

Residential Tenancies Tribunal

Application 2023-1206-NL
2023-1219-NL

Decision 23-1206-00

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 23-January-2024 at 8:58 am.
2. The applicant [REDACTED] appeared on behalf of herself and her husband, [REDACTED] via teleconference. Hereinafter they are referred to as the tenants.
3. The respondents, [REDACTED] and [REDACTED] hereinafter referred to as the landlords, also appeared via teleconference.

Issues before the Tribunal

4. Should the tenants' claim for inconvenience be granted?
5. Should the landlords' claim for damages be granted?
6. What is the disposition of the security deposit?

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* (the *Act*).

Issue 1: Inconvenience

Tenant's Position

8. The tenants claim for \$387.23 in inconvenience, based on the fact that the apartment's stove was inoperable for 8 days, requiring them to pay for food to be delivered to the residence. Appropriate receipts were provided.

Landlord's Position

9. The landlords agree the stove was nonfunctional but submit that they took all reasonable steps to remedy the issue as soon as possible. They hired a repairman who arrived promptly and found that the stove required a replacement part, which did not arrive for seven days.

Analysis

10. Under s. 47(1)(h) of the *Act*, the director has the power to direct a landlord to pay to a tenant an amount as compensation for inconvenience as a result of a contravention of the *Act* or the rental agreement.
11. It is inevitable that at times appliances supplied by the landlord as part of the rental agreement will fail. When this occurs, the landlord is required to promptly take the necessary steps to fix or replace the appliance. In this case, they did so.
12. I do not find that the landlords were in contravention of the *Act* or the rental agreement.

Issue 2: Damages

Landlords' Position

13. The landlords claim for \$3000 of the \$3252.33 total which they submit the tenants owe. This consists of \$644 for house cleaning, \$546.45 for carpet cleaning, \$75 for the replacement of damaged drywall, \$1120.14 for the replacement of heavily stained carpet, \$831.74 for the replacement of damaged linoleum, and \$35 for a lost mail key. Appropriate receipts were provided.

Tenants' Position

14. The tenant said they had a cleaning service hired but for logistical reasons that appointment fell through. They submit they did the best they could in the circumstances to clean the house, including the carpets. They said some of the marks on one section of stained carpet predated their tenancy, and that they attempted to return the mail key. They made no comment on the other issues.

Analysis

15. I accept the tenant's submissions that they did the best they could to ensure the premises were clean on move out. This is supported by the evidence presented by the landlord. However, this does not affect their liability. A claim for damages such as this is compensatory, not punitive. In other words, the purpose is not to punish the tenant for failing to meet their obligations, but to restore the landlord to the condition they would be in if those obligations had been met. Had the tenants been able to hire the cleaning service successfully, they would have had to pay the bill. The bill does not move to the landlord simply because they could not.

