

Residential Tenancies Tribunal

Application 2022 No. 1022NL

Decision 22-1022-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:16 AM on 15 March 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", was not in attendance.

Issues before the Tribunal

3. The landlords are seeking the following:
 - An order for a payment of \$2874.52 in compensation for damages,
 - An order for a payment of rent in the amount of \$1125.00,
 - An order for a payment of late fees in the amount of \$49.00, and
 - Authorization to retain the \$840.00 security deposit.

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 are sections 15 and 19 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises and rule 29 of the Rules of the Supreme Court, 1986.

Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her 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 she has been properly served. With their application, the landlords submitted an affidavit stating that tenant had been personally served with the application on 26 February 2023, and she has had 16 days to respond. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.

7. The landlord amended his application and stated that he was now seeking the maximum late fee of \$75.00.

Issue 1: Compensation for Damages - \$2874.52

Relevant Submissions

8. Landlord1 stated that they had entered into a 1-year, fixed-term rental agreement with the tenant on 01 June 2022, and a copy of that executed lease was submitted with their application. The agreed rent was set at \$1125.00 per month and it is acknowledged in the submitted lease that the tenant had paid a security deposit of \$840.00.
9. In November 2022, the tenant fell into rental arrears, and on 07 November 2022 they issued her a termination notice for her failure to pay her rent. The tenant vacated on 17 November 2022.
10. Landlord1 stated that the rental unit was constructed in 2006, and when they purchased it in 2020, they carried out a full renovation of the unit.
11. After the tenant vacated, the landlords discovered that the tenant had caused damage to the floors in the property and there was also some damage to the walls. Some cleaning was also required. The landlords submitted the following breakdown of the costs to carry out the necessary repairs:

• 400 sq ft laminate flooring	\$1772.27
• 400 sq ft flooring underlay	\$288.63
• Paint and plaster supplies	\$140.92
• Labour	\$672.70
Total	<u>\$2874.52</u>

Flooring

12. Landlord1 stated that in 2020, when they had renovated this apartment, they had installed new laminate flooring through the rental unit. After the tenant moved

out, landlord1 testified that he could detect a smell of animal urine in the apartment, which he claimed was caused by the tenant allowing her dog to urinate inside the unit. He also complained that this urine had seeped into the seams of the laminate flooring, causing it the seams to break and causing the boards to swell. In support of these claims, landlord1 pointed to his submitted photographs showing the damaged flooring. His photographs also show that there is urine on the baseboards in the unit, and that this urine had made its way to the subfloor.

13. Because of this damage, the landlords were required to remove and replace 400 square feet of flooring at the unit. With their application, they submitted receipts showing that they were charged \$1772.27 for new laminate flooring and \$288.63 for underlay. Landlord1 testified that he had removed and disposed of this damaged flooring himself, and he also installed the new floors. He pointed to his submitted timesheet showing that it took him 21.5 hours to carry out this work.

Paint and plaster

14. Landlord1 also complained that the tenant had caused some damage to the walls in the unit, and he again pointed to his photographs showing this damage. He stated that there were several gyproc screws in the walls, there was damage to the living room wall where the tenant's couch had been pushed up against it, and there were also chunks of paint missing from the wall in the kitchen.
15. With their application, the landlords submitted a receipt showing that they were charged \$140.92 for paint, plaster and other supplies to repair these walls, and landlord1 reports on his timesheet that this work took him 5 hours. These walls were last painted in 2020, and some touch-ups were done before the tenant moved in in 2022.

Cleaning

16. The landlords are also seeking compensation for 4.5 hours of cleaning. Landlord1 stated that the areas behind the fridge and stove were dirty, the cabinets in the bathroom and the kitchen needed cleaning, and he had even found cigarette butts in these cabinets. Landlord1 also complained that the refrigerator and freezer had not been cleaned out before the tenant vacated, and he stated that there was a bad odour coming from the refrigerator. He also testified that he was required to wash down the walls and the baseboards where the dog had been urinating.

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 wilful 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 accept the landlords' testimony and evidence concerning the conditions of the floors at the unit after the tenant moved out, and because of the odour and because of the damage caused by the animal urine, I agree that these floors needed to be replaced. A good grade laminate floor has an expected lifespan of 10 years. As these floors were installed in 2020, I find that the landlords are entitled to a depreciated award of \$2021.96 (\$2527.45 (\$1772.27 for the floors, \$288.63 for the underlay, and \$466.55 for their personal labour (21.5 hours x \$21.70 per hour) x 8/10).
19. I also agree with the landlords, based on their testimony and evidence, that some plastering and painting was required because of damage caused to numerous

walls at the property. As it is expected that a landlord would have to repaint the walls at a rental property every 3 to 5 years as a result of normal wear and tear through successive tenancies, I find that they are entitled to a depreciated award of \$149.42 (\$249.42 (\$140.92 for supplies and \$108.50 for their personal labour (5 hours x \$21.70 per hour) x 3/5).

20. With respect to the cleaning, I agree that the landlords ought to be compensated for 4.5 hours of their labour, as claimed, and I calculate that they are therefore entitled to \$97.65 (4.5 hours x \$21.70 per hour).

Decision

21. The landlords' claim for compensation for damages succeeds in the amount of \$2269.03, determined as follows:

• Flooring	\$2,021.96
• Plaster and paint	\$149.42
• Cleaning.....	\$97.65
Total	<u>\$2,269.03</u>

Issue 2: Rent - \$1125.00

Relevant Submissions

22. With their application, the landlords had submitted a rent ledger showing the payments they had received from the tenant since she had moved into the unit. According to this ledger, the tenant's rent was paid and up-to-date for the period ending 31 October 2022, and landlord1 pointed out that no rent was paid for November 2022.
23. After the tenant moved out on 17 November 2022, the landlords immediately carried out the required repairs to the floors and walls, and they were able to secure new tenants for 01 December 2022. However, they suffered a loss of rental income for November 2022, and they are seeking an order for a payment of \$1,125.00 for that month.

Analysis

24. I accept the landlords' claim that the tenant had not paid her rent for November 2022. Given that the landlords were required to carry out repairs to the unit, after she vacated on 17 November 2022, I find that she is responsible for the whole rent for that month.

Decision

25. The landlords' claim for a payment of rent succeeds in the amount of \$1,125.00.

Issue 3: Late Fees - \$75.00

26. The landlords have assessed late fees in the amount of \$75.00.

Analysis

27. Section 15 of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

The minister has prescribed the following:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

28. As the tenant has been in arrears since 02 November 2022, the landlords are entitled to a payment of the maximum fee of \$75.00 set by the minister.

Decision

29. The landlords' claim for late fees succeeds in the amount of \$75.00.

Issue 4: Security Deposit

30. The landlords stated that the tenant had paid a security deposit of \$840.00 on 04 May 2022, and receipt of that deposit is acknowledged in the submitted lease. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses

31. The landlords paid a fee of \$20.00 to file this application. As their claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

32. The landlords are entitled to the following:

a) Compensation for Damages	\$2,269.03
b) Rent	\$1,125.00
c) Late Fees	\$75.00
d) Hearing Expenses	\$20.00
e) LESS : Security Deposit.....	(\$840.00)
f) Total Owing to Landlords	<u>\$2,649.03</u>

31 March 2023

Date


John R. Cook
Residential Tenancies Tribunal