

Residential Tenancies Tribunal

Application 2024-0322-NL

Decision 24-0322-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:50 p.m. on 16-May-2024.
2. [REDACTED] (applicant 1) and [REDACTED] (applicant 2), hereinafter referred to as "the landlords" attended by teleconference.
3. [REDACTED] (respondent 1), hereinafter referred to as "the tenant" attended by teleconference. [REDACTED] (respondent 2), hereinafter referred to as "the tenant" did not attend.

Preliminary Matters

4. The landlords submitted 2 affidavits with their application stating that they had served the tenants with the notice of hearing via pre-paid registered mail ([REDACTED] and [REDACTED]) on 23-April-2024 (LL#1). Respondent 1 confirmed that both she and respondent 2 received the documents on 27-April-2024. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There was a written fixed rental agreement which commenced on 8-December-2023. The tenants vacated the unit on 14-March-2024. Rent was \$2050.00 per month, due on the 8th day of each month. A security deposit of \$1500.00 was paid on 28-November-2023 and its disposition has been dealt with in a previous hearing by this tribunal.

Issues before the Tribunal

6. The landlords are seeking:
 - a. Compensation for damages \$2211.52
 - b. Other (rent) \$2050.00
 - c. Hearing expenses \$49.76

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 are the following sections of the *Residential Tenancies Policy Manual*: Section 9-3: Claims for damages to rented premises and Section 12-1: Recovery of Costs.

Issue # 1: Compensation paid for Damages \$2211.52

Relevant Submission

9. The landlords testified that there were damages / losses to the rental unit, and they submitted a damages ledger to support the claim (LL#2). See damages ledger below:

Compensation for Damages

Submitted by: [REDACTED]

Date: April 9/24

Applicant: [REDACTED]

Respondent: [REDACTED]

Item #	Description of Damages	Compensation Claimed
1	Storage Unit RM Self storage	\$224.88
2	Labor to Move Belongings 2 people x 4 hours = 8 hours	\$188.80
3	House Cleaning (1500 Sanitrol)	\$508.50
4	Counter Top for Island (Provincial Woodproducts)	\$434.24
5	Hour to install counter top labor	\$23.60
6	New Kitchen Flooring	\$747.50
7	New Cupboard trim	\$36.80
8	Two hours to install trim labor	\$47.20

Landlord's Position

10. The landlords testified that the above list of items have been identified as damages / losses to the unit and / or financial losses to the landlords caused by negligence on the part of the tenants. The landlord's position on each item is as follows:

Item # 1: Storage unit & labor to move belongings (\$413.68) – The landlords testified that they had to store the tenants' belongings once they were granted a *Certified Order* from *Residential Tenancies* to take possession of the property. Applicant 1 stated that it cost \$224.88 to rent a storage unit for 1 month and they are also seeking \$188.80 in labor costs to move the tenants' personal belongings (8 hours at \$23.60 per hour). The landlords submitted a copy of the receipt from *R&M Self Storage* to support the claim (LL#3).

Item # 2: Cleaning (\$508.50) - The landlords testified that once they took possession of the unit, a deep clean was required. Applicant 1 testified that it took a cleaning company one day to complete the work as the fridge and stove was very dirty and there was dog excrement present throughout the unit. The landlords submitted an invoice from *CJD Janitorial* in the amount of \$508.50 to support the claim (LL#4).

Item # 3: Replace countertop on Island and labor to install (\$457.84) - The landlords testified that the countertop on the island was damaged and needed to be replaced. Applicant 1 testified that it appeared that something hot was placed on the vinyl countertop causing it to bubble and melt. The landlords submitted a photograph to show the extent of the damage (LL#5) and a copy of the receipt from *Provincial Woodproducts Ltd* in the amount of \$434.24 to support the claim (LL#6). The landlords are also seeking 1 hour of self-labor to install the new countertop at \$23.60 per hour.

Item # 4: Kitchen flooring (\$747.50) - The landlords testified that the kitchen flooring had to be replaced due to dog urine. Applicant 1 stated that it appeared that the dogs were urinating alongside the kitchen island and the urine was seeping down underneath the flooring which caused a bad urine odor underneath the flooring. The landlords submitted photographs of the area to support the claim (LL#7) and a copy of the receipt from *Baker Flooring* in the amount of \$747.50 to support the claim (LL#8).

Item # 5: Cupboard trim and labor (\$84.00) - The landlords testified that the bottom portion of the kitchen island was destroyed due to dog urine and bubbled and cracked due to constant dampness in the area. Applicant 1 stated that the island did not have to be replaced but rather needed a wooden trim to cover the area affected. The landlords submitted photographs of the area to support the claim (LL#9) and a copy of the receipt from *Dream Kitchens Ltd* in the amount of \$36.80 to support the claim (LL#10). The landlords are also seeking \$47.20 for 2 hours of self-labor at \$23.60 per hour to complete the work.

