

## **Residential Tenancies Tribunal**

Application 2023-0913-NL

Decision 23-0913-00

Pamela Pennell  
Adjudicator

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### **Introduction**

1. Hearing was called at 1:47 p.m. on 6-November-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.
4. The landlords testified that they served the tenant with the notice of hearing electronically via email on 26-October-2023. The tenant confirmed receiving the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.

### **Preliminary Matters**

5. There was a written term rental agreement that commenced on 1-May-2022. The tenant vacated on 31-July-2023. Rent was \$1200.00 per month due on the first day of each month. A security deposit of \$600.00 was paid on 9-April-2022 and is no longer in the landlord's possession. Security deposit was dealt with under application 2023-0773-NL.
6. The landlords amended their application to exclude security deposit applied against monies owed as it has been previously dealt with. Also, the amount sought for damages increases from \$5082.00 to \$5682.00 as the security deposit will not be applied against.

### **Issues before the Tribunal**

7. The landlord is seeking:
  - Compensation for Damages \$5682.00
  - Hearing expenses \$20.00

### **Legislation and Policy**

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*;

Section 9: Claims for Damage to Rental Premises and Section 12-1: Recovery of Fees, Costs, Hearing Expenses, Interest, Late Fees and NSF.

**Item # 1: Compensation for Damages \$5682.00**

Relevant Submission

9. The landlord's testified that there is damage to the rental unit caused by negligence on the part of the tenant. The landlords are seeking compensation in the amount of \$5682.00 to cover the total losses due to the damages, including loss of rent. The landlords submitted a list of damages to support their claim. See below as follows (LL#1):

Item #	Description of Damages	Compensation Claimed
E.g.	3cm x 3cm hole in bathroom wall	\$ 75.00
1	Fibretech carpet cleaning	\$ 402.50
2	Cleaning supplies leather couch cleaning	\$ 8.99
3	Oil company - furnace not working blower always on	\$ 103.50
4	Basement repairs leaking window (estimate) work ongoi	\$ 334.90
5	Replace deck labor	\$ 1,207.50
6	Replace deck materials	\$ 1,978.63
7	Estimate to complete cleaning	\$ 240.00
8	Cleaning supplies leather couch cat smell	\$ 10.98
9	October rent	\$ 1,395.00

Landlord's Position

10. The landlord's testified that the above listed items have been identified as damages or the result of damages to the unit caused by negligence on the part of the tenant. The landlord's position on each item is as follows:

Item # 1: Fibretech carpet cleaning (\$402.50) - The landlord's testified that the carpet needed to be professionally steam cleaned due to cat dander and cat urine. The landlord's testified that they hired *Fibretech Carpet Cleaning* to complete the work on 10-August-2023. The landlord's stated that they entered into an agreement with the tenant which allowed her to have a cat at the premises if she had the carpets professionally steam cleaned once she vacated the premises. Applicant 1 stated that the agreement was put in place as he suffers from asthma and cat allergies. The landlord's testified that the carpets were not professionally steam cleaned, and they are seeking reimbursement of the cost to have the carpets professionally steam cleaned. The landlord's submitted a receipt in the amount of \$402.50 to support their claim (LL#2).

Item # 2: Cleaning Supplies leather couch cleaning (\$8.99) – The landlord's testified that there was dirt between the cushions of the couch, and they purchased cleaning supplies to clean the couch. The landlord's submitted a photograph to show dirt between the cushions (LL#3) and a copy of a receipt from *Dominion* in the amount of \$8.99 to support their claim (LL#4).

Item # 3: Oil Company – furnace not working blower always on (\$103.50) – The landlord's testified that the furnace was not working properly and attributed the damage to the tenant having the blower on. The landlord's stated that they hired *Western Petroleum* to service the furnace on 1-September-2023 and the technician found that there was no heat because the thermostat was dislocated from the wall, the emergency switch was turned off and the fan limit switch on the furnace was turned off. Applicant 1 stated that the blower was on when they completed their final walk through, and he stated that he felt confident that the blower was always left on no matter the temperature in the house. The landlord's submitted a copy of a receipt to support their claim (LL#5).

