

Residential Tenancies Tribunal

Application 2022 No. 717NL

Decision 22-0717-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 AM on 03 October 2022 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "the tenants", were not in attendance.

Issues before the Tribunal

3. The tenants are seeking the following an order for refund of security deposit in the amount of \$1121.00.
4. The landlords are seeking the following:
 - An order for a payment of \$3506.07 in compensation for damages; and
 - Authorization to retain the \$1121.00 security deposit.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises

Preliminary Matters

7. The tenants were not present or represented at the hearing and I was unable to reach them by telephone. 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 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 that the hearing may proceed in the respondent's absence so long as they have been properly served. The landlords submitted an affidavit with their application stating that the tenants were served with the application and notice of the hearing, by e-mail, on 21 September 2022, and a copy of that e-mail was submitted at the hearing. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

8. The landlords amended their application at the hearing and stated that they were now seeking a total of \$4273.56 in compensation for damages.
9. The tenants had filed their own application, 2022 No. 580NL, which was to be heard, along with the landlords', at this hearing. As they did not attend the hearing to provide any evidence in support of their claim, that application is dismissed.

Issue 1: Compensation for Damages - \$4273.56

Relevant Submissions

10. Landlord2 stated that she had entered into a 1-year, fixed-term rental agreement with the tenants on 01 July 2021, and a copy of the executed lease was submitted with the landlords' application. The agreed rent was set at \$1495.00 per month, and it is acknowledged in the lease that the tenants had paid a security deposit of \$1121.00.
11. Landlord2 stated that she had issued the tenants a 3-month termination notice before the lease expired, and the tenants vacated on 30 June 2022.
12. This rental unit was furnished with beds, dressers and tables, and the landlords also provided the tenants with bedding. After the tenants moved out, the landlords were required to clean the unit, they had to repair and replace some of the furniture and bedding that the tenants had been supplied with. They submitted the following breakdown of the costs they had incurred to carry out that work:
 - Missing sheet \$17.22
 - Replace 2 comforters \$80.00
 - 8 hours cleaning \$200.00
 - Garbage removal \$50.00
 - Repair tables \$50.00
 - Repair dressers \$50.00
 - Replace sofa \$2758.85

- Clean stairs \$75.00
- Repair wall \$75.00
- Unclog sink \$75.00
- Clean chair \$50.00
- Clean mattress, Replace mattress pad \$25.00

Total..... \$3506.07

13. Landlord2 testified that one of the bottom sheets for one of the beds was missing, and she replaced it with another that she already had on hand. She pointed to a screenshot she had submitted from a store showing that a similar sheet would have cost \$17.22.
14. Landlord2 also complained that the 2 comforters for the beds were “nobby” and she suspected that the tenants had been washing these comforters with towels. She stated that these comforters could no longer be used and she disposed of them. The landlords replaced these comforters with ones they already had on hand, and they are seeking \$80.00 in compensation. With their application, the landlords submitted a screenshot from Bed Bath & Beyond showing that a new comforter would costs \$69.99 + tax.
15. Landlord2 testified that the whole apartment needed to be cleaned after the tenants vacated, and she is seeking compensation for 8 hours of her personal labour. She stated that she had to steam-clean some soiled chairs, and she removed garbage that she had found under the beds and behind the dressers. She claimed that the bathroom was “disgusting” and she stated that she had found cat fur in the cupboards. She also stated that the refrigerator needed to be cleaned out, and that all the floors needed washing. In support of their claim, landlord2 drew my attention to her photographs showing the areas behind a dresser and under a bed.
16. Landlord2 also complained that the tenants had left behind some garbage which they had to collect and bring to the dump. She stated that there was bags of garbage and cardboard left off the back deck, and there was rotten food left inside the house, as well as cat feces and cat litter. She is seeking compensation in the amount of \$50.00 to have that garbage removed.
17. Landlord2 stated that the end tables, side tables and the coffee table, as well as the dressers, were all damaged and scratched by the tenants cats, and there were some coffee stains on the tables as well. She stated that she was required to sand the damaged areas and then she had to match the colour of the stain. Landlord2 claimed that it took her 2 hours to repair the tables, and another 2 hours to repair the dressers.
18. Besides the tables and dressers, landlord2 also stated that the cat had scratched their leather sofa, and she pointed to her photographs submitted with her application. Because of that damage, the landlord2 testified that she had disposed of that sofa and she is seeking the costs of replacing it. With her

application, the landlords submitted a screenshot from wayfair.ca showing that a similar sofa costs \$3459.99 + tax, and a second screenshot showing that a similar sofa at Leon's would cost \$2399.00 + tax. Landlord2 stated that this sofa was about 5 years old, and it has not yet been replaced.

