

## Residential Tenancies Tribunal

Decision 19-0024-03

Michael Greene  
Adjudicator

---

### Introduction

1. The hearing was called at 1:30 pm on 25 March 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 Landlord1 participated in the hearing. (*Sworn*)
3. The applicant, [REDACTED], hereafter referred to as the Landlord2 participated in the hearing. (*Sworn*)
4. The respondent, [REDACTED], hereafter referred to as the tenant, participated in the hearing. (*Affirmed*)
5. The details of the claim were presented as a verbal monthly rental agreement with rent set at \$675.00 per month and due on the 1<sup>st</sup> of each month beginning on 10 November 2018 and terminated on 28 February 2019. It was stated that a security deposit in the amount of \$337.50 was collected on or about 1 November 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.

## Preliminary Matters

7. The affidavit submitted by the landlord shows that the tenant was served with the notice of hearing on the **12 March 2019** by serving the Application for Dispute Resolution to the tenant by email:

[REDACTED]

The email address was an address used to communicate between parties. The tenant appeared at the hearing and acknowledged the email address and receipt of the documents.

As the tenant was properly served in accordance with the *Residential Tenancies Act, 2018*, with the Application for Dispute Resolution, the hearing proceeded.

## Issues before the Tribunal

8. The landlords are seeking the following:
- a) Damages **\$340.00**;
  - b) Hearing Expenses;
  - c) Application of Security Deposit

## 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:
- a. Sections 34 and 35 of *the Act*; and;
  - b. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
  - c. *Policy 9-2 Claims and Counter Claims*, and;
  - d. *Policy 9-3 Claims for Damage to Rental premises*.

## **Issue 1: Compensation for Damages - \$340.00**

### **Relevant Submissions**

#### Landlord Position

11. Landlord 1 testified that when the property was recovered it was noticed that the following items were damaged. The damages were outlined as follows:
  - a. Refinish kitchen cabinet
  - b. Steam clean carpets
  - c. Repair/paint walls chewed by a pet
  - d. Clean the property
12. Landlord2 testified that they renovated prior to the tenant moving into the property. Landlord2 testified that they renovated the kitchen cabinets with a seven step process kit as opposed to replacing the cabinets at a significantly higher cost. Landlord2 stated the original cabinets were 18 years old. Landlord2 submitted a photo of the damage to the cabinets (**Exhibit L # 1**) along with a receipt from Kent Building Supplies (**Exhibit L # 1**) to purchase another kit in the amount of \$114.99 + HST. Landlord2 stated that the kit procedure has to be followed from beginning to end and all seven steps have to be followed to get the result. Landlord1 testified that they are seeking 3 hours labor ( $\$19.15 \times 3 \text{ hrs} = \$57.45$ ) in addition to the cost of the kit.
13. Landlord 2 testified that when the property was recovered, it was noticed that the carpets were not cleaned including what appeared to be dog vomit in the hallway closet area. Landlord2 referred to photos of the area (**Exhibit L # 1**) to demonstrate that there was some sort of spillage on the carpet. Both landlords stated that they rented a carpet cleaner from Dominion (No Receipt) in the amount of \$31.99 plus HST and are claiming 1 hour labor to clean the carpets at a rate of \$19.15 per hour.
14. Both landlords testified that the property was left in an unclean condition after the tenant vacated the property. The landlords referred to the photos of the property to demonstrate the cleaning required (**Exhibit L # 4**). The landlords are seeking 2 hours labor at a rate of \$19.15 per hour to clean the property. Total cleaning claim is \$38.30.

#### **Tenant Submission**

15. The tenant testified with regard to the kitchen cabinets, she does have a golden doodle dog (70-80 lbs) who likes to chew things. The tenant testified that her dog did indeed chew the corner of the cabinets and that she accepts full responsibility for this claimed damage.

