

Residential Tenancies Tribunal

Application 2024-0416-NL

Michael Reddy
Adjudicator

Introduction

1. The hearing was called at 2:00 PM on 12 August 2024 via teleconference.
2. [REDACTED] and [REDACTED], hereinafter referred to as “the landlords”, attended the hearing.
3. [REDACTED], hereinafter referred to as “the tenant”, did not attend and was not represented.

Preliminary Matters

4. The tenant was not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. Prior to the start of the hearing, I attempted to contact the tenant at 1:49 PM at which time, I was informed by an unidentified person it was the wrong telephone number for the tenant. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with a claim and notice of the hearing 10 clear days prior to the hearing date, and, where the respondent fails to attend the hearing, Rule 29.11(1) states the hearing may proceed in the respondent’s absence so long as they have been properly serviced. The landlords submitted an affidavit of service indicating the tenant was served electronically [REDACTED] on 1 August 2024 (L#1). As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in his absence.
5. There was a written monthly rental agreement that commenced on 2 January 2023. The landlords testified that they were unsure as to the date the tenant actually vacated; however, they had received notice from Newfoundland Power that services were discontinued on 9 May 2023 so they estimate he had vacated somewhere around that date. Rent was \$1,450.00 per month, due on the 1st of each month. A security deposit of \$1,000.00 was paid on 6 January 2023, the disposition of which was awarded to the landlords in a previous adjudication, application #2023-0225-NL, to offset monies awarded in that hearing.

6. As application #2023-0225-NL determined rent and late fees for the period in question (April and May 2023), these items are removed from the application and will not be dealt with in this hearing.
7. The landlords amended their application to include additional costs associated with labour in the amount of \$2,760.00 and were also seeking the hearing expenses. The landlords testified that they were initially unaware that they could claim the cost of labour associated with the repairs; however, once realizing they amended their claim to include those costs. Under the principles of natural justice, the respondent has a right to receive such details necessary to prepare a reasonable defense. As these were not included in the application and notice of hearing to the respondent, they cannot be considered during this hearing. The landlords were offered the option to postpone, to amend their application and reserve the tenant; however, they opted to proceed.
8. In a proceeding under the *Residential Tenancies Act, 2018*, the applicants have the burden of proof. This means the applicants have 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 their account of events is more likely than not to have happened.

Issues before the Tribunal

9. The landlords are seeking the following:
 - Compensation for damages
 - Hearing expenses

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018 (the Act)*.
11. Also, relevant and considered in this case is Section 14 of the *Act*, along with *Policy 09-003: Claims for Damages to Rental Premises* and *Policy 09-005: Depreciation and Life Expectancy of Property*.

Issue 1: Compensation for Damages

12. The landlords submitted a claim for \$8,600.00 in damages (L#2), divided amongst 8 items. Those 8 items will be categorized under 5 headings below, which will be dealt with individually.

Replacement of Flooring - \$3,000.00

13. The landlords testified that they had installed new laminate flooring in the premises in 2019, and that they had to replace the flooring throughout the upstairs portion of the premises upon taking possession due to horrible smell of cat urine. They noted that the

rental agreement (L#3) specified no animals or pets. However, they had reports from the tenant in the basement apartment that there was at least one, if not more, cats on the premises. They testified that when they took possession of the property there was a "horrible smell of cat pee" and "animal feces all over the house". They testified that cat urine had seeped down through the laminate flooring in many areas throughout requiring removal; and because the laminate was consistent throughout the upstairs portion of the premises it all had to be replaced.