19. Landlord2 complained that she was required to deodorize and steam clean the carpets on the stairs because of the smell of cat urine on them. She stated that this took her about 1.5 hours. She also complained that there were some dents in a wall in one of the bedrooms, which she was required to plaster and re-paint. She stated that this work took about 2 hours. These walls were last painted 5 years ago.
20. Landlord1 stated that the kitchen sink was also clogged, and he had to rent a snake from CBS Rentals to try to unclog it. Landlord2 stated that she had purchased some Drano, and landlord1 stated that they had also purchased some sulphuric acid to clear the blockage. No receipts for these purchases were submitted with the landlords' application, and landlord1 stated that it took him about 2 hours to unclog that sink.
21. Landlord2 stated that there were stains on kitchen chairs which had to be steam cleaned, and she testified that it took her about 4 hours to carry out that work. In support of her claim, the landlord submitted a photograph of one of these chairs showing that it was stained.
22. Finally, in addition to the items listed on the above breakdown, landlord2 stated that they are also seeking the costs of replacing a mattress and box spring. She stated that this mattress also was missing a mattress pad and it was stained and smelled of vomit. She stated that she had attempted to clean and had even left it out in the sun for some time, but the odour could not be removed, and the landlords disposed of it. That mattress and box spring have not been replaced but the landlords submitted a screenshot showing that a replacement would cost \$649.99 + tax. These items were 5 years old when the tenancy ended.

Analysis

23. 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

24. I accept the landlords' claim that a bottom sheet was missing for one of the beds and I find that they are entitled to an award of \$17.22 as per the submitted screenshot. I was not convinced, though, that these comforters needed to be replaced. The photographs submitted by the landlord do show that they have suffered some minor wear and tear, but as the landlords contend that that damage was caused by washing these comforters, which is normal use, I find that they have failed to show that the tenants were negligent or had caused that damage deliberately. Landlords have to expect that there will be some minor wear and tear on furniture, floors, walls, bedding, etc., as a result of normal use.
25. I accept the evidence submitted by the landlords showing that the unit was not adequately cleaned, and I award the landlords compensation for 8 hours of their personal labour. Policy with this Section is that an applicant may claim up to \$21.70 per hour for their labour, so that claim succeeds in the amount of \$173.60.

26. I find that the landlords are also entitled to \$43.40 for 2 hours of their labour to remove garbage and another \$43.40 for 2 hours of steam cleaning the kitchen chairs. The landlords' evidence shows that there are some scratches on the tables and dressers, and I also award an additional \$86.80 for 4 hours of labour to carry out these repairs. I also find that they are entitled to compensation for 2 hours of their labour to unclog the sink—\$43.40—and \$32.55 for their labour to steam clean the carpets.
27. With respect to the painting and plastering, as a landlord is expected to repaint the walls at a rental unit every 3 to 5 years, and as these walls were last painted 5 or 6 years ago, I find that this is work that the landlords would soon have to carry out anyhow. Hence that claim does not succeed.
28. Regarding the sofa, the landlords' evidence does show that there are some scratches on the bottom, and on the arms. However, based on those photographs, that damage seems very minor and I find that these superficial scratches would not warrant the disposal of that couch. Hence that claim does not succeed.
29. I do accept the landlords claim, though, that a mattress and box spring were stained and had a bad odour, and I agree with the landlords that they are entitled to the costs of replacement. Mattresses have a life expectancy of between 6 and 8 years, and given that this mattress was 5 years old, I find that the landlords are entitled to a depreciated award of \$213.57 ($\$747.49 (\$649.99 + \text{tax}) \times 2/7$).

Decision

30. The landlords' claim for compensation for damages succeeds in the amount of \$653.94, determined as follows:

• Missing sheet	\$17.22
• 8 hours cleaning	\$173.60
• Garbage removal	\$43.40
• Repair tables/dressers	\$86.80
• Clean stairs	\$32.55
• Unclog sink	\$43.40
• Clean chair	\$43.40
• Replace mattress/box spring.....	\$213.57
Total	<u>\$653.94</u>

Issue 2: Security Deposit

31. The landlords stated that the tenants had paid a security deposit of \$1121.00 on 17 June 2021, and receipt of that deposit is acknowledged in the submitted lease. As the landlords' claim for compensation for damages has succeeded, that deposit shall be disposed of as follows:

a) Refund of Security Deposit \$1121.00
b) LESS: Compensation for Damages (\$653.94)
c) Total Owing to Tenants..... \$467.06

22 December 2022

Date



John R. Cook
Residential Tenancies Tribunal