

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0002-01

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:23 am on 25 March 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as "tenant1" and "tenant2", respectively, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$4518.00 in compensation for damages,
 - An order for a payment of rent in the amount of \$2000.00,
 - An order for a payment of utilities in the amount of \$538.20,
 - An order for a payment of \$1000.00 in compensation for future repairs, and
 - Authorization to retain the security deposit of \$1200.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this decision is policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Compensation for Damages - \$4518.70

Relevant Submissions

The Landlord's Position

6. The landlord stated that she had entered into a verbal rental agreement with the tenants on 16 February 2016. The agreed monthly rent was set at \$800.00 and the landlord stated that the tenants had paid a security deposit of \$400.00.
7. The landlord stated that the tenants informed her that they were vacating the rental unit in 2019 and on 07 or 08 November 2019 a walkthrough was conducted of the property. The landlord stated that numerous deficiencies were noted at that time and she claimed the tenants had agreed that they would carry out repairs to the property and would clean before they released the unit to the landlord. She stated that she regained possession of the unit on 24 November 2019.
8. Despite the tenants' promise that they would have repairs carried out at the property before they returned the keys, the landlord stated that there were still numerous issues with the unit and she submitted the following breakdown of the costs to carry out repairs ([redacted] #1):
 - Flooring (canvas)..... \$432.95
 - Carpet install..... \$270.00
 - Ceiling (back room)..... \$195.60
 - Light fixtures \$30.00
 - Paint and wallpaper \$1070.33
 - Glass in stove and door \$184.00
 - Door/knobs \$127.62
 - Miscellaneous \$50.00
 - Labour \$1600.00
 - Total..... \$3960.50

Flooring

9. The landlord stated that there was a room off the porch area at the unit where the tenants would put their dog when they were away. The landlord stated that the dog did not enjoy being alone and it tore up the floor and door in that room as a result. After the tenants moved out, that floor was replaced by the landlord at a cost of \$432.95. No receipt was submitted at the hearing.
10. The landlord stated that that flooring was installed in 2015, just before the tenants moved in.

Carpet Install

11. The landlord also complained that she had to replace the carpet in the living room as it was badly stained after the tenants moved out. She claimed that there were nail polish stains found on the carpet, as well as stains from pet urine, food and bleach. The landlord stated that the tenants purchased new carpet for her after they vacated and she then had to pay \$270.00 to have it installed. No receipt was submitted with her application.
12. The landlord claimed that the carpet was at least 10 years old, as it was already in the property when she purchased it, and she claimed that it was in very good condition when the tenants moved in.

Ceiling

13. The landlord also complained that she was required to replace a ceiling in the property as one of the tenants' children had smashed the ceiling tiles and had punctured the tiles with a screwdriver. The landlord acknowledged that the tenants had offered to repair the ceiling themselves, but she claimed that the repair job was inadequate.
14. The landlord stated that these ceiling tiles were old, and she also acknowledged that there were about 4 tiles that had already suffered water damage. The landlord has since replaced the whole ceiling and she is seeking \$195.60 in compensation for the costs of the materials and she also incurred costs to have it installed, though she did not know how much of the \$1600.00 she had paid her contractor was for the labour associated with the ceiling.

Light Fixtures

15. The landlord also complained that the 2 fluorescent lights fixtures in the back room were also damaged during this tenancy and needed to be replaced. She testified that the shades on these lights were "beat off" and one of those lights no longer worked. The landlord stated that she did not know how old those lights were and she testified that they were already there when she purchased the property 10 years ago.
16. The landlord has since replaced those lights with ones she had purchased second hand. No receipt was submitted with her claim, but she is seeking \$30.00 in compensation.

Paint and Wallpaper

17. The landlord stated that the tenants had been marking on the walls and the trim in the kitchen and dining room area and she had to repaint that room after the tenants moved out. She stated that she had purchased a quart of mistint for \$10.00 and that it took her an hour or 2 to carry out that work. The landlord

stated that the unit was last painted in 2015. No receipts were submitted for the paint and no photographs were submitted showing the marks on the walls.

18. Regarding the wallpaper, the landlord stated that she also had to repaper 2 rooms as the tenants animals had scratched up the wallpaper in those 2 rooms. In support of her claim, the landlord pointed to her submitted photographs showing that damage.
19. The landlord testified that she had purchased new wallpaper for these rooms at a cost of approximately \$1060.00 and she testified that she had paid her mother \$650.00 to put the new wallpaper up. No receipts were submitted with her application. The landlord testified that these walls were papered in 2015.

