

Residential Tenancies Tribunal

Application 2023 No. 396NL
Application 2023 No. 437NL

Decision 23-0396-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 AM on 20 June 2023 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, was also attendance.

Issues before the Tribunal

3. The tenants are seeking an order for refund of a \$425.00 security deposit.
4. The landlord is seeking the following:
 - An order for a payment of \$6266.83 in compensation for damages, and
 - Authorization to retain the \$425.00 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 are sections 15 and 19 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Compensation for Damages - \$6266.83

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into monthly rental agreement with the tenants on 30 August 2019, and a copy of that executed agreement was submitted with his application. The agreed rent was set at \$850.00 and it is acknowledged in the submitted agreement that the tenants had paid a \$425.00 security deposit.
8. The tenants vacated the unit on 31 March 2023, after receiving a 3-month termination notice from the landlord.
9. The landlord stated that after the tenants moved out he discovered that they had caused significant damage to the unit during their tenancy, and with his application he submitted the following breakdown of the costs of carrying out repairs:

• Paint and plaster	\$1200.00
• Painting supplies	\$275.88
• Plaster	35.99
• Clean back yard	\$280.00
• Interior cleaning.....	\$600.00
• Laminate flooring.....	301.12
• Window sill casing.....	\$23.40
• Door casing	\$25.47
• Baseboard.....	\$36.60
• Door casing	\$34.49
• Tub surround.....	\$384.85
• Transitions strips	\$130.95
• Carpet on stairs.....	\$126.09
• Door knob	\$20.99
• Toilet seat	\$19.00
• Labour.....	\$2772.00
Total	<u>\$6266.83</u>

Plastering and painting

10. The landlord stated that the tenants had been adhering their pictures to the walls with tape, and he claimed that when he removed this tape the paint on the walls peeled away with it. As a result, the landlord stated that he has to plaster and repaint all of the walls at the property. With his application, the landlord submitted a quote showing that he would be charged \$1380.00 to have the unit repainted. The landlord did not hire that contractor, but instead he carried out the work himself. He submitted receipts with his application showing that he had

purchased paint and painting supplies at a cost of \$318.44. The landlord stated that this unit was last painted in 2018.

Backyard cleanup

11. The landlord stated that according to their rental agreement, the tenants were responsible for yard maintenance, but he complained that after they had moved out, he was required to spend over 8 hours collecting leaves, which had accumulated over several years, as well as other garbage, which included children toys, a suitcase, and cardboard. The landlord submitted a quote with his application showing that if he had hired someone to do this work, he would have been charged \$322.00.

Interior cleaning

12. The landlord pointed to his photographs showing the condition of the various rooms in the unit when the tenants moved out, and he claimed that he was required to spend approximately 24 hours cleaning. He stated that the oven had to be sprayed 3 times, and he also complained that the refrigerator was dirty and had to be scrubbed. He stated that he was required to clean all the floors in the unit, and he also had to clean the toilet, which he claimed had mold on it.

Laminate Flooring

13. The landlord also pointed to his photographs showing the laminate floors in the 2 bedrooms, and he pointed out that there were numerous scratches on these floors. The landlord stated that he removed these floors, and with the undamaged boards, he was able to re-floor 1 one room. For the other room, the landlord pointed to his receipts showing that he was charged a total of \$116.10 for new flooring. The landlord stated that these floors were installed in 2014.

Window sill casing

14. The landlord stated that during a visit to the unit in November 2022, to address concerns about water damage, the tenants informed the landlord that the window sill and casing in the master bedroom had also suffered water damage. The landlord stated that this damage was not caused by the tenants, but he argued that they are responsible for the costs of repairing it as they had neglected to inform him about it. The landlord pointed to a submitted receipt showing that he was charged \$23.40 for the materials needed to repair that window.

Door casing Baseboard

15. The landlord stated that a couple of door casings, as well as a baseboard, were damaged during this tenancy and had to be replaced. The landlord suspected that the tenants had been keeping animals in the unit and that these animals had been chewing on the baseboards and door casings. The landlord pointed to his

submitted photographs showing this damage, and he also pointed to 3 receipts, showing that he had paid a total of \$111.15 for the replacement materials.