Tenant's Position

11. Respondent 1 was present and disputed most of the claims. See below the tenant's position on each item:

Item # 1: Storage unit & labor to move belongings (\$413.68) – The landlords testified that they had to store the tenants' belongings once they were granted a *Certified Order* from *Residential Tenancies* to take possession of the property. Respondent 1 disputed that the landlord had to take such drastic measures to store their personal belongings and testified that they were blocked from entering the unit and were not able to gather their personal belongings. Respondent 1 stated that she was awaiting the outcome of a previous hearing from this tribunal whereby the landlords were seeking vacant possession. Respondent 1 stated that once the *Order of Possession* was released to the landlords, the landlords took immediate action and blocked them from entering their home to gather their belongings. Respondent 1 stated that they did not have time to prepare their move and felt that it was unfair of the landlords to block them from the premises and go through all their personal belongings. Respondent 1 disputes that they should be responsible for the costs of the storage unit when they were more than willing to gather their belongings had they not been blocked from entering their home.

Item # 2: Cleaning (\$508.50) - The landlords testified that once they took possession of the unit, a deep clean was required. Applicant 1 testified that it took the cleaning company a full day to complete the work as the fridge and stove were very dirty and there was dog excrement present throughout the unit. Respondent 1 disputes that they are responsible for the cleaning costs as they would have cleaned the unit on move out if they had been able to do so. Respondent 1 stated that they were blocked from

entering the unit when the *Order of Possession* was released and as such, they did not have the opportunity to clean the unit.

Item # 3: Replace countertop on Island and labor to install (\$457.84) - The landlords testified that the countertop on the island was damaged and needed to be replaced. Respondent 1 did not dispute that the damage was caused during the tenancy.

Item # 4: Kitchen flooring (\$747.50) - The landlords testified that the flooring had to be replaced due to dog urine. Applicant 1 stated that it appeared that the dogs were urinating alongside the kitchen island and the urine was seeping down underneath the flooring which caused a bad urine odor underneath the flooring. Respondent 1 disputes that the dogs ever urinated on the floor or up against the island and stated that they always used doggie pads to urinate. Respondent 1 submitted photographs to show that the dogs did use the pads (TT#1). Respondent 1 stated that the kitchen flooring did not appear to have been laid and stretched properly and had bubbles in it which in her opinion, is the real reason why the landlords wanted the flooring replaced.

Item # 5: Cupboard trim and labor (\$84.00) - The landlords testified that the bottom portion of the kitchen island was destroyed due to dog urine and bubbled and cracked due to constant dampness in the area. Applicant 1 stated that the island did not have to be replaced but rather needed a wooden trim to cover the area affected. Respondent 1 disputes that the dogs ever urinated up against or alongside the bottom of the island and stated that she is not aware of why the wood was splitting and bubbling in the area.

Analysis

12. In accordance with *Residential Tenancies policy 9-3*, 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)*

13. Based on the testimony of both the applicants and respondent 1 and the exhibits entered into evidence, the items were analyzed as follows:

Item # 1: Storage unit & labor to move belongings (\$413.68) – The landlords testified that they had to store the tenants' belongings once they were granted a *Certified Order* from *Residential Tenancies* to take possession of the property. Respondent 1 disputed that the landlord had to take such drastic measures to store their personal belongings and testified that they were blocked from entering the unit and were not able to gather their personal belongings including medications. I accept that once the landlords received the *Order of Possession* and had it *certified* that they wanted to proceed and take possession of their unit. The question is whether or not the tenants had an opportunity to even know that the *Order* had been issued as it was sent to them via email at 2:31pm and at 4:49pm the tenants found themselves blocked from entering the driveway and accessing the unit. I accept that the landlords were in their right to have the *Order* certified and proceed to take back their unit however, I find that blocking the driveway and not allowing the tenants to enter to get their belongings was extreme. When the Sheriff is involved in removing tenants, at least 3 days are allowed to give the tenants a grace period to remove their belongings and clean the unit. I find that the landlords did not take into consideration that the tenants were also awaiting the decision on the previous vacant possession hearing and did not expect to be blocked from their unit within 3 hours of the *Order* been released. Due to the extremity of the circumstances, I accept that the tenants did not have an opportunity to gather their personal belongings and as such, I find that the tenants are not responsible for the cost of the storage unit as claimed by the landlords.

Item # 2: Cleaning (\$508.50) - The landlords testified that once they took possession of the unit, they hired *CJD Janitorial* to complete a deep clean of the unit. Applicant 1 testified that it took the cleaning company a full day to complete the work as the fridge and stove was very dirty and there was dog excrement present throughout the unit. Respondent 1 disputes that they are responsible for the cleaning costs as they would have cleaned the unit on move out if they had been able to do so. Respondent 1 stated that they were blocked from entering the unit when the *Order of Possession* was released and as such, they did not have the opportunity to clean the unit. Based on the photographs entered into evidence, I accept that the landlords were able to show that there was some cleaning required within the unit, however I find that the tenants did not have an opportunity to clean the property as they were blocked from the unit and as such, I find that the tenants are not responsible for the cleaning costs as sought by the landlords.

