

Residential Tenancies Tribunal

Applications 2022 No. 0882 NL
2022 No. 0918 NL

Amended Decision 22-0882-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:03AM on 28 November 2022 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", participated in the hearing.
3. The respondent, [REDACTED], as represented by [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
4. An affidavit of service (T#1) was provided by the tenants confirming that they served the landlord electronically on 12 October 2022 and proof of service was provided (T#2). The landlord confirmed service and provided an affidavit (L#1) confirming that he served both tenants electronically using the emails they provided on their own applications for dispute resolution. The landlord provided proof of service (L#2) and the tenants confirmed service received.
5. The details of the claims were presented as a longstanding rental agreement that started in 2009. Monthly rent was most recently set at \$675.00 due on the 15th of each month, POU and a security deposit in the amount of \$325.00 was collected.
6. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has 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

7. The tenants are seeking the full return of their security deposit in the amount of \$325.00.
8. The landlord is seeking the following:
 - Compensation for damages in the amount of \$3,857.28.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and considered in this case is sections 14 and 19 of the *Act*.

Preliminary Matters

11. The rental premises is two apartment building located at [REDACTED] [REDACTED]. The tenants resided in the main floor unit. The tenants were given a section 18, three month notice of termination in June 2022 and vacated the rental premises when required in September 2022. The landlord and tenants agreed that the tenancy was terminated so that the property owner could renovate the main floor apartment similar to renovations that had been completed in the bottom floor apartment. The main floor apartment currently remains vacant as renovations are not yet complete. The landlord testified that the rental premises is approximately 60 years old and that the rental unit was last renovated 15 years prior. He also testified that the interior was previously painted two years prior, and that any and all issues were promptly addressed by the tenants during their tenancy.
12. The landlord amended his claim using invoice documents that were provided to the tenants and submitted to this tribunal on 25 November 2022 (L#3). He clarified that he is seeking compensation for cleaning in the amount of \$109.25 (see page 1) and compensation for replacement of the carpet flooring with laminate floors in the amount of \$3,585.13 (see page 2). The landlord also stated that he is looking to retain the full value of the \$325.00 security deposit against the total damage claim of \$3,694.38 (reduced down from \$3,857.28).

Issue 1: Compensation for Damages (\$3,694.38)

Landlord's Position

13. The landlord submitted a series of photos taken after the rental premises was vacated (L#4) but did not submit any photos or other documentation (such as a move in condition inspection report) of the rental premises prior to it being occupied by the tenants. The landlord testified that the tenants were approved for

one cat and that they had multiple cats during the tenancy. The landlord also testified that the tenants signed an agreement stating that the tenants would be responsible for any damage caused by pets in the rental premises.

14. The landlord referred to multiple photos submitted of the carpet and testified that the damage to the carpet was beyond wear and tear. He also testified that the original renovation plan was to salvage any of the carpet that they could, if only in the bedrooms. In particular, the landlord testified that there were fleas in the carpet and that flea treatment needed to be purchased to protect the workers removing the carpet. The landlord also testified that the odour from damage to the carpet was very strong and that he could have salvaged the carpet if the tenants had at least steam cleaned it on occasion. The landlord also referred to multiple pulled areas in the carpet and acknowledged that the cost to replace the carpet with laminate was high. The landlord offered to accept half payment (%50) of the \$3,585.13 replacement costs and stated that he would also offer a repayment plan.
15. The landlord did not know how old the carpet was and disputed the policy maintained by the Residential Tenancies tribunal (09-005) which establishes that good quality carpets have an expected serviceable life of 10 years. The landlord also referred to photos submitted of the replaced flooring throughout the rental premises.
16. The landlord summarized his claim for cleaning in the amount of \$109.25 by referring to photos submitted of the tub, the fans and windows in the rental premises. He acknowledged that the tenant returned to the rental premises to clean further after they initially vacated the rental premises. The landlord testified that he has not yet replaced the tub in the rental premises because he incurred the unexpected costs to replace the carpet.

Tenants Position

17. Tenant1 testified that they were given notice to vacate for renovations and asked for one month extension so that they could secure a new rental premises. He testified that this request was denied because contractors were going to start work right away. Tenant1 testified that he contacted the landlord a week after he vacated to inquire about their security deposit and was allowed to return to the rental premises to complete additional cleaning. Tenant1 testified that he cleaned the appliances and tenant2 testified that she cleaned the fans. Tenant1 testified that repair work by contractors did not appear to have been started.
18. Tenant1 testified that he understood the carpet and the tub were going to be replaced. He stated that the process of moving out was stressful and that they cleaned the best they could. Tenant1 stated that he does not think he should pay for half the replacement of the carpet with laminate, because there was some damage to it when they first occupied the premises in 2009. Tenant1 testified that they then lived on the carpet for 13 years, obviously causing some damage.

19. Tenant2 testified that she previously tried to have windows in the rental premises replaced because the seals were broken and the frames were crumbing. She testified that such windows are really difficult to clean.

