

## Residential Tenancies Tribunal

Decision 21-0009-05

Michael Greene  
Adjudicator

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### Introduction

1. The hearing was called at **9:30 am** on **10 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 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 tenant1 participated in the hearing - *Affirmed*.
5. The respondent, [REDACTED], hereafter referred to as tenant2 participated in the hearing - *Affirmed*.
6. The details of the claim were presented as a written monthly rental agreement with rent set at \$700.00 per month, pay own utilities and rent was due on the 1<sup>st</sup> of each month. A security deposit in the amount of \$525.00 was collected on or about 03 November 2018. The security deposit was disposed of in an agreement outside of this application and will not be addressed here.
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 applicant has to establish that his/her account of events are more likely than not to have happened.

## Preliminary Matters

8. The affidavit submitted by the landlords shows that tenant1 was served with the notice of this hearing on the **17 February 2021** by serving the application for dispute resolution document to tenant1 to the email address: [REDACTED]. The tenant acknowledged receipt.
9. The affidavit submitted by the landlords shows that tenant2 was served with the notice of this hearing on the **13 February 2021** by serving the application for dispute resolution document to tenant2 to the email address: [REDACTED]. The tenant acknowledged receipt.
10. The tenants provided a new forwarding address at the hearing. The address was updated in the electronic application system with Residential Tenancies.

## Issues before the Tribunal

11. The landlords are seeking the following:
  - a) Damages **\$561.43**;
  - b) Utilities **\$69.71**;
  - c) Hearing Expenses;

## Legislation and Policy

12. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
13. 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: Payment of Utilities - \$69.71

### Relevant Submissions

#### Landlord Position

14. The landlords testified that the tenants terminated their power account on 30 September 2020 and did not provide proper notice of termination to end the tenancy. The landlords testified that the tenants provided a text message on 17 September 2020 terminating for 04 October 2020.

15. The landlords testified that they were able to re-rent the property for 01 November 2020 and therefore incurred a loss for October 2020. The landlords added that the tenants paid the rent owing in lieu of notice for October but failed to pay for the associated utilities.
16. The landlords submitted a copy of the NL Power invoice (**Exhibit L # 10**) as evidence.

#### Tenant Position

17. The tenants acknowledge the amount of the utilities (\$69.71) explaining that they had assumed that they had paid the invoice to NL Power directly and in actual fact the payment was for another period of time.
18. The tenants have no dispute with this portion of the claim.

#### **Analysis**

19. The tenants have no dispute with this portion of the claim and the claim itself is reasonable. I find the tenants responsible for the electrical usage for the property for October 2020 in the amount of **\$69.71**.

#### **Decision**

20. The landlords' claim for utilities succeeds in the amount of **\$69.71**

#### **Issue 2: Compensation for Damages - \$561.43**

#### **Relevant Submissions**

##### Landlord Position

21. The landlords testified that when the property was recovered it was noticed that the following items were damaged as outlined:
  - a. Replace Carpet (Cat Urine)
  - b. Replace two sets of Blinds
  - c. Plaster/Paint walls
  - d. Cleaning
  - e. Labor
22. The landlords submitted an incoming inspection report of the property (**Exhibit L # 11**). The landlords testified that when the property was recovered, it was noted that there was an extensive smell of cat urine coming from the carpets of the

small bedroom which the tenants used as an office. In addition to the smell, the carpet itself showed extensive wear as this area was used as an at home office during the work from home public health orders resulting from the Covid-19 pandemic.

23. The landlords stated that the carpet was newly installed when the tenants moved into the property and submitted photos of the damage (**Exhibit L # 2**) and an invoice from Centura (**Exhibit L # 1**) for the purchase of the replacement carpet. The carpet would be 1 year 9 months old when vacated.

### Tenant Position

24. The tenants testified that their cat was litter trained and had access to the small bedroom closet only. The tenants further indicated that he used a special cleaner when the cat would have mishaps and throw a fur ball.
25. The tenants did not address the carpet wear but did indicate that this was used as an at home office during the pandemic.

### **Analysis**

26. I have reviewed the testimony and evidence of the landlords and tenants in this portion of the claim. The landlord 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
27. The incoming inspection report clearly indicates that the carpet was new upon entry and the tenants signed off on this report at the time. The carpet from the photos appears to be of a commercial grade carpet, typically found in a lot of rental properties.
28. There is two issues with the carpet being addressed (1) the excessive wear and (2) smell of cat urine. The tenants' mention that the office seen more wear as a result of the pandemic. I accept this only for the last 6 months of the tenancy (April – September 2020). The tenants also mentioned that the cat only had access to the closet area. This I find hard to accept that a cat was restricted to a closet. If this is the case, then that would be considered cruel. Further, just because a cat is litter trained, does not mean that it will not soil outside of the litter box. Cats are instinctually clean animals, however, if their litter boxes become over full and soiled, they may look to void in a cleaner location.
29. It is this tribunal's opinion that the cat likely soiled on the carpet near the litter box. Further, the carpet and underlay was obviously excessively worn as a result of the tenants using the room as a home office. For at least the last 6 months of

the tenancy, there was a new reality thrust upon the world with respect to “working from home”. This new office set up undoubtedly will put extra wear on the areas where the new office are being established.

30. The apparent wear of the carpet is deriving from the movement of an office chair in front of a desk. Whereas in an office setting this is expected, the landlords did not rent out as an office, so cannot be expected to absorb additional wear as a result. The tenants would have the burden in this area to address any extra wear and incorporate extra protective measure to reduce the wear on the carpet. One simple measure comes to mind and that would be to add the acrylic floor protectors used in many offices with carpet. This was not apparently considered and as such I find the tenants responsible for the replacement of the carpet.
31. The landlords has claimed 4 hours or \$72.00 as labor to install the new carpet. I will address this portion of the labor here in addition to the material cost of \$191.46. Carpet is a depreciable item and Residential Tenancies assess a useful life span of a mid-grade carpet at 8 years or 96 months. The carpet in this case was 21 months old (1 year 9 months) and therefore the depreciated value for the carpet replacement is **\$205.50** calculated as ( $\$263.46 \div 96 \text{ months} = \$2.74/\text{month} \times 75 \text{ months} = \$205.50$ ).
32. For the balance of the claim, the tenants have acknowledged the damages as claimed as follows:
- |                       |                        |
|-----------------------|------------------------|
| a. Blind Replacement: | \$52.88                |
| b. Plaster/Paint:     | 17.00                  |
| c. Cleaners:          | 30.09                  |
| d. Labor:             | <u>198.00</u>          |
| e. <b>Total</b>       | <b><u>\$297.97</u></b> |
33. As such, I find the tenants responsible for the above claimed damages in the amount of \$297.97.

### Decision

34. The landlords’ claim for damages succeeds in the amount of **\$503.47** (\$205.50 + \$297.97)

## Summary of Decision

35. The landlords are entitled to the following

a. Compensation for Damages	\$503.47
b. Payment of Utilities	<u>69.71</u>
<b>c. Total owing to landlords</b>	<b><u>\$573.18</u></b>

22 March 2021

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**Date**



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**Michael Greene**  
**Residential Tenancies Tribunal**