

Residential Tenancies Tribunal

Application 2023-0732-NL

Amended Decision 23-0732-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:47 p.m. on 17-October-2023.
2. The applicants, [REDACTED] (applicant 1) and [REDACTED] (applicant 2), hereinafter referred to as “the landlords” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.

Preliminary Matters

4. The landlords submitted an affidavit with their application stating that they had served the respondent with the notice of hearing electronically by email to; [REDACTED] on 30-August-2023 (LL#1). The tenant confirmed receiving the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was originally a written term rental agreement that converted to a month-to-month tenancy. The tenant took possession on 1-November-2020 and vacated the unit on 1-August-2023. Rent was \$1400.00 per month due on the first of each month. A security deposit of \$1050.00 was paid in 2 installments (November 2020 and November 2021).

Issues before the Tribunal

6. The landlord is seeking:
 - a. Compensation for Damages \$5778.84
 - b. Security deposit applied against monies owed \$1050.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

8. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 14; Security Deposit. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*, Section 9: Claims for Damage to Rental Premises.

Issue # 1: Compensation paid for Damages

Relevant Submission

9. The landlords testified that there was damage to the rental unit and submitted a list of damages to support their claim. See below as follows (LL#2):

List of Damages re: Tenant - [REDACTED]

Item #	Description	Repair Estimate	Documentation	Comments
Item 1	Carpet Replacement - intense cat urine smell from carpeting - assessment from flooring installer is to replace. Total square footage = 710 sq ft	\$ 2,207.45	Receipt + Affidavit + Pics	Flooring purchased and installer willing to provide affidavit re: replacement requirement
Item 2	Labour to install Item 1	\$ 1,068.75	Hours Log (in-kind)	Carpet/underlay removal and disposal, floor prep, floor sealing, installation of new flooring, clean-up. HOURS LOG (\$22.50/hour as per regulations): - Aug. 6: Removal of carpet/underlay - 9 am-12 pm - three people - Aug. 6: Floor prep/sealing - 4:15 pm-7:45 pm - three people - Aug. 7: Installation - 9 am-4 pm - three people - Aug. 8: Installation/clean-up - 9 am-4 pm - one person
Item 3	Back door lock replaced - changed by tenant - no landlord keys	\$ 108.97	Receipt + Pics	Receipt + 30 mins labour @ \$22.50/hr + two keys cut
Item 4	Back door damage - dents in steel door + missing hinge pin	\$ 1,059.75	Pics + Estimate	Estimate on replacement and install - NOTES: Crowbar used to pry off handle?
Item 5	Garage door damage - dents in steel door - door split and stapled	\$ -	Pics	No replacement claimed, work not completed since not a house entrance.
Item 6	Garage door lock replaced - closure latch snapped off	\$ 74.49	Receipt + Pics	Receipt + 30 mins labour @ \$22.50/hr
Item 7	Front door lock - not functional	\$ 149.25	Receipt	Receipt + 30 mins labour @ \$22.50/hr
Item 8	Front door damage - dents in door + shoe cabinet damage	\$ -	Pics	Crashed against shoe cabinet - no replacement claimed.
Item 9	External front door trim	\$ -	Pics	Staples used for decorations - no replacement claimed - will pull staples and repaint
Item 10	Damage to walls - TV mount in living room, hole in wall in hallway, sticks on walls and trim in multiple locations. Unapproved painting in second bedroom - unapproved colour.	\$ 750.00	Pics + Lease Clause + Estimates	Excessive wear & tear to walls - plaster, painting and materials - full paint job estimate = \$6,000, claiming only \$750 based on contractor's estimate
Item 11	Primary ensuite light fixture - missing part	\$ 80.25	Receipt + Pics	Receipt + 30 mins labour @ \$22.50/hr
Item 12	Second bedroom - missing curtain rod	\$ 50.00	Pics	Will omit if returned by Tenant
Item 13	Refrigerator door - dents	\$ -	Before & After Pics	No replacement cost claimed
Item 14	Garage - weather stripping broken/missing	\$ 229.93	Pics	Estimate for materials & labour
Item 15	Unapproved painting - garage floor	\$ -	Before & After Pics	No replacement cost claimed
Item 16	Damage to trims - rec room - bottle opener screwed into trim	\$ -	Pics	No replacement cost claimed
Item 17	Smoking - garage (not permitted as per lease)	\$ -	Pics	No replacement cost claimed
Item 18	Unauthorized alterations - benches and shelves installed in garage	\$ -	Pics	No replacement cost claimed
Item 19	Unauthorized alterations - sods removed from back lawn	\$ -	Pics	No replacement cost claimed
Item 20	Excessive wear and tear to kitchen cabinets	\$ -	Pics	No replacement cost claimed
Total Estimates To Remediate		\$ 5,778.84		