Item # 3: Replace countertop on Island and labor to install (\$457.84) - The landlords testified that the countertop on the island was damaged and needed to be replaced. Respondent 1 did not dispute that the damage was caused during the tenancy and as such, I find that the tenants are responsible for the cost to replace the countertop at \$457.84 as sought by the landlords.

Item # 4: Kitchen flooring (\$747.50) - The landlords testified that the flooring had to be replaced due to dog urine. Applicant 1 stated that it appeared that the dogs were urinating alongside the kitchen island and the urine was seeping down underneath the flooring which caused a bad urine odor underneath the flooring. Respondent 1 disputes that her dogs ever urinated on the floor or up against the island and stated that they always used doggie pads to urinate. I accept that the dogs used the doggie pads, but it is also evident from the photographs that the dogs were urinating throughout the house as well as there were photographs showing urine on the vinyl flooring, laminate flooring and in the carpet. I asked applicant 1 the age of the kitchen flooring and he responded that it was 3 months old. Based on the age of the flooring, depreciation will not be considered. I accept the landlord's testimony that when the floor was removed, there was a strong urine smell present and as such, I find that the tenants are responsible for the cost to replace the kitchen floor at \$747.50 as sought by the landlords.

Item # 5: Cupboard trim and labor (\$84.00) - The landlords testified that the bottom portion of the kitchen island was destroyed due to dog urine causing the pressboard to bubble and crack due to constant dampness in the area. Applicant 1 stated that the island did not have to be replaced but rather needed a wooden trim to cover the area affected. Respondent 1 disputes that her dogs ever urinated up against or alongside the bottom of the island and stated that she is not aware of why the wood was splitting and bubbling in the area. Based on my analysis in item # 4 as stated above, it has been determined that the dogs were urinating all over the house and the flooring underneath the island had a urine odor. Based on the photographs in the kitchen area by the island, I accept that the bottom portion of the island bubbled and split due to a consistent amount of dampness caused by dog urine and for those reasons, I find that the tenants are responsible for the cost of the trim to cover the damage and the labor costs associated with installing it at \$84.00.

Decision

14. The landlord's claim for damages succeeds in the amount of \$1289.34.

Issue # 2: Other (Rent) \$2050.00

Relevant Submission

15. The landlords testified that they were unable to rent the unit in April 2024 due to damages and they are seeking the loss of one month's rental income in the amount of \$2050.00.

Landlord's Position

16. Applicant 1 testified that they took possession of their unit on 14-March-2024 and they were unable to rent the property for April as there were damages to the unit which needed to be dealt with before any new tenant could occupy the unit. Applicant 1 testified that it took time to have the flooring and new countertop ordered and installed and they had the unit ready to rent for May.

Tenant's Position

17. Respondent 1 disputes that they caused any damage to the unit other than the countertop and stated that they should not be responsible for any loss of rent to the landlords.

Analysis

18. Based on the items claimed by the landlords for damages and based on my analysis of those items as stated in paragraph 13 above, I accept applicant 1's testimony that the purchasing process and installation time needed to restore the unit to the way it was prior to the tenancy took some time and as a result they incurred the loss of rental income for the month of April. Respondent 1 stated that they should not be responsible for rent when they did not reside there, however a landlord should not incur any loss in rental income as a result of negligence on the part of tenants and for that reason, I find that the tenants are responsible for the loss of rental income to the landlords for the month of April in the amount of \$2050.00.

Decision

19. The landlord's claim for Other (rent) succeeds in the amount of \$2050.00.

Issue # 3: Hearing expenses \$49.76

20. Section 12-1 of the *Residential Tenancies Policy Manuel* states:

Recovery of Costs

In general, claimable cost may include the following:

- a. The \$20.00 filing fee
- b. The costs incurred in the preparation for a hearing
- c. The cost incurred in serving the other party with the application or with the evidence, or serving a witness with a subpoena, such as
 - Process server
 - Registered mail or Xpresspost

21. The landlords paid an application fee of \$20.00 to *Residential Tenancies* and also incurred postal fees to serve the respondents in the amount of \$29.76. The landlords provided receipts to support the claim (LL#11). In accordance with Policy 12-1 as stated above, I find that the tenants are responsible for the reimbursement of the hearing expenses as sought by the landlords.

Decision

22. The landlord's claim for hearing expenses succeeds in the amount of \$49.76.

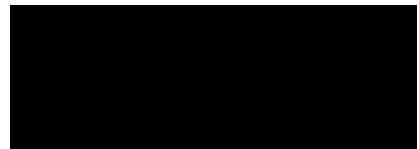
Summary of Decision

23. The tenants shall pay the landlords \$3389.10 as follows:

Compensation for damages	\$1289.34
Other (rent)	2050.00
Hearing expenses	49.76
Total	\$3389.10

May 30, 2024

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office