Tub surround

16. The landlord also complained that he was required to replace the tub surround in the bathroom. He stated that during this tenancy, the handle to the faucet had broken, and the tenant had been using a screwdriver to turn it off and on, and this had caused the tub surround to rust. He claimed that the surround was stained yellow and the tenants had not been cleaning it, and he was unable to remove the yellow stains. The landlord purchase a new tub surround at a cost of \$442.58 and a receipt was submitted with his application. He installed that tub surround himself, and he claimed that it took him about 2 days to complete it.

Transition strips

17. The landlord claimed that the transition strips leading into the bedrooms, as well as one in the hallway, were cracked and needed to be replaced. No photographs were submitted showing this damage. The landlord submitted a receipt showing that he was charged \$150.59 for replacements.

Carpet

18. The landlord submitted 2 photographs showing the carpet on the stairs, and he pointed out that the carpet is frayed on the end where it meets the stairs, and he also pointed to a line running through the carpet on the top landing. He testified that he had spent half a day removing that carpet, and another half day installing new carpet. He submitted a receipt with his application showing that he was charged \$145.00 for this new carpet. The landlord testified that this carpet was installed in 2014.

Doorknob

19. The landlord pointed to another of his photographs showing that a doorknob was missing from one of the interior doors. He replaced that doorknob after the tenant moved out, and he pointed to a receipt showing that he was charged \$24.14 for a replacement.

Toilet seat

20. Another photograph shows the toilet seat in the basement bathroom, and the landlord pointed out that it was moldy and dirty. He purchased a replacement seat at a cost of \$21.85, and a copy of that receipt was submitted with his application. The landlord stated that that toilet set was first installed in 2014.

The Tenant's Position

Plastering and painting

21. Tenant1 stated that he had not put any holes in the walls during his tenancy, and he agreed with the landlord that he had used tape, instead of screws or nails, to hang his pictures. He claimed, though, that the tape he used was scotch tape, that it was not very sticky, and the paint should not have peeled away when removed. He also pointed out that the unit was not freshly painted when he had moved in.

Backyard cleanup

22. Tenant1 testified that he had been regularly raking the leaves during his tenancy, and in support of that claim, he pointed to a photograph showing the yard in June 2022, and he pointed out that no leaves were visible on the ground in that photograph. He also argued that he could not clean the yard when the tenancy ended because it was covered in snow, and he pointed to another submitted photograph to corroborate that claim.

Interior cleaning

23. Tenant1 claimed that the unit was not clean when he moved in, in 2019. He testified that the floors were dirty, that the kitchen appliances were dirty, and there was garbage left behind in the basement. In support of that claim, the tenants submitted an affidavit from [REDACTED] who helped the tenants move into the unit. With respect to the condition of the unit when they vacated, the tenants pointed to their own photographs, showing the unit on the day they vacated, and pointed out that there was no garbage left behind and that all of the floors had been swept and mopped.

Laminate flooring

24. Tenant1 stated that these floors were already scratched when he moved into the unit in 2019 and he speculated that they were quite old. In support of his claim that these floors were already scratched he pointed to his submitted affidavit, and tenant1 stated that [REDACTED] attests to that claim in her affidavit.

Window sill casing

25. Tenant1 stated that there was always condensation on this window, and it would pool and then spill onto the floor. During his tenancy, tenant1 stated that he always had a towel on the sill to soak up the water, but nevertheless, over the course of this 3 year tenancy, the water damage to the casing and sill got worse. Tenant1 testified that he had informed the landlord about this issue many times.

Door casing
Baseboard

26. With respect to the damages to the baseboards and the door casings, tenant1 testified that this damage was already there when he moved in. To support that claim, he pointed out that the damaged areas had been painted over, and the unit was last painted a year before he moved in. He also testified that he had not been keeping pets at the unit.