Glass in Stove and Door

20. The landlord stated that after she regained possession of the property she found that the glass in the door to the wood stove was cracked and it had to be replaced. She stated that she incurred \$184.00 to have that glass replaced. No photographs or receipts were submitted with her application. She stated that the stove was already in the property when she purchased it 10 years ago.
21. The landlord also complained that a pane of glass in the porch door was broken and had to be replaced. She claimed that she was charged \$30.00 to have it replaced. No receipt was submitted with her application. The landlord stated that that door was at least 10 years old.

Door/knobs

22. The landlord also stated that she was required to purchase 3 new doors after the tenants moved out as they had been “beat up.” These doors were located in the bathroom, the den and the master bedroom. The landlord stated that she was charged \$127.62 to purchase replacement doors. No receipt was submitted with her application. She stated that all of these doors were in place when the tenants moved in and she claimed that the bathroom door and the bedroom door were white, colonial doors. The door for the den was an older style, wood panel door.

Miscellaneous

23. The landlord also claimed that she was required to purchase various miscellaneous items after the tenants moved out, such as switch plates, hinges for the doors, staples and screws and “different stuff like that”. No receipts were submitted with her application. Regarding the switch plates, the landlord complained that some were missing after the tenants moved out while she found that some others were cracked.

The Tenants' Position

Flooring

24. Tenant1 acknowledged that their dog had torn the floor and he stated that the tear was about 1.5 feet in length. He stated that after he had moved out, he paid the landlord \$800.00 for the costs to repair the damage they had caused to the property, and he claimed that \$450.00 of that amount was earmarked for this floor.

Carpet Install

25. Tenant1 acknowledged that he had caused some damage to the carpet and that it had become stained during his tenancy. He stated that he had purchased new replacement carpet for the landlord and he allotted \$250.00 of the \$800.00 he had paid her when he vacated for the costs of having that carpet replaced.
26. Tenant1 claimed that the carpet that was in the unit when he moved in was a low grade carpet and had to have been at least 15 years old.

Ceiling

27. Tenant1 also acknowledged that several ceiling tiles were damaged by his son during this tenancy. He stated that he purchased a box of 48 tiles and he hired a person to replace the 6 tiles damaged by his son. Tenant1 also claimed that the ceiling was very old and it had already suffered water damage and needed replacing anyhow. He pointed to one of his submitted photographs showing that the roof at the property is sagging and that this was the cause of the water damaging that ceiling [REDACTED] #1).

Light Fixtures

28. Tenant1 stated that these 2 lights did not work at all when he moved in and he complained that there was a general problem with the electricity in that back room. He stated that although you could hear a humming sound when one of those lights was turned on, it did not work.
29. Regarding the light shade, tenant1 acknowledged that that damage was caused during his tenancy, but he stated that this happened when he had attempted to remove the plastic shade to repair the light. He claimed that when he removed that shade, it disintegrated in hands and he surmised that this was because the lights were so old. He figured they were 40 years old, at least.

Paint and Wallpaper

30. Tenant1 acknowledged that he had marked on the walls in this room. However, he claimed that he had repainted that room before he vacated and he stated that no marks remained.

31. Regarding the wallpaper, tenant1 also acknowledged that his cats had scratched the paper causing the damage seen in the photographs. He claimed that he was willing to replace that wallpaper and he had earmarked \$400.00 of the \$800.00 he had paid to the landlord for the costs of replacing it.
32. But tenant1 also argued that the wallpaper was of poor quality and that it had not been properly applied to the walls when it was first put up. He claimed that there were areas where the wallpaper had been peeling on its own and that there was no evidence of an adhesive on the other side. He also pointed out that the wallpaper had been applied to a wood-panel wall and that that wall had not been primed before it was papered, causing the paper to come loose.
33. He also pointed to his own photographs which show that in the areas above the baseboard heaters, the wallpaper was discoloured by the heaters and that it was ripping and peeling as a result of the heat.

Glass in Stove and Door

34. Tenant1 acknowledged that he had caused the damage to the stove door and he stated that he took full responsibility. He agreed with the landlord that she is entitled to an award of \$184.00 for the costs of repairing that door. He also acknowledged that he had caused the damage to the pane of glass in the porch door and also agreed that the landlord is entitled to the \$30.00 she is seeking here.

Doors/knobs

35. Tenant1 stated that no damage was caused to the bathroom door during this tenancy, though he acknowledged that he is responsible for damaging the door to the bedroom and to the den. He complained, though, that the door to the den was at least 40 or 50 years old and that he had to remove it because it would not close properly when he moved in.