Landlord's Position

10. Item # 1: Carpet replacement 710 sq ft (\$2207.45) - The landlords testified that their realtor had visited the property during the last week of July 2023 and notified them at that time that there was an intense cat urine odor coming from the carpets. Applicant 2 states that the realtor advised that she would not be able to put the house on the market with the odor. The landlord's testified that they were surprised to hear about the odor as they had completed a walk through about 1 year prior on 17-June-2022 and there wasn't any cat urine odor at that time. The landlords stated that they flew home from Ontario on 1-August-2023 to investigate the extent of the situation and were surprised to witness a prevalent cat urine odor coming from the carpets. Applicant 1 stated that it was not the type of smell you

get when a litter box needs to be cleaned but rather a “smack you in the face, make you puke” kind of smell. Applicant 1 stated that she was told by her other tenants in the basement that the tenant upstairs had a new cat, and the landlords stated that this would explain why there was no cat urine odor a year previously. Applicant 1 stated that in her opinion the house was uninhabitable. The landlords testified that they brought in a flooring specialist who recommended that the only solution was to remove all the carpets and clean the subfloor. The landlords submitted photographs of the backside of the carpet showing multiple urine stains (LL#3). The landlords submitted a receipt to show the cost to replace the flooring (LL#4).

11. Item # 2: Labor to install carpet (\$1068.75) - The landlords testified that they are seeking the cost of labor to remove the carpet and underlay and dispose of it, prep the floor and install the new flooring and clean up. The landlords are seeking \$1068.75 for 13.5 hours of labor for 3 persons and another 7 hours of labor for 1 person at a rate of \$22.50 per hour. The landlords submitted a log of the hours (LL#5).
12. Item # 3: Back door lock replaced (\$108.97) – The landlords testified that the back door lock had been replaced and they were not given a copy of the new key. The landlords stated that when they arrived at the premises on 1-August they could not access the house. The master key did not work, and they changed the lock for security reasons. The landlords are seeking the cost to replace the back door lock and 30 minutes labor at a rate of \$22.50 per hour. The landlords submitted a copy of the receipt (LL#6).
13. Items # 4: Back door damage (\$1059.75) – The landlords testified that a crowbar was used to pry off the handle of the back door leaving dents in the steel door and a missing hinge pin. The landlords submitted a photograph to support their claim (LL#7). The landlords received an estimate on the cost to replace the door (LL#8).
14. Item # 5: Garage door damage – The landlord’s stated that they are not claiming anything for this item.
15. Item # 6: Garage door lock replaced (\$74.49) – The landlords testified that the closure latch on the garage door was snapped off. The landlords are seeking the cost to replace the lock and 30 minutes self-labor at a rate of \$22.50 per hour. The landlords submitted a photograph to support their claim (LL#9) and a copy of the receipt (LL#6).
16. Item # 7: Front door lock not functional (\$149.25) – The landlords testified that the front door lock was not functional and had to be replaced. Applicant 2 stated that he had replaced the front door lock in April 2023 and when he arrived in August, the lock was totally stripped, and the key would not work in the lock. The landlords are seeking the cost to replace the lock and 30 minutes self-labor at a rate of \$22.50 per hour. The landlords submitted a copy of the receipt to support their claim (LL#6).
17. Item # 8: front door damage – The landlords stated that they are not claiming anything for the damage to the door.
18. Item # 9: external front door trim – The landlords stated that they are not claiming anything for the damage.
19. Item # 10: Damage to walls (\$750.00) – The landlords testified that there was excessive wear and tear to the walls which required plaster and painting. The landlords stated that

