

Residential Tenancies Tribunal

Application [REDACTED]
[REDACTED]

Decision 21-0007-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **17 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 respondent, [REDACTED] hereafter referred to as landlord1 did not participate in the hearing but was represented by Shirley Ryan. (*Absent and Represented*)
5. The respondent, [REDACTED] hereafter referred to as landlord2 participated in the hearing. (*Affirmed*)
6. The details of the claim were presented as a written monthly agreement with rent set at \$1100.00 per month and due on the 31st of each month and a security deposit in the amount of \$800.00 was collected on or about 15 January 2018.
7. 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

8. The affidavit submitted by the tenants show that the landlords [REDACTED] & [REDACTED] were served with the notice of this hearing on the **25 January 2021** by serving the application for dispute resolution document to the landlords to the email address: [REDACTED]. Verification and proof of the email was attached.
9. The affidavit submitted by the landlords show that the tenants [REDACTED] & [REDACTED] was served with the notice of this hearing on the **25 February 2021** by serving the application for dispute resolution document to the tenants to the email [REDACTED] and [REDACTED]. Verification and proof of the email was attached.
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) Return of Security Deposit
12. The landlords are seeking the following:
 - b) Damages **\$1635.68**;
 - c) Hearing Expenses;
 - d) 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.*

Issue 1: Compensation for Damages - \$1635.68

Relevant Submissions

Landlord Position

15. The landlords testified that when the property was recovered it was noticed that the following items were damaged as outlined:
 - a. Clean the property
 - b. Removal & disposal of metals, tires & other waste
 - c. Paint/Plaster Property
 - d. Supplies to clean and Paint
 - e. Replace Shed Doors
16. The landlords testified that the tenants moved from the property on 30 November 2020 and an inspection walk through was completed on 01 December 2020 with AC. The landlords testified that there was dirt in the kitchen, the oven was a mess, plaster spots in the living room, multiple holes in the walls above the bedroom windows, paint on window sills and screens and bleach marks on the carpet etc.
17. The landlords testified that an extensive cleaning was required as there was dog hair everywhere. The landlords referred to photos of the property taken after the tenants vacated (**Exhibit L# 1**). The landlords indicated that the photos showed the need for cleaning, the damaged walls, etc. The landlords testified that the bedrooms were painted immediately prior to the tenants occupying the property.
18. The landlords submitted into evidence an invoice from H & O Codner (**Exhibit L # 2**) in the amount of \$1460.00 for the cleaning and other repairs. The landlords further added that they are not claiming item # 4 on this invoice and only ½ of item # 3 as those items do not pertain to the tenants. The landlords went on to state that they are claiming \$1100.00 of this invoice as documented in the breakdown of damages (**Exhibit L # 3**). The invoice outlines 35 hours for cleaning and 5 hours for repairs to the property.
19. The landlords further submitted invoices for the supplies used totaling \$185.68 (**Exhibit L # 4**). The supplies consisted of \$82.80 for cleaning and \$102.88 for painting.
20. The landlords are further seeking costs for the removal of metal, tires and other waste from the property. The landlords submitted an invoice from Layman & Hayden (**Exhibit L # 5**) in the amount of \$150.00 for this cost. The landlords explained that the tenants left an old metal bed frame, old hoses, a child's pool, plastic containers, tires and miscellaneous garbage. There were no photos submitted by the landlords demonstrating the items left behind.

Tenant Position

21. The tenants dispute the claim stating that when they moved into the property, there were countless holes throughout the house. In addition, there was debris left behind from the previous tenants and the property was not clean and they had to clean the unit upon entry.
22. The tenants stated that there were multiple problems with the property which included but not limited to:
 - a. Transition strips was a tripping hazard and the landlord refused to repair
 - b. No working smoke detectors
 - c. Shed was not fully functional
23. The tenants additionally added that the carpets were cleaned before vacating (Tenants did not supply a copy of the receipt) and submitted photos of the property as they vacated (**Exhibit T # 1**). The tenants further added that they drove by the property on 17 December 2020 and the unit door was open and the property was not secured. Tenant2 added that they are not responsible for damages that occurred after they vacated.

Analysis

24. 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
25. As with the majority of challenged claims, there are widely dissenting opinions on the condition of the property at the end of the tenancy. The applicants always hold the burden of substantiating the claim they are putting forth on the balance of probabilities.
26. The evidence presented in this claim has been challenging to analyze in most part as they have not been presented in their original forms. Digital images have been saved and re-saved such that the meta data is not available to determine the date they were taken or photos have been scanned into a pdf format which again provides virtually no information.
27. For both parties, I have only a set of photos taken after the tenancy finished. The two sets of photos are from very differing perspectives and tells a very different story. The landlords' evidence is more close up and detailed with appliances moved whereas the tenants' evidence is taken from a distance with all appliances in place. Not all the same areas are covered by both sets of photos. If I was to analyze each in their own right, I would say they are different homes or taken at different times.

28. This is problematic as it does not provide this tribunal with a baseline of condition that the property was in at the start of the tenancy. I will add here at this point that there was no incoming inspection report provided into evidence as well.
29. On each point of damages, the tenants indicate that the damages were there upon move in. They state that the previous tenants left debris around, that they had to clean the unit upon entry and that there were holes throughout the property when they moved in.
30. The very concept of having before and after photos for each tenancy is so easily obtained in this day in technology. A smart phone can hold thousands of photos and are readily available. In any regard, it is the applicants' burden to support and substantiate the claim made for damages, which in this case is the landlords.
31. Based on the evidence, this tribunal cannot reasonably assess that the damages as described actually existed as claimed and was the responsibility of the tenants in this matter. As such, the landlords' claim for damages does not succeed.

Decision

32. The landlords' claim for damages does not succeed.

Issue 2: Application/Refund of Security Deposit

Landlord Position

33. The landlords testified that a security deposit in the amount of \$800.00 was paid on the property on or about 06 & 15 January 2018. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.
34. The landlords acknowledges holding the security deposit in the amount of \$800.00.

Tenant Position

35. The tenants are seeking a refund of the security deposit paid in the total amount of \$800.00.

Analysis

36. Established by undisputed fact above, the tenants did pay a security deposit to the landlords in the amount of \$800.00.

37. The landlords' claim has not been successful as indicated above. The security deposit plus accrued interest is \$800.00 as the interest rate for 2018 – 2021 is set at 0%.
38. The landlords' claim has failed. 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 no attributable loss and as such, the tenants are entitled to a refund of the security deposit as outlined in the attached order.

Decision

39. As the landlords' claim above has failed, the landlords shall refund the security deposit being held to the tenants as outlined in the attached order.

Issue 3: Hearing Expenses

Landlord Position

40. 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 # 10**). The landlords are seeking this cost.

Tenant Position

41. The landlords paid a fee in the amount of \$20.00 as an application filing fee and presented a receipt from Service NL (██████) (**Exhibit T # 3**). The tenants are seeking this cost.

Analysis

42. I have reviewed the testimony and evidence of the landlords and tenants in this matter. The expenses incurred by both parties 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*. However, as the landlords claim has not been successful, the landlords shall cover their own expenses in addition to the tenants' reasonable expenses.

Decision

43. The landlords shall pay the reasonable expenses of the tenants' in the amount of \$20.00.

Summary of Decision

44. The tenants are entitled to the following:

- a) Refund of Security Deposit\$800.00
- b) Hearing Expenses20.00

- b) **Total owing to Tenants**.....**\$820.00**

30 March 2021

Date



Michael Greene
Residential Tenancies Tribunal