Miscellaneous

36. Tenant1 argued that he is not responsible for replacing the switch plates as they were very old when he moved in.

Analysis

37. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent

act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

Order of director

- 47. (1) After hearing an application the director may make an order**
- (a) *determining the rights and obligations of a landlord and tenant;*
 - (b) *directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*
 - (c) *requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;*
 - (d) *requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement*

38. Tenant1 acknowledged that he was responsible for the damage caused to the floor in the porch. That floor was already 4 years old when the tenancy ended and a medium grade vinyl floor has an expected lifespan of 8 years. Factoring in depreciation, then, the landlord would be entitled to half of the costs she incurred for materials and labour to install new flooring. I find that the tenants' allotment of \$450.00 for replacement flooring is more than reasonable.
39. Regarding the carpet, a low grade carpet only has an expected lifespan of 6 years and given that it was at least 10 years old, I find that it had outlived its lifespan. Nevertheless, the tenants paid for the new carpet installed by the landlord and they agreed that she was entitled to \$250.00 to have it installed. Hence, her claim succeeds in that amount.

40. With respect to the ceiling tiles, although the tenants did admit that they had caused damage to some of the tiles in that room, I find that the landlord would have had to replace that ceiling anyhow because of the pre-existing water damage, which was not the tenant's fault. The landlord also admitted that the ceiling was old and I find that it had probably outlived its useful lifespan anyhow.
41. Tenant1 claimed that the light fixtures did not work when he moved into the unit and as there was no written report of an incoming inspection, I find that the landlord had failed to establish that these lights were damaged during this tenancy. With no receipts either, she also has failed to establish that she had incurred \$30.00 to have them replaced. Hence that claim does not succeed.
42. With respect to the painting, the landlord presented no evidence showing that the walls needed to be repainted after they had been painted by the tenants when they moved out. Hence, that part of her claim does not succeed. Regarding the wallpaper, the landlord's evidence does show that the tenant's cats had scratched that wallpaper and it is evident that it needs replacing. But I was also convinced by the tenants' evidence which does show that the wallpaper was peeling and discoloured in the areas near the baseboard heaters. Also, given that a medium grade wallpaper only has an expected lifespan of 6 years, I find that the tenants' offer of \$400.00 for repairs is more than reasonable.
43. As the tenants acknowledge that they are responsible for the stove door and door to the porch, the landlord is entitled to the costs she claimed here.
44. Regarding the 3 doors, as the tenants admit that they are responsible for damaging 2 of them, I find that the landlord is entitled to a depreciated award for the costs of replacing them. Interior colonial doors have an expected life expectancy of 20 years, so the landlord would be entitled to approximately half of the costs she incurred to replace them. However, as no receipts or estimates were submitted with her application to corroborate the costs she is seeking here, that claim does not succeed.
45. I also find that the landlord's claim for miscellaneous items does not succeed. No evidence was submitted showing that the switch plates were damaged and the landlord's statement that she had to purchase "stuff like that" was just too vague to justify any sort of award. No receipts were submitted with her application, either.

Decision

46. The landlord's claim for compensation for damages succeeds in the amount of \$1314.00 determined as follows:

- Flooring (canvas) \$450.00
- Carpet install \$250.00
- Wallpaper \$400.00
- Glass in stove and door \$214.00

- Total..... \$1314.00

Issue 2: Future Repairs - \$1000.00

Relevant Submissions

The Landlord's Position

47. With her application, the landlord also submitted a document in which she writes that she is seeking \$1000.00 for the costs of replacing window screens and a storm door, and the costs of carrying out painting of the ceiling.
48. Regarding the windows screens, the landlord stated that she has to replace approximately 10 screens at the unit now as they have been torn up, presumably by the tenants' pets. No photographs were submitted showing that damage and no estimates or quotes indicating the costs of replacing those screens.
49. The landlord also stated that the paint on the ceiling is peeling and there is soot there as well which was caused by the wood stove. She speculated that the paint is peeling in the area above that stove because the tenants had allowed the stove to get too hot. The landlord gave no indication as to how much it would cost to have that ceiling repainted.
50. The landlord also claimed that the storm door was "beat up" during this tenancy, and that there were several dents in it and that the screen was broken. The landlord submitted no quotes for the costs of having that door replaced. She acknowledged, though, that the door was quite old.

