

Residential Tenancies Tribunal

Application 2023 No. 187NL

Decision 23-0187-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:06 AM on 28 June 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as "landlord1" and "landlord2", respectively, participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as "tenant1" and "tenant2", respectively, were also in attendance.

Issues before the Tribunal

4. The landlords are seeking the following:
 - An order for a payment of \$11,137.43 in compensation for damages,
 - An order for a payment of rent in the amount of \$1100.00, and
 - Authorization to retain the \$500.00 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 decision is section 18 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Compensation for Damages - \$11,137.43

Relevant Submissions

The Landlords' Position

7. Landlord1 stated that he had entered into a verbal rental agreement with the tenants on 05 October 2019. The agreed rent was set at \$1100.00 per month, and landlord1 stated that the tenants had paid a security deposit of \$500.00.
8. In March 2022, the landlords issued the tenants a termination notice, and they vacated the unit on 01 June 2022.
9. Landlord1 stated that the tenants had caused significant damage to the unit during their tenancy, and with their application they submitted a list of the items they had purchased to carry out repairs to the unit. These materials costs \$4,927.43, and the landlords are also seeking \$6,210.00 in compensation for 276 hours of their personal labour.

Painting and plastering

10. Landlord1 stated that most of the rooms in the apartment had to be painted after the tenants moved out. He stated that the tenants had been smoking in the unit, causing there to be a sticky residue on all the walls. He also complained that the tenants had painted a couple of rooms a "battleship green" colour, which he claimed he would not have approved of. Additionally, the tenants had affixed a stick-on back-splash to a wall in the kitchen, and had also put up wall paper in the bathroom. The landlords submitted receipts with their application showing that they had spent \$339.11 on paint and supplies, and landlord1 claimed that he had carried out the painting himself between June and September 2022. The landlords stated that the unit was last painted in 2018.

Cleaning

11. Landlord1 pointed to his submitted photographs showing the condition of the property after the tenants vacated. He described the unit as being in very poor shape and he claimed that every surface required cleaning. He again stated that there was a sticky residue on the walls, and he claimed that this residue had to be sanded off before he could carry out any painting. Landlord1 stated that the tenants had left items in the cupboards and that they were dirty, and items were left under the sinks as well. He complained that the refrigerator was dirty and he claimed that the enamel on the stove had been hammered off. All of the fixtures in the bathroom were dirty, and he claimed that all the windows and doors in the unit needed cleaning as well. Landlord1 pointed to his submitted photographs to corroborate these claims. Landlord2 stated that she had carried out most of the cleaning herself, but she was unable to state how long it took her.

Flooring

12. Landlord1 claimed that the carpets in the unit—located in the 3 bedrooms, the rec room, the front room and the hallway—all had to be replaced after the tenancy ended, and he characterized them as being “destroyed”. Landlord1 claimed that all of these floors were scuffed and dirty, and there were numerous tears in them. Landlord2 stated that in one of the bedrooms, the carpet was wrinkled up and had started to lift in the corners. Landlord1 speculated that the tenants had not been removing their boots or shoes while they were inside the unit and that this was the cause of the carpets being so dirty. The landlords subsequently replaced all of these carpets with laminate floors. Landlord1 also complained that there was a stain on the vinyl floor in the bathroom that he was unable to clean, and that floor also had to be replaced. With their application, the landlords submitted 2 invoices showing that they were charged a total of \$4,362.65 for that new flooring. The landlords also submitted a receipts for \$3.67 and \$42.38 for the costs of bolts and a toilet bowl gasket. Landlord1 stated that when the new vinyl floor was laid in the bathroom, the baseboards and the toilet first had to be removed and then reinstalled. Landlord1 claimed that these carpets were about 12 years old, and the floor in the bathroom was approximately 15 years old.

Stove

13. Landlord1 also complained that the tenants had damaged the stovetop, and he stated that the drip pans were rusted and needed replacing. The landlords were not able to afford to replace the stove, but they did replace these drip pans. The submitted receipt shows that they were charged \$42.45.

The Tenants' Position

Painting and plastering

14. Tenant1 denied that they had been smoking in their apartment and he pointed out that they would never smoke indoors out of concern for their children. Tenant1 acknowledged that he had put up a backsplash in the kitchen and that there was wallpaper on a wall in the bathroom, but he argued that both of these could have been easily removed with some soap and water, and they would not have caused any damage to the paint. With respect to the painting they had carried out, tenant1 stated that they had received the landlords' permission to paint these rooms, and that the landlord had even supplied him with the paint. He testified that the landlords had told him that he could tint the paint whatever colour he wanted, and he denied that he had been told not to use dark colours. Tenant1 also complained that, according to the landlords' log of the hours they had spent working at the unit, all the repairs and painting had been completed by 05 September 2022, while some of the receipts submitted by the landlords show that paint was being purchased in late September 2022.

Cleaning

15. Tenant2 stated claimed that had the landlords pointed out to her that the unit had not been adequately cleaned, she would have returned to the unit and completed that work. She complained, though, that the landlords had not given her the chance to return. Tenant2 did acknowledge, though, that some cleaning was required and she conceded that the stove was not clean and that she had left some items in the cupboards. However, she claimed that there was nothing wrong with the walls and that there was no residue on them.