14. In support of their testimony, the landlords supplied pictorial evidence of the rental premises prior to the tenancy (L#4). The landlords also provided pictures of the premises following the removal of the laminate flooring and during what appears to be the period during which they were conducting repairs (L#5). These pictures show several areas with stains on the subflooring that appear to be the result of liquid being absorbed. The landlords further testified that they the estimate of \$1,500.00 to replace the flooring in the upstairs portion of the premises, which they note was an initial estimate and that the flooring itself had cost much more.
15. The landlords stated the flooring in the basement area of the premises, including the rec room and laundry room had to be fully replaced following a leak in the water heater. They testified that while the tenant was not responsible for the water heater initially breaking, his deliberate and negligent actions caused the damage to be much more significant than it would have been otherwise, as he refused to allow anyone in to assess the situation and affect repairs.
16. The landlords testified that during the time in question they were out of the country and received messages from the tenant in the basement apartment, beginning on April 7, 2023 advising that water was seeping in to their apartment, and that it appeared to be seeping through the wall connected to the basement rec room of the upstairs unit. Numerous attempts were made to contact the tenant directly, as well as the tenant's parents who advised them that they were unable to make contact with him. The landlords further testified that they contacted a plumber who went to the house, but the tenant refused to allow him entry. As well, the landlords testified that their own parents attempted to gain entry to the premises on their behalf, but the tenant threatened them with a baseball bat and refused entry. The landlords testified that the police became involved, and when they gained access to the premises one of the officers went down to the basement and advised the landlords over the telephone that there were several inches of water accumulated on the basement floor. In total, the landlords estimated that the tenant did not permit a plumber into the rental premises for approximately 5 days. Along with their application, the landlords supplied pictures of the floor showing areas where the flooring had been removed, water-stained subflooring and pictures of some areas where the floor was removed down to the concrete (L#5). Again, the landlords testified that they the estimate of \$1,500.00 to replace the flooring, which was an initial estimate.
17. In support of their claim for damages, the landlords provided eight receipts for various items, including a receipt in the amount of \$2,681.48 for flooring from Home Depot (L#6) and a receipt for \$317.40 for the rental of an industrial dehumidifier for more than 6 days; which they testified was required to dry out the basement and reduce the moisture content back to acceptable levels before affecting repairs.

Analysis

18. With all damage claims, three primary things must be considered:
1. Applicants must establish that damages exist and the extent of the damages
 2. That the damages arose from deliberate or negligent actions of the tenant.
 3. The costs of repairing or replacing the damaged items. Further, when making an award for damages, normal wear-and-tear, as well as straight-line depreciation is a consideration where warranted. Along with their application, the landlords supplied a Compensation for Damages List (L#2).
19. I accept the landlord's testimony that the tenant's actions caused damage to the floors in the upstairs portion of the unit. The landlords provided pictures of the premises which clearly demonstrated that the flooring was in a good state of repair prior to the tenant's residency with no damage. They also provided pictures of the floor following the removal of the damaged flooring clearly demonstrating several areas with stains on the subflooring that appear to be the result of liquid being absorbed. I also accept the landlord's testimony that, while the tenant did not cause the initial break in the water heater, his deliberate and negligent action of refusing to allow anyone in the premises to affect repairs for several days contributed significantly to the level of damage caused to the flooring of the basement area of the premises. Pictorial evidence provided clearly demonstrates extensive damage to the flooring requiring full replacement.
20. In accordance with Residential Tenancies Program Policy 9-005, where an applicant seeks compensation for the costs of replacing or repairing a damaged or missing item, this tribunal would apply straight-line depreciation calculation to determine an amount that should be awarded. The National Association of Home Builders Study of Life Expectancy of Home Components identifies laminate flooring as having a life expectancy of up to 25 years. The landlords testified that the flooring in the premises had been installed in 2019, putting it at approximately 4 years old at the time the tenant vacated. The landlords provided a receipt for flooring in the amount of \$2,681.48 to demonstrate the cost of replacing the flooring. Taking depreciation into account, I find the tenant is responsible for \$2,252.44 $[(\$2,681.48 \div 25 \text{ years}) \times 21 \text{ years remaining}]$ for the replacement of the flooring, as well as the cost of the industrial dehumidifier rental at \$317.40 for a total of \$2,569.84.

