

Residential Tenancies Tribunal

Decision 19-0016-01

Michael Greene
Adjudicator

Introduction

1. The hearing was called at 2:30 pm on 13 June 2019 at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador.
2. The applicant, [REDACTED], hereafter referred to as the tenant, participated in the hearing - *Affirmed*.
3. The respondent, [REDACTED], hereafter referred to as landlord1 participated in the hearing – *Absent and Represented*.
4. The respondent, [REDACTED], hereafter referred to as landlord2 participated in the hearing – *Affirmed*.
5. The details of the claim were presented as a written fixed term rental agreement set to expire on 31 March 2019 with rent set at \$850.00 per month (utilities extra) and due on the 1st of each month. It was stated that a security deposit in the amount of \$500.00 collected on the tenancy on 01 October 2018 and \$140.00 was refunded through e-transfer. The landlord issued a termination notice dated 01 January 2019 for the intended termination date of 31 March 2019 under Section 18 of the *Residential Tenancies Act, 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.

Issues before the Tribunal

7. The tenant is seeking the following:
 - a. Compensation for Inconvenience - **\$425.00**
 - b. Compensation for Damages - **\$100.00**
 - c. Refund of Security Deposit – **(\$360.00)**
8. The landlords are seeking the following:
 - a) Compensation for Damages **\$360.00**
 - b) Hearing expenses

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
10. Also relevant and considered in this case are Sections 19, 34 and 35 of *the Act*, and Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Compensation for Inconvenience - \$525.00 (\$425.00 + \$100.00)

Relevant Submissions

Tenant Position

11. The tenant testified that during the tenancy there was a water break in the living room which caused damages to the ceiling in the living room, floor in the dining room and the floor in the living room. The tenant further testified that it took approximately 2 weeks to complete the repairs and he did not have full use of the premises he was renting as a direct result of the damages to the leak and subsequent repairs. The tenant estimates that approximate 1/3 was usable within the property. As such the tenant is claiming 1/2 of a month's rent (\$425.00) as compensation for the loss of use.
12. The tenant further testified that the repairs of the property was being completed by the insurance company and Newtown Cleaners attended the property on behalf of the insurance company. The tenant claims that Newtown Cleaners moved his desk and damaged it. The tenant referred to the photos submitted (**Exhibit T # 1**). There was no invoices or estimates presented for the valuation of the claimed damage.

13. The tenant testified that he did not hold a tenant's insurance policy.

Landlord Position

14. The landlord testified that the tenant was in no way responsible for the damages caused by the water leak in the bathroom and is not being charged for any associated damages resulting from this water leak. He testified that his insurance company were involved in the clean-up and associated repairs.
15. The landlord advised that he was notified of the leak by the tenant on or about 11 January 2019 and the work began on 14 January 2019 with the work completed on 21 January 2019. He testified that this would put the property down for 10 days.
16. The landlord testified that he feels like the claim for compensation for inconvenience has no merit.

Analysis

17. I have reviewed the testimony and evidence of the landlord and tenant in this matter. As far as I can see, there is one issue here that needs to be addressed: (i) has the tenant been unduly inconvenienced with respect to the use and occupation of the rented premises for which the tenant has paid.
18. It has been determined that there was a water leak that engaged the services of the insurance company and the services of a property restoration company to complete the required repairs.
19. It has been further determined that the living room ceiling and floors were removed and replaced. It has been determined that the leak originated from the bathroom which required some repair. As the living room was stripped, the items in this room were moved into the dining room and kitchen areas which further made the property not usable.
20. A tenant makes a rental payment for the unobstructed use and occupation of the entire property for which rent is being paid. It is clear that as a result of the water leak which was no fault of the tenant, the unobstructed use of the property was clearly not provided to the tenant. It would certainly be a reasonable consideration to rebate the tenant for the portion of the rent paid respective of the portion of the property that was not accessible and for the duration that there was upheaval. As the main area of the rented premises (living room, dining room kitchen and bath room) were affected, I find that the claim for $\frac{1}{2}$ of a month's rent rebate is not unreasonable. The tenant estimated approximately $\frac{1}{3}$ of the property was obstructed, but this was the main living area where daily activity took place. I find that the tenant is entitled to a rental rebate in the amount of **\$425.00** representing $\frac{1}{2}$ of one month's rent.

