cleaning the fridge and not vacuuming the floor. They stated that they were forced out as the landlords asked them to move early, which they did. The tenants went on to say that if they had been allowed back into the property, they could have cleaned the unit to the satisfaction of the landlords.

Landlord Position

25. The landlords stated that in no way did they force the tenants to move early. Further, the landlords indicated that any of the viewings that did happen, were not the result of the tenants finding a new tenant.

Analysis

26. I first will address the raised issue by the tenants concerning the invoice by the landlords from the landlords' own company identified as [REDACTED]. All indications are that the landlords are the owner of the property in question and not the company. They are also the owners of the company engaged to address the move out where by the landlords get to set the pricing of the service and invoice themselves which is in turn billed back to the tenants. This action in and of itself is filled with notions of conflict of interest especially with no additional independent estimates or quotes from similar contractors in the area presented. An owner cannot be gaining any advantage in a claim because they own a company and can invoice and charge increased rates over and above what Residential Tenancies permits for self-labor. I agree with the tenants' assertion and find that, by the landlords, in this case charging for damages from their own company, presents itself as a conflict of interest. As such, I will deal with and address the company invoice as if the landlords was dealing with the property. The self-labor rate permitted by Residential Tenancies for the time period in question is \$19.65/hour which is minimum wage + \$8.00.

27. The invoice itself does not provide specific costing for paint, plaster, cleaning materials, etc., and such issues will be addressed as reasonable depreciated arbitrary amounts.
28. I have reviewed the testimony and evidence of the landlords and tenants 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
29. On the matter of cleaning in the property, the landlords have stated that the property was left unclean and required additional cleaning and that the tenants could not have cleaned the property. The review of the landlords photos and videos as well as the tenants video, shows that the tenants did not clean the fridge, left the surface areas like the countertops and floors with dust, and the oven and bathrooms were less than pristine. Neither sets of evidence shows the property as being left filthy, extremely unclean or excessively damaged.
30. The tenants claim they were forced out of the property and didn't have time to clean but I find there is no evidence to suggest this defense angle. It is the responsibility of the tenants to clean and return the property in a condition that is clean and undamaged, less any reasonable wear and tear for normal living.
31. In the tenant video, the tenant can be heard saying "*.....I guess I should have vacuumed.....*" and further "*.....there's some dust over there.....*" and noted that the fridge was not cleaned. The balance of the tenants' video was a quick general overview of the condition of the property. The landlords evidence shows close up areas showing an accumulated dust/and dirt, uncleaned toilet and faucets in the bathroom etc., and the evidence is clear that the tenants did not adequately clean the property before leaving. However, I do not find that the claimed 18.5 hours of labor of the landlords is accurate. I find that this amount of cleaning labor is excessive for the demonstrated level of untidiness. I find that there is more like 8 hours of cleaning required and find that the tenants are responsible for 8 hours at a rate of \$19.65 per hour as established at Residential Tenancies for self-labor for the total of **\$157.20** for labor to clean along with a cost of **\$25.00** as cost of materials for the cleaning.
32. On the matter of plastering and painting in the property, the evidence is clear again in both sets of evidence, that the tenants did install a wall mount TV and mirror thereby creating screw holes in the gyproc which would be considered above and beyond normal wear a tear holes for small picture hangers. The landlords have indicated that the painted surface was only 4 months old when the tenants vacated.

33. The landlords invoice is seeking \$510.50 plus HST. Given the invoice is being addressed for the landlords point of view, no HST is applicable unless demonstrated in the purchase of materials with receipts from suppliers. There is no specific breakdown of what was completed respective of hours of work and material costs.
34. The area of concern for plaster is approximately 8 screw holes which is easily filled for plaster and/or perhaps easier some spackle which is quicker drying. In any regard, this is not an extensive plaster repair and minimal time would be required. Similarly it is apparent that only two walls were affected and would have required priming of the repair areas and painting. I find the tenants responsible for the wall repair and painting. In the lack of specific material receipts I will award the landlords an arbitrary depreciated award for the minimal labor to repair and paint the unit walls in question in the amount of **\$100.00**.

Decision

35. The landlords' claim for damages succeeds as follows:
 - a. Cleaning labor/materials **\$182.20**
 - b. Plastering/painting **\$100.00**
 - c. **Total \$282.20**

Issue 2: Hearing Expenses

Landlord Position

36. 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 # 11**). The landlords also paid a fee for a Commission for Oaths Service in the amount of \$46.00 (**Exhibit L # 12**), a fee for the purchase of two thumb drives for evidence in the amount of \$34.48 (**Exhibit L # 13**) and postage to mail the drives to Residential Tenancies in Corner Brook (**Exhibit L # 14**) in the amount of \$35.65. The landlords are seeking these cost.

Analysis

37. I have reviewed the testimony and evidence 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 tenants are responsible to cover these reasonable expenses.

Decision

38. The tenants shall pay the reasonable expenses of the landlords in the amount of \$136.13.

Issue 3: Application/Refund of Security Deposit

Landlord Position

39. The landlords testified that a security deposit in the amount of \$1050.00 was paid on the property on or about 01 March 2020. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.
40. The landlords acknowledge holding the security deposit in the amount of \$1050.00.

Analysis

41. Established by undisputed fact above, the tenants did pay a security deposit to the landlords in the amount of \$1050.00.
42. The landlords' claim has been successful in part as indicated above. The security deposit plus accrued interest is \$1050.00 as the interest rate for 2020 – 2021 is set at 0%.
43. 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 tenants 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 for damages and hearing expenses and as such, the landlords shall offset the security deposit against the amount outstanding as determined in this decision and the attached order.

Decision

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

Summary of Decision

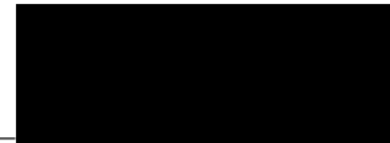
45. The tenants are entitled to the following:

- a) Security Deposit.....\$1050.00
- b) LESS: Compensation for Damages (\$282.20)
- c) LESS: Hearing Expenses (\$136.13)

- c) **Total owing to tenants.....\$631.67**

17 March 2021

Date



Michael Greene
Residential Tenancies Tribunal