Item # 4: Basement repairs leaking window – estimate (\$334.90) - The landlord's testified that water entered the basement through a window that was compromised due to the deck collapsing and an abundance of snow and ice jammed up into the window area. Applicant 1 stated that water leaked in through the window and caused damage to the wall and floor area underneath the window in the basement. The landlord's submitted an estimate to have the work completed to fix the wall and flooring that had water damage (LL#6).

Item # 5: Replace deck labor (\$1207.50) - The landlord's testified that the deck needed to be replaced as it collapsed when snow and ice piled up on it. The landlord's stated that the tenant was negligent in not taking proper care of the deck during the winter months, creating a situation whereby the deck was too heavy and consequently collapsed. The landlords also stated that the tenant left the summer patio furniture on the deck which froze into the deck causing even more weight on the deck. The landlord's submitted photographs of the deck to support their claim (LL#7). The landlords are seeking \$1207.50 for the work which was completed by *Talbot's Contracting*, and they submitted a copy of the receipt to support their claim (LL#8).

Item # 6: Replace deck materials (\$1978.63) – The landlord's testified that it cost \$1978.63 to purchase the necessary materials to have the deck rebuilt. The landlord's stated that the tenant did not maintain the deck with regards to removing snow and ice during the winter months and stated that the tenant left patio furniture on the deck all winter which contributed to the demise of the deck. The landlord's submitted several photographs of the deck to support their claim (LL#7) and they also submitted a copy of a receipt from *Stan Dawe Ltd* to support their claim (LL#9).

Item # 7: Estimate to complete cleaning (\$240.00) – The landlord's testified that the house needed extra cleaning once the tenant vacated the premises and they contacted the cleaning lady that the tenant had used to get a quote as to what it would cost to finish cleaning the unit. The landlord's stated that the cleaning lady advised that she would need to spend a minimum of 8 hours at \$30.00 per hour to have the house cleaned to her standards. The landlords are seeking the cost of \$240.00 to have the house cleaning finished as quoted by the cleaning lady who professionally cleaned the house for the tenant.

Item # 8: Cleaning supplies leather couch cat smell (\$10.98) – The landlord's testified that the cleaning of the leather couch needed an additional product to deal with the smell of cat urine. The landlord's testified that they found a cat wand between the cushions of the couch which stunk of cat urine. The landlord's stated that they needed to purchase a unique product to assist with eliminating the smell of cat odor and urine. The landlord's submitted a copy of a receipt from *Walmart* to support their claim (LL#10).

Item # 9: October rent (\$1395.00) – The landlord's testified that they lost rent for the month of October due to a lingering cat odor in the unit and the overall cleanliness of the unit. The landlord's testified that they had a couple interested in renting the unit, paid their security deposit and eventually declined to move into the unit. The landlords are seeking lost rent for the month of October 2023 in the amount of \$1395.00.

#### Tenant's Position

11. The tenant responded to each item claimed as the landlord's stated their case. The tenant's position on each item is as follows:

Item # 1: Fibretech carpet cleaning (\$402.50) - The tenant did not dispute that she entered into an agreement with the landlords to have the house professionally cleaned when she vacated the unit, and she stated that she was unaware that this meant that she had to professionally steam clean the carpets. The tenant stated that she hired a professional to clean the house and carpets which she feels is considered professional cleaning. The tenant stated that the carpets were left in good condition when she vacated the unit, and she feels that she should not be responsible for the cost to professionally steam clean the carpets.

Item # 2: Cleaning Supplies leather couch cleaning (\$8.99) - The tenant disputed the landlord's claim that the leather couch needed a cleaning supply to clean a few crumbs that were found between the cushions. The tenant stated that she kept a blanket over the couch to protect the cushions and without before and after pictures of the cushions, she is not convinced that the crumbs found between the cushions were left there by her. The tenant stated that the couch was cleaned before she vacated, she does not feel that she is responsible for the cost of cleaning supplies to remove a small amount of crumbs from between 2 cushions of the couch.