Repair, Replacement, Plastering, and Painting of walls, Gyproc and baseboards - \$1,400.00

21. The landlords testified that there was significant damage to the walls of the premises in the upstairs section due to carvings of swastikas in the walls themselves, as well as the smoking of cigarettes and other substances which left the walls sticky with residue (which was a violation of the terms of the rental agreement) and could not be properly cleaned. The landlords testified that they had to replaster in many areas and repaint throughout. In total, the landlords claim estimated \$1,400.00 to cover the costs associated with repairs, replacements, plastering and painting.

22. The landlords testified that the lower part of the walls in the basement, approximately 1 ½ to 2 feet up from the floor, including walls in the separate basement apartment required removal and replacement. As well, they testified that they had to repaint the basement apartment due to the extensive water damage which originated in the basement of the upstairs premises seeping out into the basement apartment. They attributed the requirement for these replacements and repairs to the level of water damage and mold which resulted from the tenant's refusal to allow a plumber onto the premises in a timely manner to affect repairs. The landlords testified that they completed all repairs themselves. No receipts were provided for drywall; however, the landlords provided six receipts (L#6) detailing items such as paint, paint supplies, molding, underlay and sealant totaling \$1,043.93.

Analysis

23. As per the criteria outlined in paragraph 16, I accept the landlord's testimony that the tenant's actions caused damage to the upstairs portion of the unit requiring repairs, plastering and painting. The landlords provided pictures of the premises which clearly demonstrated that the premises was in a good state of repair prior to the tenant's residency with no damage. They also provided pictures (L#5) of the walls clearly demonstrating several areas requiring extensive plastering. As noted previously, I also accept the landlord's testimony that, while the tenant did not cause the initial break in the water heater, his deliberate and negligent action of refusing to allow anyone in the premises to affect repairs for several days contributed significantly to the level of damage caused to the flooring of the basement area of the premises. Again, pictorial evidence (L#5) provided clearly demonstrates extensive damage to the walls in the basement portion of the premises.
24. The National Association of Home Builders Study of Life Expectancy of Home Components identifies interior paint as having a life expectancy of approximately 15 years. The landlords testified that the premises was painted in 2019, putting it at approximately 4 years old at the time the tenant vacated. The landlord's receipts provided detailing costs of paint and related materials total \$426.29. Taking depreciation into account, I find the tenant is responsible for \$312.61 $[(\$426.29 \div 15 \text{ years}) \times 11 \text{ years remaining}]$ for costs associated with painting and plastering.
25. The National Association of Home Builders Study of Life Expectancy of Home Components identifies moldings as having a lifetime expectancy. The landlords provided receipts totaling \$617.64 detailing costs of molding and related materials. As depreciation is not a factor, I find the tenant responsible for the cost of \$617.64 for moldings and related material.
26. The landlords claim for costs associated with repairs, replacement, plastering, and painting succeeds in the amount of \$930.25.

Removal of garbage and materials - \$500.00

27. The landlords claim \$500.00 cost of removing garbage and debris from repairs. They testified that all of the flooring replaced from both upstairs and downstairs required

removal, along with damaged drywall, moldings, damaged furnishings and other debris. The landlords testified that they did not have receipts to support this portion of the claim as they paid students and others in cash. They also testified that they completed some of the cleanup and disposal work themselves and made at least six trips to the dump to dispose of garbage and waste.