there were holes in the walls and unapproved painting in the second bedroom. The landlords stated that there was a tv mount on the wall which left a lot of damage to the wall, and they are claiming \$750.00 to repair and paint the areas of the walls that had damages. The landlords stated that they will cover the cost to plaster and paint the remainder of the house. The landlords submitted a photograph to support their claim (LL#10) and the contractors estimate (LL#11).

- 20. Item # 11: Primary ensuite light fixture missing part (\$80.25) – The landlords testified that the light fixture had to be replaced due to a missing clasp. The landlords are seeking the cost to replace the light fixture and 30 minutes self-labor at a rate of \$22.50 per hour. The landlords submitted a photograph to support their claim (LL#12) and a copy of the receipt (LL#13).
- 21. Item # 12: Second bedroom missing curtain rod (\$50.00) – The landlords testified that the curtain rod has been returned and they are not seeking anything for this item.
- 22. Item # 13: Refrigerator door indents – The landlords stated that they are not claiming anything for the damage.
- 23. Item # 14: Garage weather stripping broken / missing (\$229.93) - The landlords chose to omit this item from the list during the hearing.
- 24. Items # 15-20: as per list above - The landlords stated that they are not claiming anything for the damages related to those items.

Tenant's Position

- 25. Item # 1: Carpet replacement (\$2207.45) - The tenant disputed that there was a cat urine odor coming from the carpets and suggested that the odor was caused by water from a carpet cleaner combined with the humidity in July. The tenant testified that there were visible stains on the carpet prior to her moving in. The tenant testified that there were 2 stains on the carpet in the basement and 1 stain in the spare bedroom, and she stated that animals had resided in the home prior to her moving in. The tenant stated that the integrity of the carpet was compromised at the beginning of the tenancy. The tenant also stated that her cat is an outdoor cat, and it is highly unlikely that the stains were caused by her cat. The tenant denies bringing a second cat into the unit.
- 26. Item # 2: Labor to install flooring (\$1068.75) - The tenant is disputing the need to replace the flooring thus also disputing the labor costs associated with it.
- 27. Item # 3: Back door lock replaced (\$108.97) – The tenant does not dispute changing the back door lock, however she stated that she did not have a choice. The front doorknob was hanging off and she started to use the back door which was also in bad shape as it was very rusty. The tenant submitted a photograph to show the rust around the doorknob (TT#1). The tenant did not dispute that she did not give the landlords a copy of the key until she moved. The tenant stated that she was moving in a couple of weeks and did not see the point.
- 28. Items # 4: Back door damage (\$1059.75) – The tenant does not dispute damaging the back door as she could not get in the unit at 3:00am when returning from work. The tenant stated that she asked the landlord to fix the backdoor lock and it never got done.

29. Item # 6: Garage door lock replaced (\$74.49) – The tenant disputes any damages to the garage door that would result in having to replace the door lock. The tenant submitted a photograph of the garage door before she vacated (TT#2).
30. Item # 7: Front door lock not functional (\$149.25) – The tenant disputes that she did anything to the lock. The tenant stated that the lock was troublesome since the day it was installed, and she submitted a copy of a text message whereby the landlord suggested she use WD40 in the lock (TT#3).
31. Item # 10: Damage to walls (\$750.00) – The tenant does not dispute that she had a tv mount on the wall. The tenant states that when she moved into the unit, there were a multitude of small holes in the walls where pictures had been hung. The tenant admitted to hitting the corner of the hallway when moving a desk and stated that she offered to fix it, but the landlord declined. The tenant testified that she painted the bedroom, and the color is just a shade in the difference of what it originally was. The tenant stated that the landlord approved the color, and she submitted a copy of a text message from the landlord showing that the landlord approved the color (TT#4).
32. Item # 11: Primary ensuite light fixture missing part (\$80.25) – The tenant disputes that the light fixture had a missing part and stated that the light fixture was placed on the window stall when she vacated.