Item # 3: Oil Company – furnace not working blower always on (\$103.50) - The tenant disputed that she was responsible for any damage to the furnace. The tenant stated that she never touched the furnace or the override switch or the thermostat. The tenant stated that the photographs she submitted into evidence shows the thermostat on the wall when she vacated (TT#1). The tenant stated that she never made the landlords aware of any problem with the furnace because she was not experiencing any problems with the furnace.

Item # 4: Basement repairs leaking window – estimate (\$334.90) - The tenant disputed the landlord's claim that she did anything to cause the water to enter through the window. The tenant stated that she was out of the province for the last half of March 2023 and was not responsible for a buildup of snow and ice on the deck. The tenant stated that snow jamming up next to the basement window was not something she had control over, and she had no way to know that water would enter through the window area. The tenant stated that she should not be responsible for any water damage to the basement.

Item # 5: Replace deck labor (\$1207.50) - The tenant disputed the landlord's claim that she is responsible for any repairs to the deck and as such, she disputed that she is responsible for the labor associated with replacing the deck. The tenant testified that large chunks of snow and huge icicles hung from the eave of the house just over the back deck area creating a safety hazard. The tenant stated that the landlords were aware of the situation, and she felt that it was not her responsibility to ensure that snow and ice was removed from the eave of the house before falling to the deck.

The tenant stated that she kept the front of the premises and main walkway clear from snow as she felt that was her only responsibility when it came to snow clearing. The tenant testified that she was out of the province during the last half of March 2023 and when she returned the deck had collapsed. The tenant submitted pictures of the roof to show the danger associated with entering the deck area (TT#2). The tenant stated that she is not responsible for the collapse of the deck and she does not feel that she is responsible for the cost of labor to repair or replace the deck.

Item # 6: Replace deck materials (\$1978.63) – The tenant disputes the landlord's claim that she is responsible to replace the deck. As stated in item # 5 above, the tenant stated that she is not responsible for the collapse of the deck and for the same reasons as stated above, the tenant feels that she should not be responsible for the cost of the materials to replace the deck.

Item # 7: Estimate to complete cleaning (\$240.00) – The tenant disputed the landlord's claim that she is responsible for any further cleaning in the unit other than the 12 hours of cleaning that she has already paid the cleaning lady to do. The tenant testified that she hired a professional who completed the work, and the house was in great condition when she vacated. The tenant submitted photographs of the house to show that it was cleaned (TT#3). The tenant stated that she feels that the landlords had an unrealistic expectation of her to go above and beyond what normal cleaning consists of. The tenant stated that she did not have the walls and windows washed down but left the house clean.

Item # 8: Cleaning supplies leather couch cat smell (\$10.98) – The tenant disputed the landlord's claim that the leather couch needed a cleaning supply to eliminate the odor of cat urine. The tenant stated that her cat never urinated on the couch and disputes that there could have been a smell of urine from the couch. The tenant stated that she cleaned the leather couch and there wasn't any smell of cat urine from the couch when she vacated. The tenant stated that the cat used the litter box, and she does not feel that she is responsible for the cost of cleaning supplies to remove the smell of cat odor from the couch.

Item # 9: October rent (\$1395.00) – The tenant disputed the landlord's claim that she is responsible for the loss of rent for the month of October 2023 when she vacated the unit on 31-July-2023. The tenant stated that she left the house in good condition, and she stated that she should not be responsible for any lost rent 2 months after she vacated.