Flooring

16. With respect to the carpets, tenant1 claimed that the carpet was in very poor condition when they moved in. He claimed that it was a commercial-grade carpet and he figured that it was at least 20 years old. Tenant2 stated that the wrinkles in the carpet in the bedroom were already there when the tenants moved in, and she claimed that there were no tears anywhere in the carpets when they moved out. She speculated that the tears shown in the carpets in the photographs may have been made after they had moved out. Tenant1 also claimed that the landlords had intended to replace the carpets after they had moved out, anyhow. He stated that they were evicted because the landlords wanted to carry out an interior renovation so that they could either move in the unit, or sell it.
17. With respect to the bathroom floor, tenant2 stated that this floor was also in poor condition when the tenants moved in and she claimed that it was already rolling up at the edges.
18. Tenant1 again pointed out that the dates on landlords' receipts do not match their submitted log showing when they carried out the work at the unit. He also pointed out that the landlord's purchased 2 toilet bowl gaskets—one in September 2022, and another in November 2022. Tenant1 stated that the landlords own several rental properties, and he speculated that they had submitted receipts with this application which were probably for purchases for repairs at one of these other units. Additionally, tenant1 stated that the landlords had accidentally sent him a flight itinerary for a trip that had taken between 30 June and 14 July 2022. But even though they were out of the province during this period, they had written on their log that they were carrying out work at the unit during this period.

Stove

19. Tenant1 claimed that the drip pans were already rusting when they moved into the unit, and he claimed that it would have taken longer than their 2 year tenancy for these pans to rust out.

Analysis

20. 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*

21. With respect to the painting, I find that the landlords have not submitted enough evidence to establish that they had instructed the tenants not to paint the unit certain colours. In any case, as landlords are expected to repaint a rental unit every 3 to 5 years, as a result of normal wear and tear, and as this property was

last painted in 2018, this unit would soon have to be repainted and these are costs that the landlords would have likely incurred anyhow.

22. I reach the same conclusion about the flooring throughout the apartment. Carpets and vinyl floors have an expected lifespan of between 8 and 12 years, depending on their quality, and as these floors were installed over 12 years ago, I also find that they had outlived their useful lifespan and would soon have to be replaced. But additionally, as there was no incoming condition report, and as there were no pictures submitted showing the condition of the unit before the tenants moved in, I also find that the landlords have failed to establish that the damage they complained about was caused during this tenancy.
23. On the issue of cleaning, though, I do agree with the landlords that the unit had not been adequately cleaned before the tenants vacated, and this much was conceded by the tenants at the hearing. The landlords' photographic evidence shows that the stove and oven were very dirty, and the countertops in the kitchen had not been cleaned. Numerous items had been left in the cupboards and there was a large amount of garbage and debris left behind on the floors. The pictures show that the refrigerator was dirty, that there was food left inside, and the area behind the refrigerator was also very dirty. It was also apparent that the floors had not been cleaned before the tenants vacated. Accordingly, I find that the landlords are entitled to compensation for 20 hours of their labour to clean the apartment. Policy with this Section is that a landlord may claim up to \$22.50 per hour in compensation for their personal labour, so this claim succeeds in the amount of \$450.00. I also award the landlords the costs of the drip pans—\$42.25.

Decision

24. The landlord's claim for compensation for damages succeeds in the amount of \$492.25.

Issue 2: Rent - \$1100.00

Relevant Submissions

The Landlords' Position

25. Landlord2 pointed out that they had given the tenants a notice back in March 2022, terminating this tenancy, effective 30 June 2022. However, she stated that the tenants decided to move out at the beginning of June 2022, without giving them any notice. After receiving some advice from this Section, landlord2 stated that she posted a notice of abandonment on the door to the unit, and on 06 June 2022 they entered and took possession of the property.
26. Landlord2 argued that as this tenancy was to terminate on 30 June 2022, and as the tenants had not given them any prior notice that they were moving out before

that date, they are nonetheless still responsible for rent for June 2022. Landlord2 stated that they had received no payments for that month and they are therefore seeking an order for a payment of \$1100.00.

The Tenants' Position

27. Tenant2 claimed that the landlords did know that the tenants were moving at the beginning of June 2022 as they were speaking with their new landlord on 25 May 2022, who had informed them of that fact.
28. Tenant1 also pointed out that they had been paying their rent bi-weekly up to that point as they could not afford to pay rent at 2 apartments and he claimed that they had explained this to the landlords.

Analysis

29. I accept the landlords' claim that they had provided the tenants with a termination notice, terminating the tenancy on 30 June 2022. Although it may have been the case that the landlords were informed, on 25 May 2022, that the tenants were moving on 01 June 2022, that is not adequate notice.
30. According to section 18 of *The Residential Tenancies Act, 2018*, a tenant is required to provide a landlord with at least 1 month's notice that they are terminating their agreement. Additionally, such a notice must be in writing and in the form prescribed by the minister. At no time did the tenants give the landlords a proper, written notice, and even if they did, on 25 May 2022, the earliest they could have terminated their agreement on that date would still have been 30 June 2022.
31. Given that the landlords only recovered possession of the unit on 06 June 2022, and given that it had not been cleaned before the tenants vacated, I find it highly improbable that the landlords would have been able to find new, paying tenants for the month of June 2022. As such, I agree with the landlords that they are entitled to a payment of rent, for June 2022, in lieu of proper notice.

Decision

32. The landlords' claim for a payment of rent for June 2022 succeeds in the amount of \$1100.00.

Issue 3: Security Deposit

33. The landlords stated that the tenants had paid a security deposit of \$500.00 on 06 October 2019. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

34. The landlords are entitled to a payment of \$5,302.29, determined as follows:

a) Compensation for Damages	\$492.25
b) Rent	\$1,100.00
c) LESS : Security Deposit.....	<u>(\$500.00)</u>
d) Total Owing to Landlords	<u>\$1,092.25</u>

08 August 2023

Date

John R. Cook
Residential Tenancies Tribunal