16. The tenant testified with respect to the corner of the walls, again her dog did indeed chew the corners. Further, the tenant testified that she did remove a TV wall mount from the living room and she as well plastered the holes that were created, but did not paint them. The tenant again accepted responsibility but questioned the need to purchase a gallon of paint.
17. The tenant disputes the claim to clean the carpets. She testified that she does not recall the stain on the carpet (alleged dog vomit) when she moved in, she didn't see the stain and stated that she kept the carpets clean during the tenancy.
18. The tenant further disputed the claim for cleaning stating that she was cleaning the property all day prior to moving. She further stated that her father removed some curtain rods and likely created some dust as a result. The tenant called witness [REDACTED] who stated that it is very likely that some plaster dust may have fell on the countertop when he removed the curtain rods. He added that the unit was being cleaned all day on the day of moving. The witness further added that there was a stain on the carpet prior to the tenant moving in, yet indicated that he did not see the unit prior to his daughter moving into the property under questioning from the adjudicator.

## Analysis

19. I have reviewed the testimony and evidence of the landlords and tenant in this matter. The 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
20. Regarding the claims for repair of the kitchen cabinets and repair of the walls, the tenant has acknowledged responsibility for these damages and as such I find the tenant responsible and award the landlord applicants as follows:
  - a. Repair Cabinets:  $\$132.24 + 57.45 = \$189.69$
  - b. Repair Walls:  $\$67.83 + 19.15 = \$86.98$
  - c. **Total: \$276.67**
21. Regarding the claim for cleaning the carpets, it is clear from the landlord photos that there was some sort of spillage on the carpet in a closet area. What I do not find clear is the condition of the carpets prior to the tenant renting. The tenant's witness did state that the stain was there prior to the tenant moving in and moments later also stated that he did not see the property prior to the tenant moving in. This conflict raises questions of credibility of this witness testimony. Removing this testimony from the decision, the burden of proof still rests with the landlords to establish liability. The landlords have not established the condition of the property (in this portion of the claim, the carpets) prior to the tenant moving

in. Further, the landlords have also not provided a receipt for the rental of a steam cleaner which is also required to establish a valuation for any award. As the landlords have not supported their claim for this portion of the total claim, the claim for carpet cleaning fails.

22. With regard to the claim for cleaning the unit, there also appears to be a difference of opinion. The tenant disputes the claim stating the property was cleaned all day prior to leaving. The tenant did acknowledge that there may very well be a small amount of dust created from the removal of curtain rods in the kitchen. The landlords presented a video demonstration showing that there was plaster dust (very small amount) along the back of the countertop. The applicants' video and pictures presented as evidence does in no way indicate that anywhere near 2 hours of labor would have been required to clean the property. In fact, there appears that there was no other cleaning required. In any estimation, it would take 2 minutes to wipe a cloth along the back of the countertop to complete the task. I find that the claim for cleaning has not been fully supported and if indeed it is only the small amount of plaster dust, is frivolous. The landlords' claim for cleaning fails.

## Decision

23. The landlords' claim for damages succeeds as follows:

a. Repair Kitchen Cabinets	\$189.69
b. Repair Walls	86.98
c. Clean Carpets	0.00
d. Clean Apartment	<u>0.00</u>
e. <b>Total Damages</b>	<b><u>\$276.67</u></b>

## Issue 2: Application of Security Deposit

### Landlord Position

24. Landlord2 testified that a security deposit in the amount of \$337.50 was paid on the property on or about 1 November 2018. The landlords' claim is seeking to apply the security deposit against the order issued by the tribunal.

## Analysis

25. Established by undisputed fact above, the tenant did pay a security deposit to the landlords in the amount of \$337.50. The landlords' claim has been successful in part. The security deposit plus accrued interest is \$337.50 as the interest rate for 2018 – 2019 is set at 0%.

## Decision

26. As the landlords' claim above has been successful, the landlords shall apply the security deposit being held against the attached Order as outlined in the attached.

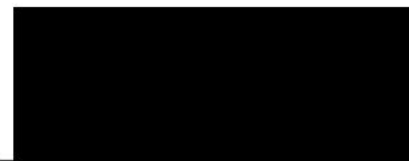
## Summary of Decision

27. The tenant is entitled to the following:

- a) Damages .....\$276.67
- b) LESS: Security Deposit being held ..... (\$337.50)
- f) **Total owing to Tenant.....\$60.83**

14 June 2019

**Date**



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