Tub surround

27. Tenant1 claimed that there were several plumbing issues in the bathroom that went unaddressed for a significant portion of his tenancy, and these issues had contributed to the growth of mold behind the toilet and on the side of the bathtub. He stated that the toilet was constantly running, and the cistern was always covered with condensation. He also complained that there was an issue with the way in which the tub surround was initially installed, and water was running in behind it, making the wall soft. With respect to the yellow stains, tenant1 stated that he was not able to remove those stains either.

Transition strips

28. Tenant1 stated that he had not caused any damage to these transitions strips during his tenancy, and he claimed that they were not cracked or broken when he moved out.

Carpet

29. Regarding the carpet, tenant1 claimed that it was already old and worn when he moved in. With respect to the line and frayed end, he stated that this damage should be chalked up to normal wear and tear, and he claimed that it was not caused by him deliberately and he was not even sure if it occurred during his tenancy.

Doorknob

30. Tenant1 acknowledged that he had removed this door knob from the door shown in the photograph. He stated that this doorknob had just seized up one day, and it would no longer turn. He claimed that the same thing had happened to a doorknob to a closet door and to doorknob for the bathroom door. He testified that he had done nothing to cause this damage, and attributed it to normal wear and tear.

Toilet seat

31. Tenant1 claimed that the toilet seat was really old and he stated that he also found it difficult to clean. He pointed out that the sealant at the base of the toilet

was worn off, and the toilet seat was always covered in moisture, causing mold to grow.

Analysis

32. 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 willful 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

33. The evidence submitted by the landlord shows that there is garbage and debris in the yard, and that there is a significant amount of rotten leaves that had not

been raked up. As the tenant was responsible for yard maintenance, I agree with the landlord that he is entitled to compensation for the labour he exerted cleaning that yard after the tenant vacated. I find that compensation for 6 hours of his personal labour is reasonable. Policy with this Section is that a landlord may claim up to \$22.50 in compensation for each hour of labour, so this claim succeeds in the amount of \$135.00.

34. The landlord's evidence also shows that the unit was not adequately cleaned after the tenant moved out. The landlord's photographs show that the kitchen appliances were dirty, inside and out, the baseboards and baseboard heaters were dirty and dusty, the windows and window sills needed cleaning, and the bathrooms were dirty. Of course, the tenant claims that the unit was dirty when he moved in, and that claim was corroborated by his witness's affidavit. With that in mind, I only award the landlord compensation for 4 hours of his labour—\$90.00.
35. With respect to the water damage to the window sill and casing, the landlord acknowledged that the tenant was not responsible for damage and I therefore find that he is not entitled to the costs of repairing those items. No photographic evidence was submitted showing that the transition strips were damaged, so those claims also don't succeed.
36. I find that the remaining claims made by the landlord also fail, and for 2 broad reasons.
37. Firstly, there was no written report of any incoming inspection and no photographic evidence was submitted showing the condition of the property before the tenant moved in. Because of this, I am unable to determine whether some of the damages identified by the landlord here actually occurred during this tenancy. For instance, the landlord is seeking the costs of replacing laminate flooring in the bedrooms, but the tenant claimed that the scratches on those floors were already there when he moved in. Likewise for the carpet on the stairs, the damaged baseboards and casings, and the tub surround. So those claims do not succeed.
38. Secondly, some of the items identified by the landlord were coming to the end of their useful life and would soon have to be replaced anyhow. This again would apply to the laminate floors and the carpet, as they have an expected lifespan of between 8 and 10 years. Toilet seats are only expected to last 10 years as well. With respect to the painting and plastering, it is also expected that a landlord would repaint a rental property every 3 to 5 years, so this is also work that would soon have to be done anyhow.

Decision

39. The landlords' claim for compensation for damages succeeds in the amount of \$225.00, determined as follows:

- Exterior cleaning\$135.00
- Interior cleaning.....\$90.00
- Total\$225.00

Issue 2: Security Deposit

40. The tenant paid a security deposit of \$425.00 and receipt of that deposit is acknowledged in the submitted rental agreement. 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 \$425.00
- b) LESS : Compensation for Damages (\$225.00)
- c) Total Owing to Tenants..... \$200.00

24 July 2023

Date



John R. Cook
Residential Tenancies Tribunal