The Tenants' Position

51. Tenant1 acknowledged that he was responsible for the damages caused to a couple of window screens. He claimed that one could purchase of 100 foot roll of screen for \$68.00 and it only takes about 15 minutes to replace each screen.
52. Tenant1 stated that he had cleaned the ceiling before he vacated and he pointed to his submitted video as evidence of that fact (████#2). He also argued that he cannot be held responsible for peeling paint and that he was unaware that there were any preventative measures he could have taken.
53. Regarding the storm door, tenant1 stated that that door was already in poor condition when they moved in and he claimed that he was required to carry out several repairs on the hardware of that door during his tenancy.

Analysis

54. Regarding the window screens, tenant1 acknowledged that they were responsible for repairing 2 of them. Although the landlord presented no evidence establishing what it would cost to repair, tenant1 stated that it would take 30 minutes to repair 2 screens and that a roll of screen costs \$68.00. I find therefore that the landlord is entitled to an award of \$78.08 (\$68.00 for screen and \$10.08 in compensation for 30 minutes of her personal labour).
55. Regarding the ceiling, I agree with the tenants that they cannot be held responsible for peeling paint and the landlord identified no evidence to establish that there was soot on the ceilings.
56. I also agree with the tenants that they cannot be held responsible for the costs of replacing the storm door. No evidence was presented establishing the costs the landlord is seeking here and no evidence establishing the condition of the door when the tenants moved in.

Decision

57. The landlord's claim for future repairs succeeds in the amount of \$78.08.

Issue 3: Utilities - \$538.20

Relevant Submissions

The Landlord's Position

58. The landlord stated that because of the repairs that she was required to carry out at the property, she was unable to secure new tenants until 15 February 2020. The landlord stated that for the period from 24 November 2019 to 15 February 2020 she incurred \$188.20 in electrical charges. No electrical bill was submitted at the hearing.
59. The landlord also stated that she had paid \$350.00 for wood for the wood stove during that same period. No receipts were submitted with her application.

The Tenants' Position

60. Tenant1 acknowledged that some repairs were required after he moved out. However, he argued that it would have taken no more than 4 days to lay the new flooring and carpet and to put up new wallpaper.

Analysis

61. The landlord presented no evidence, in the way of bills or receipts, to establish that she had incurred \$538.20 for wood and electricity during this period. As such, her claim does not succeed.

Decision

62. The landlord's claim for a payment of utilities does not succeed.

Issue 4: Rent \$2000.00

Relevant Submissions

The Landlord's Position

63. The landlord also argued that because she was required to carry repairs at the property after the tenants vacated, the unit sat vacant from 24 November 2019 through to 15 February 2020 and she suffered a loss of rental income during that period.
64. The landlord is seeking compensation for the loss of rent during that period and she calculated that she is entitled to a payment of \$2000.00—\$800.00 for December 2019, \$800.00 for January 2020 and \$400.00 for the period from 01 February to 14 February 2020.
65. The landlord stated that as soon as she had received notice from the tenants that they were moving, she placed advertisements on Facebook and she testified that she had several people interested in renting that property.

The Tenants' Position

66. The tenant claimed that they were no longer residing at the property after 20 November 2019 and he argued that the landlord could have had all the repairs carried out before the end of that month.
67. He argued that a claim for 2.5 months to replace flooring and to rehang wallpaper was excessive as she could have had a new home built during that period.

Analysis

68. I agree with the landlord that some repairs were required after the tenants moved out and it would not have been feasible to have those repairs completed before the end of November 2019, given that she had only regained possession of the property on 24 November 2019.

69. I agree with tenant1 as well though, and I do not agree that it should take 2.5 months to complete these repairs.
70. I find that compensation for a loss of rental income for December 2019, 1 month, is fair.

Decision

71. The landlord's claim for compensation for lost rental income succeeds in the amount of \$800.00.

Issue 5: Security Deposit

72. The tenants paid a security deposit of \$400.00 when they moved into the property in 2016 and it is also not disputed that they had paid another \$800.00 after they had moved out as compensation for the damages caused to the floor and walls. As the landlord's claim has been successful, she shall retain that total amount of \$1200.00 as outlined in this decision and attached order.

Issue 6: Hearing Expenses

73. As the landlord's claim has been successful, the tenants shall pay her hearing expenses of \$20.00 for the costs of filing this application.

Summary of Decision

74. The landlord is entitled to the following:

- | | |
|--|------------------|
| a) Compensation for Damages..... | \$1314.00 |
| b) Future Repairs..... | \$78.08 |
| c) Rent..... | \$800.00 |
| d) Hearing Expenses | \$20.00 |
|
e) LESS: Security Deposit (\$1200.00) | |
| f) Total Owing to Landlord | <u>\$1012.08</u> |

16 July 2021

Date

John R. Cook
Residential Tenancies Tribunal