Analysis

33. In accordance with *Residential Tenancies policy 9-3*, the applicants are required to show:

That the damage exists;
That the respondents are responsible for the damage, through a willful or negligent act;
The value to repair or replace the damaged item(s)

34. The landlords did not present a condition report with their list of damages and the tenant did not identify any issues with the unit upon moving in except for the presence of 3 stains on the carpet which relate to item # 1 below. Each item is analyzed separately below:
35. Item # 1: Carpet replacement (\$2207.45) – I accept the landlord's testimony that the carpet was destroyed and needed to be pulled up. The photographs show multiple stains on the back side of the carpet which I accept were most likely caused by an animal. The landlords resided at the premises prior to the tenant moving in and if the stains were there at that time, it is likely that the same cat urine odor would have been prevalent throughout the house when the tenant moved in. The landlords testified that during a walk through on 17-June-2023 there was no urine odor but 1 year later on 1-August-2023 it was very intense. I asked the landlords how old the carpet was, and they responded that the carpet was 6 years old and that it was a high-quality carpet at a hotel grade which had an additional 5-7 years of wear. The carpet was 3 years old when the tenant moved in, and the landlords did not dispute that there were 3 stains on the carpet at that time, but they did dispute that those stains were caused by an animal.

36. I find that the carpet had multiple urine stains that were not present at the commencement of the tenancy and as such, the damage to the flooring was caused by a willful or negligent act by the tenant.
37. In accordance with *Policy 9-5; Life expectancy of Property*, a high-quality carpet has roughly a 10-year life expectancy and as the carpet in the unit is only 6 years old, it is reasonable to assume that the landlords would have gotten another 4 years of life from the carpet. Taking depreciation into consideration, I find that the tenant is responsible for 40% of the cost claimed to replace the flooring. The receipt submitted from Costco Wholesale shows a cost of \$2437.39 for the flooring, however the landlord's made a claim for \$2207.45.
38. I find that the tenant is responsible to pay the landlords \$882.98 ($\$2207.45 \times 40\%$) towards the cost to replace the flooring.
39. Item # 2: Labor to install carpet (\$1068.75) – As per my analysis of item # 1 (paragraph 34), I find that the tenant is also responsible for 40% of the labor costs to replace the flooring.
40. I find that the tenant is responsible to pay the landlords \$427.50 for self-labor to replace the flooring ($\$1068.75 \times 40\%$).
41. Item # 3: Back door lock replaced (\$108.97) – I accept that the tenant felt the need to change the lock so she could access the house without any problems. The tenant did not purposefully keep the key from the landlords, she accidentally gave them the incorrect key when she moved. I accept that the landlord chose to change out the lock for security reasons, however I find that changing locks on rental units after tenants vacate falls within the *cost of doing business*. I find that the tenant is not responsible for the cost to replace the back door lock.
42. Item # 4 amended: Back door damage (\$1059.75) – In accordance with *Residential Tenancies Policy Manual; Section 8(1) Amended Orders*, Item # 4 has been amended due to a matter which should have been adjudicated upon but was mistakenly omitted. I accept that the tenant was experiencing trouble with the back door lock. The tenant did not dispute that she damaged the door trying to get into the unit at 3:00am. The landlord showed dents in the door and a missing hinge. I accept the landlord's testimony that they were not made aware of the problem with the back door and as such did not have an opportunity to address the problem. I asked the tenant to show that she had made the landlords aware of the problem and she stated that she did not have any text messages or emails to show that she communicated the problem to the landlords. The landlords are seeking \$1059.75 for the cost of the door and supplies and the cost of self-labor to complete the work.
43. I find that the damage to the back door was caused by a willful act by the tenant and as such the tenant is responsible to replace the back door. I find that \$918.26 are legitimate expenses as per receipts from Hickey's Building Supplies, Kent, Capitol HBC and Home Depot (LL#8). With regards to the self-labor, I am unable to award 18 hours of self-labor to remove and install an outside door. Research shows that the average time to do this work ranges from 4-6 hours (research is taken from the following source www.homeguide.com).
44. I find that the tenant is responsible to replace the back door at the cost of \$1053.26 (\$918.26 for material costs and \$135.00 for 6 hours of self-labor at \$22.50 per hour).