## Analysis

12. In accordance with *Residential Tenancies policy 9-3*, the applicant is 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)*
13. The landlords did not present an incoming and outgoing premises condition report with their list of damages. The tenant disputed all claims listed above. Each item is analyzed separately based on the testimony and evidence presented from both parties. See below:

Item # 1: Fibretech carpet cleaning (\$402.50) - The landlord's testified that they entered into an agreement with the tenant to have the carpets professionally steam cleaned at the end of the tenancy as applicant 1 suffers from asthma and cat allergies. The tenant did not dispute that she entered into an agreement with the landlord's to professionally clean the house when she vacated, however the tenant stated that she was unaware that she was required to professionally steam clean the carpets. The tenant stated that she felt that because she hired a professional to clean the house, that the carpets were professionally cleaned. I asked the tenant if the cleaning lady had a steamer to steam clean the carpets and the tenant responded that the cleaning lady had only vacuumed the carpets. I accept the landlord's testimony that they agreed to allow the tenant to have a cat at the premises under the condition that the house was professionally cleaned. Vacuuming the carpets is not professionally cleaning the carpets and as such, I find that the tenant is responsible for the cost to steam clean the carpets. The landlord's claim for \$402.50 to professionally steam clean the carpets succeeds.

Item # 2: Cleaning Supplies leather couch cleaning (\$8.99) - The landlord's testified that there was dirt between the cushions of the couch, and they purchased cleaning supplies to clean the couch. The landlord's submitted a photograph which shows a few crumbs located between 2 cushions of the couch. The tenant disputed the landlord's claim that the leather couch needed a cleaning supply to clean a few crumbs that were found between the cushions. I accept that there was dirt between the cushions, however I find that the small amount of dirt shown in the landlord's photograph could be easily swept away. I find that a few crumbs between the cushions is not damage to the couch and was not left there as negligence on the part of the tenant. I find that the tenant is not responsible for the cost of a cleaning supply to clean the couch. The landlord's claim in the amount of \$8.99 for a cleaning supply does not succeed.

Item # 3: Oil Company – furnace not working blower always on (\$103.50) - The landlord's testified that the furnace was not working properly and attributed the damage to the tenant having the blower on. The tenant disputed the landlord's claim that she may have caused damage to the furnace and the tenant stated that she never touched the furnace for any reason. The tenant stated that she doesn't know anything about furnaces or override switches, and she testified that the thermostat was on the wall when she vacated as shown in one of her photographs (TT#1). According to the receipt from *Western Petroleum*, the furnace was serviced on 1-September-2023 which is 1 month after the tenant vacated the unit. I accept that the furnace needed to be serviced as all furnaces need servicing, however the landlord did not show that the furnace was damaged on 31-July-2023 when the tenant vacated, and the landlords did not show that the damage to the furnace was caused due to negligence on the part of the tenant. As such, I find that the tenant is not responsible for the service fee charged by the Oil Company to service the furnace. The landlord's claim for \$103.50 for service to the furnace does not succeed.

Item # 4: Basement repairs leaking window – estimate (\$334.90) - The landlord's testified that water entered the basement through a window that was compromised due to the deck collapsing and an abundance of snow and ice jammed up into the window area. The tenant disputed the landlord's claim that she did anything to cause the water to enter through the window. The tenant stated that she was out of the province for the last half of March 2023 and was not responsible for a buildup of snow and ice on the deck. I accept that the water entered the window due to the buildup of snow and ice from the collapsed deck, however I find that the tenant did not cause the buildup of snow and ice and she was not negligent in any way. I find that the

tenant is not responsible for basement repairs due to a leaking window. The landlord's claim for \$334.90 to complete repairs to the basement does not succeed.

Item # 5: Replace deck labor (\$1207.50) - When seeking compensation for damages, the burden of proof lies with the applicant to show that the respondent was negligent in causing the damage. The landlords testified that the back deck needed to be replaced as it collapsed when snow and ice piled up on it, and that the tenant did not take proper care of the deck during the winter months, creating a situation whereby the deck was too heavy and consequently collapsed. The landlords also stated that the patio furniture was left on the deck during the winter months which added extra weight to the deck. The photographs of the deck provided by the landlords show some snow on the deck and in the surrounding area, however this is normal usage, and is not evidence of negligence. The tenant disputed the landlord's claim that she was responsible for the deck collapsing. The tenant testified that she was out of the province for the last half of March and when she returned, she noticed that the deck had collapsed. The landlords did not prove that the deck collapsed because of a willful or negligent act on the part of the tenant. The landlord's claim for labor to replace the deck does not succeed.