Analysis

20. The applicant in any damage claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:

- 1) That the damage they are claiming compensation, exists;
- 2) That the respondent is responsible for the reported damage through a willful or negligent act; and
- 3) The value to repair or replace the damaged item(s).

21. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.

22. The landlord is seeking compensation for replacement of carpet in the rental premises. He did not know how old the carpet was and he did not provide any written or other documentary evidence (such as photos or video) related to the state of the carpet prior to the premises being occupied by the tenant. The tenants testified that the carpet was installed prior to their occupying the rental premises in fall 2009. Because they vacated the rental premises in September 2022, the carpet is understood to be at least 13 years old. According to Residential Tenancies Policy 09-005, the expected serviceable life of a good quality carpet is 10 years. Accordingly, even if the landlord has successfully established that the tenants caused damage to the carpet (which he did not because he did not satisfy part 2 of the test for damages as set out in paragraph 19) he would not be entitled to compensation because the carpet had exceeded its serviceable life.

23. Where the landlord disputed this serviceable life policy, and repeatedly argued throughout the hearing that he was nonetheless entitled to compensation for the flooring because the claimed carpet damage, (e.g., staining, odour, fleas) he also failed to specifically claim compensation for any of these. Instead, he submitted a single invoice, from his company to his clients in the amount of \$3,585.13 for flooring which included:

- \$1,687.50 for Laminate materials
- \$150.00 for padding
- \$1,200.00 for labour
- \$467.63 HST

24. The landlord did not submit the invoice for the laminate flooring or padding. Nor did he break down his claim for labour. Consequently, he failed to even establish that he incurred costs in the amount of even \$2,113.13 (Laminate + padding + HST) because he did not submit the invoice for purchase of these items. In sum, I find that the landlord's claim for compensation for replacing the carpet with laminate does not exceed in any amount.
25. Regarding the landlord's claim for compensation for cleaning, I note that he originally claimed \$287.50 (see page 9 in L# 5) and that this amount was later reduced to \$109.25 in an updated invoice (see page 1 in L#3). I understand this reduction in amount claim to represent the efforts by the tenants to further clean the rental premises after they were notified by the landlord that he was unsatisfied.
26. I also understand this new claim for cleaning to be specific to cleaning of the tub and windows. However, the only documentation related to the tub, was a single photo that suggests a newly caulked enclosure. Where the landlord testified that the original tub was as white as the caulk, he did not provide any visual evidence to suggest any damage (such as visual staining in certain areas) other than age.
27. Regarding the landlord's claim for compensation for cleaning windows, there was a photo of a poorly looking sill, which tenant2 disputed as challenging to clean because she argued the windows were in need of replacement. The landlord also testified that windows were being replaced. Consequently, I find that the landlord failed to clearly indicate and justify the requirement for cleaning windows that were being replaced. Had he for instance, clearly identified windows and requirements for cleaning on a room by room basis as compared to windows being replaced, some portion of the claim for cleaning may have been awarded.
28. Regarding the charge for cleaning the vent, I accept the picture provided of a clogged vent, and I will arbitrarily award compensation for cleaning for one hour of cleaning. According to Residential Tenancies Policy 09-005, the maximum hourly claimable rate for cleaning is \$21.70.

Decision

29. The landlord's claim for compensation for damages succeeds in the amount of \$21.70.

Issue 2: Security Deposit (\$325.00)

Relevant Submissions

30. The tenants provided proof of a \$325.00 security deposit having been collected on 25 August 2009. They requested the full value of their deposit returned, and the landlord requested to retain it against costs for damages.

Analysis

31. Section 14, sub 10, 12 and 14 of the *Residential Tenancies Act, 2018* states:

(10) *Where a landlord believes he or she has a claim for all or part of the security deposit,*

(a) *the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or*

(b) *the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.*

(12) *A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.*

(14) *Where a landlord does not make an application under subsection (11), he or she is not prohibited from making an application under section 42 other than an application with respect to a claim against the security deposit.*

32. In accordance with the Schedule of Security Deposit Interest Rates pursuant to the Act, I find that the \$325.00 security deposit collected on 25 August 2009 accrued \$1.15 in interest as a result of the %1.00 interest rate set in 2009.

33. Consequently, I find that the landlord is holding a security deposit on behalf of the tenants valued at \$326.15. Where the landlord's claim for compensation for damages was found to succeed in the amount of \$21.70, I find that the remainder of the security deposit shall be returned to the tenants.

Decision

34. The landlord is entitled to retain \$21.70 of the security deposit collected.

35. The landlord shall pay to the tenants \$304.45 (e.g., \$326.15 - \$21.70 = \$304.45) representing the return of the remaining security deposit.

Summary of Decision

36. The landlord's claim for compensation for damages succeeds in the amount of \$21.70.
37. The landlord is entitled to retain \$21.70 of the security deposit collected.
38. The landlord shall pay to the tenants \$304.45 representing the return of the remaining security deposit.

05 December 2022

Date



Jaclyn Casler
Residential Tenancies Tribunal