21. In deciding the portion of this claim that is for the compensation of damages done to the personal property of the tenant, I make the finding that I am unable to deal with this portion of the claim as it does not rest within the jurisdiction of the Residential Tenancies Act, 2018, the reasoning for which follows.
22. The landlord's insurance company was engaged to complete the restoration repairs to the landlord's property for which the policy is applicable. It is a common understanding that personal items of a tenant within a rented unit are not covered by the insurance policy of the landlord.
23. Further, the restoration company engaged by the landlord's insurance provider are contractually mandated to attend to the repairs and restoration of the items belonging to the landlord only. Any action on the part of the restoration company to move items not belonging to the landlord within the rented premises would be an action that they would take outside their contract for work.
24. The landlords cannot be held accountable for an action of a third party for which no direction was given by the landlord. It is apparent that the restoration company acted on their own to apparently move a furniture item of the tenant. As this company is not the landlord, there is no landlord and tenant relationship and as such this tribunal does not have jurisdiction on this portion of the claim. The tenant is directed to another court of jurisdiction to adjudicate this portion of the claim.

Decision

25. The tenant's claim for compensation for inconvenience succeeds in the amount of \$425.00

Issue 2: Compensation for Damages (L) - \$360.00

Landlord Position

26. The landlords are seeking compensation for damages to the rented premises noted after the tenant vacated the property respective of the following:
 - a. Cleaning - **\$200.00**
 - b. A Missing Floor Rug - **\$100.00**
 - c. Plumbing Inspection - **\$60.00**
27. The landlord testified that when the property was recovered after the tenant vacated on or about 31 January 2019, the property was left in a mess and required that a cleaner be brought in to clean the unit. The landlord testified that they hired RW to clean and paid her \$200.00 (**Exhibit L # 2**). The landlord further submitted a rental premises condition report (Outgoing) (**Exhibit L # 1**) and indicated that photos of the property condition were submitted to Residential Tenancies and placed on the Department Server (**Exhibit L # 3**).

28. The landlord further testified that the tenant removed the kitchen faucets without permission for the purpose of using a portable dishwasher. The landlord further stated that the faucets were re-installed prior to the tenant vacating. The landlord testified that they feel it is necessary to have the plumbing inspected by a certified plumber given the tenant is not a plumber and was disconnecting and connecting plumbing fixtures. The landlord is claiming \$60.00 for Dawe's Mechanical to attend the property to inspect the plumbing alterations. The landlord indicated that the invoice (**Exhibit L # 4**) was submitted and stored on Residential Tenancies Servers.
29. The landlord further testified that when the property was recovered it was noted that a large area rug was missing from the basement area of the property. The landlord self-estimated the value of the rug at \$100.00 as a depreciated value and referred to photos (**Exhibit L # 3**) to show that the rug was in the property prior to the tenant taking possession. The landlord estimated that the rug was 3 – 4 years old.

Tenant Position

30. The tenant disputed the claim of the landlord entirely. He testified that 10 days prior to him moving out of the property, the restoration company contracted to complete the repairs cleaned the unit almost in its entirety as a result of the repairs they undertook. He stated that they cleaned the living room, dining room, kitchen and bathroom as these were the affected areas.
31. The tenant further testified that in addition to this, he further cleaned again before he vacated the property and submitted a video of the property as he was vacating (**Exhibit T # 2**). The tenant states there was no requirement for cleaning.
32. Respecting the missing rug, the tenant testified that there was no rugs in the property before or as he was moving into the unit. The tenant testified that he had a rug in the living room and an older rug belonging to his mother which he had placed in the basement and used it for exercise equipment. He testified that there were markings on the rug that were there as a result of his mother and stated that the rug was approximately 10 years old.
33. In relation to the claim for a mechanical inspection of the plumbing, the tenant acknowledges removing the landlord's faucets from the sink and re-installing them just prior to moving out. He testified that he did not want to damage the faucets by using the portable dishwasher on them. He stated that he did not alter the plumbing but simply unscrewed the faucets from the connecting valves and replaced them the same way.