Analysis

28. Based on the landlord's testimony and photographs entered into evidence, I accept that the landlords were required to remove a significant amount of debris and materials from the premises, requiring several trips to the dump. The landlord's claim costs of \$500.00 related to the removal of materials from the premises but provided no receipts or specifics as to whom they paid, how much was paid to other parties and how much of the work that they completed themselves, beyond the fact that they "made at least six trips to the dump". Based on the photographic evidence, I find it reasonable that it required at least six trips to the dump to dispose of materials.
29. In accordance with Residential Tenancies Policy 9-003, where a landlord carried out any of the repair work themselves, they may make a claim for costs of personal labour. For each hour of personal labour exerted, a landlord may claim the current provincial minimum wage rate of $\$15.60 + \$8.00 = \$23.60$. I find it reasonable to estimate that it would take approximately four hours to load, transport, unload and return one pickup truck full of garbage. I accept the testimony of the landlords in that they "made at least six trips to the dump". Based on this estimate, costs of personal labour would equate to $\$23.60/\text{hour} \times 4/\text{hours} \times 6 \text{ trips} = \566.40 . As this tribunal cannot award amounts in excess of the initial amount claimed, the landlords claim for the removal of garbage and debris succeeds in the amount of \$500.00.

Lost Rent

30. As noted in paragraph 6, rent for the months of April and May 2023 up to the date the tenant vacated the property had been dealt in a previous ruling. During their testimony the landlords also noted that they were seeking the award of additional compensation for lost rental income. They testified that given the repairs required and the time it took to affect those repairs they were unable to rent the property until November 2023.

Analysis

31. A landlord has a legal duty to take all reasonable steps to mitigate their damages after a tenant vacates the residential premises. As the most obvious sort of damage the landlord would suffer would be a loss of rental income, "mitigation" in these circumstances would entail the landlord taking immediate steps to find new tenants to move into the property so that the landlord could once again collect rent. In this instance, I note that the landlords testified that they did not file an insurance claim and have the repairs completed through their insurer. They opted to complete the repairs themselves over a more prolonged period. They offered no testimony as to when these repairs were finalized, or when and if they made reasonable attempts to secure a new tenant. While I appreciate that the amount of damage requiring repairs was significant and likely delayed the securing of new tenants, there is a lack of evidence to make a

determination, on the balance of probabilities, that the landlords made all reasonable efforts to mitigate their losses; and if so, to what extent. As such, the landlords claim for lost rental income does not succeed.

Displacement of basement apartment tenant

32. The landlords claim \$800.00 for the displacement of the resident in the basement apartment of the premises. The landlords testified that the resident of the basement apartment was temporarily displaced and suffered damages to some personal items due to the water damage that occurred, because of the negligent actions of the tenant of refusing to allow anyone on the premises to affect repairs. The landlords testified that they did not have receipts in support of this claim; however, provided texts and handwritten notes from the resident of the basement apartment. Only the handwritten notes provided by the landlords refer to the displacement of the tenant and lost of personal items. In this regard, the notes are unsigned and unsworn, and as such are afforded little weight from an evidentiary perspective.

Analysis

33. I accept the landlord's testimony that the resident of the basement apartment was impacted by the situation. While this is unfortunate, there is no evidence provided to clearly establish what, if any, of these costs were passed on and incurred by the landlords. This portion of the landlords claim therefore does not succeed.

Decision

34. The landlords claim for compensation for damages succeeds in the following:

Replacement of Flooring	\$2,569.84
Repair, Replacement, Plastering, Painting	\$ 930.25
Removal of Garbage and Materials	<u>\$ 500.00</u>
Total	\$4,000.09

Issue 2: Hearing Expenses

35. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The landlord paid \$20.00 for the application and is seeking reimbursement. As the landlord's claim has been successful, the tenant shall pay the hearing expenses.

Decision

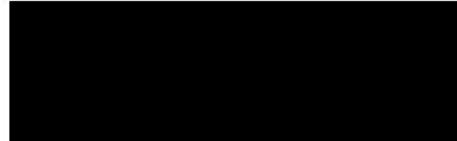
36. The landlord's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

37. The tenant shall pay to the landlord \$4029.09 as follows:

- Damages \$4,009.09
- Hearing Expenses \$ 20.00
- Total **\$4,029.09**

03 December 2024
Date



Michael J. Reddy
Residential Tenancies Office