16. The landlords claimed \$644 for house cleaning. This represents four people working for four hours each at \$35 per hour, plus HST. Evidence presented at the hearing (LL#5) suggested that two showers needed to be scrubbed, two toilets needed to be scrubbed with a toilet brush, dirt and food debris had to be cleaned from under the fridge, wax needed to be cleaned off the baseboard and a vent, the stove needed to be cleaned, disposal was needed for rotting garbage left in an unapproved container, and there was some miscellaneous dust and small hairs in some drawers. While this is a significant amount of cleaning, I do not find that it could have required 16 person-hours. I estimate that a reasonably industrious and able-bodied person could complete the job in ten hours at most.
17. The landlords also claimed for \$546.45 for carpet cleaning. This was based on the tenants taking in a pet dog in violation of their lease agreement. The landlords said they had the carpets thoroughly cleaned out of concern for dog dander as an allergen. The tenants claimed they cleaned the carpet as thoroughly as they could. No evidence was presented that suggested dog dander remained in the carpet. While I accept that the tenants were in violation of the agreement, I find the landlord has not proven on a balance of probabilities that the carpet-cleaning expenditure was required.
18. The landlords claim for \$75 for a large sheet of damaged drywall. The tenants had no comment. A photo (LL#5-11) of the damage was provided. Tenants are responsible for restoring or paying for damage caused to the property by themselves or a person they allow on the property.
19. The landlords provided a receipt (LL#4) for the replacement of damaged sections of carpet, and the damage was shown (LL#5-1, LL#5-2, and LL#5-3). The carpet is clearly heavily stained. The landlords testified that it appeared as if someone had bleached the carpet in an attempt to eliminate the stains. This is consistent with the tenants' evidence. The stains could not be removed with cleaning and therefore needed to be replaced. No photos were provided of the property from before the tenancy, but the tenant did not suggest the stains were pre-existing, save for some lines on one section of carpeted stairs. Based on the evidence presented as a whole, I accept on a balance of probabilities that the damage warranting replacement was the fault of the tenants and that they are liable for the cost.
20. However, as stated above, this tribunal awards only compensatory damages. That is, the amount awarded is meant to equal the amount of value the landlord has effectively lost. As assets often have a limited lifespan, this means accounting for depreciation. As per this tribunal's Policy 9-5, depreciation is calculated via "straight line depreciation," i.e., the total value of the asset is multiplied by the amount of years of use they ought to have expected it had remaining in its lifespan, divided by the total expected lifespan of the asset.
21. In 2006, the National Association of Home Builders, a large trade association in the United States of America, conducted a survey together with the Bank of America to determine the expected lifespan of various household components. According to a report issued by these organizations in February of 2007¹, carpet can be expected to last about

¹ Currently available online at <https://www.reservedataanalyst.com/mt-content/uploads/2019/10/national-association-of-home-builders-life-expectancies.pdf>

8-10 years (page 13). In this case the carpet was installed in 2019, and thus had a remaining expected lifespan of about 5 years. $\$1120.14 * (5/9) = \622.30 .

22. The landlords claim for \$831.74 for the replacement of damaged linoleum. A receipt (LL#4) was provided. The damage is clearly shown in LL#5-14. They say a rusted appliance was left on the floor and the rust left permanent stains on the flooring. The tenants made no comment. I accept on a balance of probabilities that this damage warranting replacement was the fault of the tenants and that they are liable for the cost.
23. According to the *Study of Life Expectancy of Home Components*, as referenced in paragraph 21 above, at page 13, the average expected lifespan of laminate flooring is in the range of 15-25 years. The flooring in the rental premises was installed in 2019, and thus had a remaining expected lifespan of about 16 years. $\$831.74 * (16/20) = \665.39 .
24. Finally, the landlords claim for \$35 for replacement of a lost mail key. They say they had asked the tenant to leave it in their house's mailbox, and the tenants left it in a Canada Post mailbox. Canada Post's policies evidently prevented it from being returned to the landlord. A receipt was provided (LL#3). I accept on a balance of probabilities that the tenants are liable for this cost.

Decision

25. The tenant's claim for inconvenience fails.
26. The landlord's claim for damages succeeds in the amounts of \$402.50 for house cleaning, \$75 for the replacement of damaged drywall, \$622.30 for the replacement of heavily stained carpet, \$665.39 for the replacement of damaged linoleum, and \$35 for a lost mail key, for a total of \$1800.19.
27. As the landlord's claim was successful, they are entitled to have their hearing costs covered, in this case consisting of the \$20 application fee.
28. As the tenants owe the landlords moneys, and the appropriate application has been made, the landlords are entitled to apply the security deposit against the total owed. The remainder must be returned to the tenant.

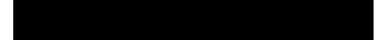
Summary of Decision

29. The landlord shall pay to the tenant \$1179.81 as follows:

Damages.....	\$1800.19
Hearing Costs.....	\$20.00
Less damage deposit.....	-(\$3000.00)
Total.....	\$1179.81.

13-February-2024

Date



Seren Cahill
Residential Tenancies Office