Item # 6: Replace deck materials (\$1978.63) – The landlord's claim for materials to replace the deck does not succeed as per analysis outlined in Item # 5 above.

Item # 7: Estimate to complete cleaning (\$240.00) – The landlord's testified that the house needed extra cleaning once the tenant vacated the premises and they contacted the cleaning lady that the tenant had hired to get a quote as to what it would cost to finish cleaning the unit. The tenant disputed that the house needed any further cleaning and submitted photographs to show the house when she vacated (TT#3). I accept that the cleaning lady quoted another 8 hours of cleaning to clean the house to her standards, but I do not know what her standards are. The landlords did not submit any photographs to show the cleanliness of the unit and the tenant did submit photographs which show a rather clean house. I find that without photographs from the landlords to show what areas of the house needed further cleaning, I am unable to award any monies for cleaning. I find that the tenant is not responsible for additional cleaning costs. The landlord's claim for cleaning cost in the amount of \$240.00 does not succeed.

Item # 8: Cleaning supplies leather couch cat smell (\$10.98) – The landlord's testified that the cleaning of the leather couch needed an additional product to deal with the smell of cat urine. The tenant disputed that there was a smell of cat urine on the couch as she stated that her cat never urinated on the couch. I accept that the landlords could smell cat urine from the couch when they entered the premises especially if there was a cat wand found between the cushions that may have contained cat urine on it and I also accept that the tenant could not smell cat urine while she was living there with the cat. I am unable to determine if there actually was a smell of cat urine from the couch but the fact that the landlord's purchased a product to eliminate the odor of cat urine leads me to believe that there was some sort of odor left behind on the couch and for that reason, I find that the tenant is responsible to reimburse the landlords for the cost of the cleaner. I find that the tenant is responsible for the cost of the cleaning supplies to eliminate the odor of cat urine. I find that the landlord's claim for cleaning supplies in the amount of \$10.98 succeeds.

Item # 9: October rent (\$1395.00) – The landlord's testified that they could not rent the unit in October 2023 due to a lingering cat odor and the overall cleanliness of the

unit. The landlord's testified that they had a couple interested in renting the unit, paid their security deposit and eventually declined to move into the unit. The tenant disputed that the unit was left in a condition that would prevent the landlord's from renting especially 2 months after she vacated. The landlords were unable to show the cleanliness of the unit as per Item # 8 above and the tenant did show how she left the unit. Without evidence to show the condition of the unit, I am unable to award any compensation for lost rent, and as such I find that the tenant is not responsible for lost rent for October 2023. I find that the landlord's claim for lost rent for October 2023 in the amount of \$1395.00 does not succeed.

14. I find that with regards to all the items listed above, the tenant is responsible to pay the landlord's a total of \$413.48 to cover damages.

#### **Decision**

15. The landlord's claim for compensation for damages succeeds in the amount of \$413.48.

#### **Item # 2: Hearing Expenses \$20.00**

16. The landlord's paid an application fee of \$20.00 to *Residential Tenancies*. The landlord provided a copy of the application receipt (LL#11).
17. In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, if an award does not exceed the amount of the security deposit, hearing expenses related to the filing fee will not be awarded. As the landlord's claim has been partially successful, and the amount awarded does not exceed the amount of the security deposit, the filing fee will not be awarded.
18. I find that the tenant is not responsible for the hearing expenses claimed.

#### **Decision**

19. The landlord's claim for hearing expenses in the amount of \$20.00 does not succeed.

#### **Summary of Decision**

20. The tenant shall pay the landlord \$413.48 as follows:

Damages.....	\$413.48
Hearing expenses .....	0.00

Total .....	<u>\$413.48</u>
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December 21, 2023

Date

Pamela Pennell  
Residential Tenancies Office