

Residential Tenancies Tribunal

Application 2022 No. 700 SJ
Application 2022 No. 869 SJ

Decision 22-0700-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:33 AM on 14 December 2022 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", participated in the hearing. [REDACTED] provided interpretation services. The tenants were represented by [REDACTED] ("DV") and [REDACTED] ("KM") of [REDACTED].
3. The respondent, [REDACTED] was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord". The homeowner, [REDACTED] ("IB"), also participated.

Issues before the Tribunal

4. The tenants are seeking the following:
 - An order for refund of the \$825.00 security deposit.
5. The landlord is seeking the following:
 - An order for a payment of \$779.18 in compensation for damages; and
 - Authorization to retain the \$825.00 security deposit.

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

7. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage.

Issue 1: Compensation for Damages - \$779.18

Relevant Submissions

The Landlord's Position

8. The landlord submitted a rental agreement with her application showing that she had entered into a 1-year, fixed-term lease with the tenants commencing 01 April 2021. The agreed rent was set at \$1100.00 per month, and it is acknowledged in that lease that the tenants had paid a security deposit of \$825.00.
9. The tenants are new Canadians, they only have a rudimentary understanding of the English language, and during this tenancy much of the communication between the landlord and the tenants was mediated by a representative from the Association of New Canadians (ANC). For example, the landlord was informed by the ANC on 03 March 2022 that the tenants had been approved for Newfoundland Labrador Housing and that the tenants wished to terminate their agreement early. The landlord accepted their request and [REDACTED] figured the tenants moved out around 14 March 2022.
10. On 23 March 2022, the landlord conducted an inspection of the property and a condition report was compiled at that time. A copy of that report was submitted with the landlord's application. There were 2 notable deficiencies noted by the landlord after the tenants moved out, and through her application she is seeking compensation in the amount of \$220.00 for the costs of having the unit professionally cleaned, as well as \$457.55 for the costs of replacing the bathroom flooring and some baseboards.

Cleaning

11. The landlord stated that the unit was not adequately cleaned after the tenants vacated, and she was required to hire a professional cleaner to ready the unit for new tenants. She claimed that the cleaner spent about 4 hours carrying out that work, and the landlord indicated on her application that she was charged \$220.00. No receipt was submitted with her application.
12. The landlord stated that all the floors required cleaning and that some of the walls and trims needed to be wiped down. She also claimed that the bathtub was dirty, as well as the refrigerator, oven and the screen on the exhaust fan. [REDACTED] also pointed out that the windows were dirty.
13. In support of her claim, the landlord pointed to the outgoing inspection report she had compiled on 23 March 2022, which included numerous photographs showing the condition of the unit on that date.

Bathroom repairs

14. The landlord stated that in August 2021, a plumber was sent to the rental unit concerning a complaint from the tenants about a leaking sink. According to **IB**, there was an issue with “dirty pipes”, and the plumber repaired the sink on that date.
15. The landlord stated that it was noted at that time that there was water on the floor and in the hallway, and it was determined that the tenants had been washing and bathing in the sink, causing water to splash onto the floors, which was allowed to sit on these floors and was not wiped up. The landlord stated that she reached out to the ANC, and through them, the tenants were instructed to bathe and shower in the bathtub, and not the sink, and that they were required to dry up any water which splashed onto the floors.
16. A few weeks later, the landlord stated that one of her maintenance workers went to the unit and installed some splash guards on the bathtub as a preventative measure to protect the floors. The landlord testified that she received no more complaints from the tenants about the bathroom or the sink after August 2021.
17. When the landlord regained possession of the property on 23 March 2022, she discovered that there was water damage caused to the floors in the bathroom, and she pointed to her photographs, taken during her inspection on that date, showing some water spots on the floor between the vanity and the toilet, and a section of baseboard in that area had also suffered water damage.
18. **IB** stated that because of this damage, the vinyl cushion floor in that room was removed, and he pointed to additional photographs showing that the subfloor was wet. He testified that the subfloor was allowed to dry out for about a week, and then a new floor and baseboards were installed by **AW**, the landlord’s maintenance worker. The landlord is seeking \$457.55 to have that work carried out. No receipts or invoices were submitted for the costs of purchasing those materials.