45. Item # 6: Garage door lock replaced (\$74.49) – I accept that the garage door lock was damaged, and I also accept that the landlord wanted to change out the garage door lock for security reasons. As stated above, changing locks on rental units after tenants vacate falls within the *cost of doing business*. I find that the tenant is not responsible for the cost to replace the garage door lock.
46. Item # 7: Front door lock not functional (\$149.25) – I accept that the front door lock was working when installed in April, however I am unsure if the tenant caused the lock to strip. As the landlord had stated that he changed the locks for security reasons, it is reasonable to assume that he would have changed out the lock anyways and as such I do not find the tenant to be responsible for the cost to change out the front door lock. As stated above, changing locks to a unit once a tenant vacates falls under the *cost of doing business*.
47. Item # 10: Damage to walls (\$750.00) – I accept that the house was painted roughly 3 years ago just prior to the commencement of the tenancy. The landlord is not seeking the cost to plaster and paint the entire house but rather to cover what they feel was damaged during the tenancy. The photographs show that there are some damages to the wall, where the tv mount had been placed and also to the corner in the hallway due to an accident during the move. The tenant is not disputing that she caused the damages to the wall. As for seeking the cost to paint the bedroom, I find that the tenant showed that she had approval from the landlords to use the new paint color, and as such I find that the tenant is not responsible for the cost to paint the bedroom.
48. I find that the damages to the wall were caused due to negligence by the tenant and as such, the tenant is responsible for the cost to repair the damages to the walls in the amount of \$138.00 as per the invoice from Core Contracting (LL#11).
49. Item # 11: Primary ensuite light fixture missing part (\$80.25) – I accept that there was a missing clasp to the light fixture which prevented it from staying in place. The light fixture was in place when the tenant moved in, and it should have been in place when the tenant vacated. I find that the tenant is responsible for losing the clasp to the fixture and as such, I find that the tenant is responsible for the cost to replace the light fixture. The receipt from Home Depot shows that the light fixture cost \$136.85, however I can only award the amount of \$80.25 as sought by the applicants in the application.
50. I find that the tenant is responsible to replace the light fixture at \$80.25.
51. In review of all the above items, I find that the tenant is responsible to pay the landlords a total of \$2581.99 to cover damages to the unit.

Decision

52. The landlord's claim for compensation for damages succeeds in the amount of \$2581.99.

Issue # 2: Security Deposit applied against monies owed \$1050.00.

Analysis

53. Section 14 of the Residential Tenancies Act, 2018 deals with security deposits, and the relevant subsections state:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(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.

(11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).

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

54. Both parties agreed at the beginning of the hearing that a security deposit was paid in the amount of \$1050.00. \$700.00 was paid in November 2020 and \$350.00 was paid in November 2021.

55. I find that the landlords have been successful in their claim for damages (see paragraph 49) and as a result, the security deposit shall be applied against monies owed.

Decision

56. The landlord's claim to have the security deposit of \$1050.00 applied against monies owed succeeds.

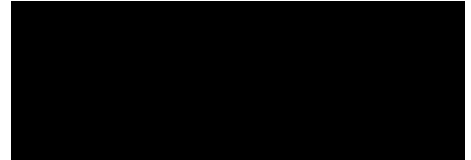
Summary of Decision

57. The tenant shall pay the landlords \$1531.99 as follows:

• Damages.....	\$2581.99
• Less: Security deposit.....	1050.00
▪ Total	<u>\$1531.99</u>

November 7, 2023

Date



Pamela Pennell
Residential Tenancies Office