

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0106-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 AM on 31 May 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED] hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$8457.79 in compensation for damages, and
 - Authorization to retain the security deposit of \$975.00.

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 section 10 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Damages - \$8457.79

Relevant Submissions

The Landlord's Position

6. The tenant moved into the rental unit on 01 June 2020, and on 21 August 2020 a lease was drafted and signed by both the landlord and the tenant. A copy of that agreement was submitted with the landlord's application ([REDACTED] #1). The agreed

rent was set at \$1250.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$975.00.

7. The lease expired on 28 February 2021 and by mutual consent, the landlord and the tenant agreed that the tenancy would end on that date. The tenant vacated on 27 February 2021.
8. The landlord stated that before she moved out, the tenant had informed her that there were some scratches on the kitchen floor, and on the steps leading to the main door, that may need to be repaired. The tenant informed the landlord at that time that she was willing to forfeit some of her security deposit to cover the costs of having the floors buffed.
9. The landlord complained, though, that the damage was not only in the kitchen and on the stairs, but rather that there were scratches on all of the hardwood floors throughout the apartment. In support of that claim, the landlord submitted photographs [REDACTED] #1) with her application, as well as videos [REDACTED] #2), showing various areas in the apartment where scratches could be seen. The landlord figured that this damage was caused by the tenant's dog's claws.
10. The landlord stated that because of the damage caused to her floors, she now has to have them all refinished to bring them back to the condition they were in before this tenancy began. With her application she submitted a quote from [REDACTED] #3) stating that it would cost \$6112.25 to have those floors, and 12 treads on her stairs, refinished. That work has not yet been carried out.
11. The landlord also stated that while the floors are being refinished, she is required to remove all of her furniture from the apartment, and she submitted a breakdown with her application [REDACTED] #4) outlining the additional costs she would incur. According to that breakdown, it would cost \$367.54 to store her furniture with U-Haul for 8 days and she would also have to pay \$828.00 to hire movers. The landlord is also seeking \$1150.00 for the costs of staying at a hotel while the floors are being refinished.
12. The landlord stated that these floors were laid in 2011, and they have not been refinished since that time.

The Tenant's Position

13. The tenant argued that the scratches on the floors in the rental unit were not caused by any deliberate or negligent act on her part and she claimed that they were the result of normal wear and tear. She testified that she took very good care of the apartment while she resided there and she claimed that she had placed rugs on almost all of the hardwood floors throughout the apartment, except for in the kitchen, so that they would not become damaged.
14. The tenant stated that she did not believe the scratches were caused by her dog, and she claimed that she had no issues at other rental units with her dog causing

damage to hardwood floors. She suggested that the scratches might have been caused by the type of wood the floors were made of. In any case, the tenant pointed out that the landlord had allowed her to have a pet dog at the property during this tenancy.

15. The tenant also pointed out that there was no walkthrough conducted when the tenancy began and she did not know how many of the scratches identified by the landlord were actually caused by her during her tenancy. She argued that as the majority of the floors were covered by rugs during her tenancy, she is not responsible for any scratches found in those areas.
16. The tenant acknowledged that some scratches were found in the kitchen and on the stairs, and although she argued that that damage was not done deliberately by her, or because of any negligent act on her part, she was willingly to allow the landlord to retain a portion of the security deposit as a diplomatic gesture. She argued, though, that she cannot be held responsible for the costs of refinishing the floors in the other areas of the apartment.

Analysis

17. 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*

18. I agree with the tenant that as there was no report of an incoming inspection, the landlord has failed to establish that all of the scratches identified by her in the photographs and in the videos were caused by the tenant during this tenancy. And given that the tenant had rugs laid on these floors throughout her tenancy, I find that some of these scratches were pre-existing.
19. However, it does seem probable that at least some of the scratches, the ones in the kitchen and on the stairs, the ones the tenant had drawn the landlord's attention to before she vacated, were caused during this tenancy.
20. As indicated in paragraph 17, above, it is policy with this Section that when determining an appropriate award for damages, an adjudicator must take into consideration the life expectancy of various items that are used by a tenant during her tenancy. Where an item has exceeded its life expectancy, it is generally the case there would be no award for damages as that item would have to soon be replaced by the landlord anyhow, as a result of normal wear and tear.
21. With respect to the finishing on a hardwood floor, policy 9-5 states that it has a life expectancy of only 5 years. As these floors were laid in 2011, and have not been refinished since, this is work that the landlord would probably soon have to carry out anyhow.
22. As such, her claim does not succeed.

Decision

23. The landlord's claim for compensation for damages does not succeed.

Issue 2: Security Deposit

24. The tenant paid a security deposit of \$975.00 on 26 May 2020 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim for damages has not succeeded, she shall return the full amount of that deposit to the tenant.

09 November 2021

Date