Analysis

34. The landlords have made the claim for damages and therefore it is the responsibility of the applicant to show beyond the balance of probabilities that what the applicant is claiming, is accurate and supported in evidence.
35. The landlords' claim for cleaning is the majority of the claim from the landlords. Landlord2 stated that the invoice from the cleaning lady and the photos of the property were sent to the Division and the other party. The evidence was identified at the hearing but at the conclusion of the hearing and at the time of writing, the evidence was not submitted or available on file at The Residential Tenancies Office.
36. Further, I have reviewed the video evidence submitted by the tenant in defense of the claim and find that the property was left in a clean condition and not as described by the landlords. To support this evidence I also accept that the property was cleaned professionally just 10 days prior to the tenant vacating by the company contracted to complete the repairs associated with the renovations. I accept the version of events presented by the tenant in this matter and find that the landlords' claim for cleaning fails.
37. Similarly, the landlords are claiming for the replacement of a missing rug and refers to evidence that has not been submitted. There is no evidence to suggest that the rug being claimed by the landlord was in the property prior to the tenant taking possession or that the rug was that of the landlords. As it is the applicant's burden to prove beyond the balance of probabilities, I find that the landlords have not supported the claim for the replacement of the rug and as such fails.
38. Respecting the claim for the plumbing inspection, the tenant has acknowledged removing a set of faucets in the property and reinstalling them prior to vacating. All be it that the removal and reinstallation is a simple process and involves only removing two screw connections, it is altering a plumbing system and it is reasonable that the landlord would want a plumber to ensure it was completed correctly to protect them against any possible future claims related to a potential water leak. There is no legal requirement in NL for a certified plumber to complete plumbing work, but it is certainly a good idea in the event of a future potential claim. Landlord2 again has indicated that the invoice from the plumbing company was submitted, it was not in the file or placed on the Department servers. I find that the amount being claimed is reasonable and award the landlords an amount of \$60.00 for the cost of the plumbing inspection.

Decision

39. The landlords' claim for damages succeeds in the amount of \$60.00.

Issue 3: Refund of Security Deposit

Tenant Position

40. The tenant stated that he is seeking the refund of the balance of his security deposit in the amount of \$360.00 as he feels the landlords have no grounds to retain the deposit. The tenant testified that a security deposit in the amount of \$500.00 was paid on 24 September 2018. This was indicated by both parties and acknowledged accordingly. The tenant further testified that the landlords have refunded \$140.00 of the deposit by e-transfer and he is now seeking the refund of the balance.

Landlord Position

41. Landlord2 testified that they are seeking to retain the balance of the security to compensate for the claimed damages above. The landlords are seeking to have the security deposit off set against any order.

Analysis

42. I have reviewed the testimony and evidence of the landlord & tenant in this matter. As far as I can see, there is 1 issue here that needs to be addressed: (i) did the tenant cause damages in the amount greater than or equal to the value of the security deposit being held.
43. Both parties have acknowledged that the security deposit in the amount of \$500.00 was paid by the tenant and that \$140.00 was refunded by the landlords after the tenancy terminated. The landlords have filed a counterclaim to the tenant's claim seeking a refund of the security deposit and that claim has partially been successful. I find that the landlords shall off set the award for damages against the security deposit as outlined in this decision and attached order.
44. The accrued interest and security deposit is \$360.00 as the interest rate for 2019 and 2020 is set at 0%.

Decision

45. The tenant's claim for refund of security deposit succeeds in the amount of \$360.00.

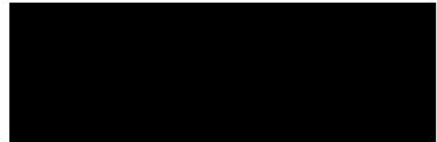
Summary of Decision

46. The tenant is entitled to the following:

a)	Rent rebate	\$425.00
b)	Refund of security deposit	360.00
c)	Sub-total	\$785.00
d)	LESS: Damages	<u>(\$60.00)</u>
d)	Total owing to tenant	<u>\$725.00</u>

6 February 2020

Date



Michael Greene
Residential Tenancies Tribunal