The Tenants’ Position

Cleaning

19. The tenants claimed that they had cleaned the unit before vacating on 14 March 2022, but they acknowledged that the ANC had contacted them shortly after, and had informed them that they needed to return to the property to remove a couch they had left behind and to address some cleaning they had overlooked. With their application, the tenants submitted 4 photographs that the ANC had sent them, showing some dirty trims and walls. The tenants returned to the unit on 16 March 2022, removed the couch, and cleaned the areas identified in the photographs.

20. With respect to the evidence submitted by the landlords, **KM** pointed out that the incoming photographs submitted by the landlord are not time-stamped, and therefore do not prove that they show the condition of the unit when the tenancy began. She also argued that the landlord ought to have conducted a walkthrough together with the tenants when the tenancy ended so that any issues could have been identified and addressed at that time. Furthermore, **KM** claimed that there was no discussion about cleaning after the tenants moved out, and she pointed to an e-mail from the landlord, dated 11 May 2022, in which the landlord only indicates that they are keeping the deposit for damages.

Bathroom repairs

21. The tenants stated that about 2 months after they moved in, the sink became clogged and water was leaking from underneath it. They stated that they contacted the landlord about that matter, and although they had sent a maintenance worker to the unit to address the issue, he did no work on the sink, but instead installed some guards on the bathtub and replaced some baseboards. **KM** pointed to an e-mail the landlord had submitted, from 17 August 2021, stating out that the landlord's maintenance worker had carried out a follow-up inspection of the property and he "noted that there were no other concerns and that the house was in good shape and very clean and tidy."

22. The tenants claimed that the sink continued to be a problem during their tenancy, and they relayed their complaints to the landlord, via the ANC, on several occasions, but nothing was done. They also claimed that when new windows were installed in October 2021, even though they could not verbally express themselves to **IB**, because of the language issues, they did physically point to the sink to indicate that there was a problem with it.

23. They claimed that they used that sink only rarely during their tenancy, and when they did, they would remove the undrained water after use and put it in the toilet. They also testified that they had placed a container under the sink to collect the leaking water. The tenants denied that they had used the sink for bathing or showering, and they testified that they had used the bathtub for those purposes, as instructed.

24. **KM** pointed out that although the landlord and **IB** claimed that a plumber was sent to the unit to repair the sink, no invoice was submitted into evidence to corroborate that testimony. She also pointed out that no invoice or receipt was submitted for the costs of carrying out these repairs. And with respect to the photographs submitted by the landlord showing that there is water on the subfloor, **KM** stated that it seems more likely that damage was caused as a result of a leak rather than water being splashed on these floors.

Analysis

25. 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*

26. With respect to the cleaning, I accept the landlord's photographic evidence showing that the unit had not been perfectly cleaned before the tenants vacated. These photographs show that the oven could use some more cleaning, that there was some grease on the range hood filter, and that some windows are dirty. The landlord submitted no invoice or receipt showing that she was charged \$220.00

to have the unit cleaned, but based on this photographic evidence, I find that the landlord is entitled to compensation for 2 hours of her personal labour to carry out that work. Policy with this Section is that a landlord may claim up to \$21.70 per hour for her personal labour, so this portion of the landlord's claim succeeds in the amount of \$43.40.

27. Regarding the bathroom floor, I do agree with the landlord and IB that there is some water damage to the floor near the toilet, and when that floor was removed there was additional water damage to the subfloor. But given that this was a vinyl cushion floor, it ought to be impermeable to water, and having water splashed on its surface ought not to cause the damage seen in the submitted evidence. In any case, the tenants denied that they had been bathing or showering in the sink, and the landlords presented no credible evidence at the hearing to substantiate that allegation. Based on the submitted evidence, it seems just as probable to me that the water damage was caused by a leaking sink, as the tenants allege, or even, say, a broken toilet. As the landlord has failed to establish, on the balance of probabilities, that this damage was caused by any deliberate or negligent act on the part of the tenants, this portion of their claim does not succeed.

Analysis

28. The landlord's claim for compensation for damages succeeds in the amount of \$43.40.

Issue 2: Security Deposit

29. The tenants paid a security deposit of \$825.00 on 01 April 2021, and receipt of that payment is acknowledged in the submitted lease. As the landlord's claim for compensation for damages has been partly successful, that deposit shall be disposed of as follows:

- a) Refund of Security Deposit \$825.00
- b) LESS: Compensation for Damages (\$43.40)
- c) Total Owing to Tenants..... \$781.60

05 January 2023

Date

John R. Cook
Residential Tenancies Tribunal