

Residential Tenancies Tribunal

Application 2024-0546-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on 6-August-2024 at am.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, attended via teleconference.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as the tenants, did not attend.
4. Three witnesses were called by the landlord and attended via teleconference. The first, [REDACTED], will hereinafter referred to as LLW1. The second, [REDACTED], will be hereinafter referred to as LLW2. The third, [REDACTED], will be hereinafter referred to as LLW3.

Preliminary Matters

5. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served. The landlord submitted an affidavit (LL#1) with their application stating that they had served the tenant with notice of the hearing electronically on 25-July-2024 at 3:20 pm. The appropriate supporting documents were provided (LL#2 and LL#3). As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.

Issues before the Tribunal

6. Should the landlords' claim for compensation for damages be granted?
7. What is the proper disposition of the security deposit?

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 (the *Act*).

Issue 1: Damages

9. The landlords claim for \$19,349.25 in damages divided amongst four items. Each item will be discussed individually. It should be noted in the outset that, in accordance with the Residential Tenancies Program Policy and Procedure Manual policy 09-003, to succeed in a claim for damages a landlord must establish that the premises were damaged and that the damage was caused by the wilful or negligent act of the tenant or a person they allowed on the premises. The landlord is required to provide sufficient evidence to establish the extent of the damage as well as sufficient evidence to establish the cost of repairing or replacing the damaged item. Wherever possible, this ought to include receipts, invoices, and/or estimates.
10. LLW3, a retired realtor once involved with the property, testified as to the condition of the premises immediately prior to it being rented by the tenants. She stated that it was in excellent shape and that she had taken great pride in it. LL#21-36 show the property at or around this time and they reflect the witness's testimony.
11. The landlords claim \$2392.00 in damages for the alleged failure of the tenants to leave the premises in a clean state. This represents 52 person hours of cleaning at a rate of \$40.00/hour. A receipt was provided from the contractor who provided this service. Evidence was submitted showing the premises in an unclean state (LL#5-16). There is a significant amount of dirt and debris. The oven requires a thorough clean. What the landlords testify is mouse feces is visible in multiple locations.
12. When tenants fail to leave rental premises in a clean condition, they are responsible for the cost of cleaning. This portion of the landlords' claim succeeds in the amount of \$2392.00.
13. The landlords claim \$155.25 for the removal of "junk" items left behind by the tenants. Some of these items are visible in LL#7, LL#17-19, and LL#39-41. LL#20 is a quote provided by LLW1 for the cost of these services. The quotes estimate a cost of \$135 plus HST, which equals 155.25. The photos provided show many items left behind on the premises, enough to fill an entire room. Testimony was provided that it took six trips with a pickup truck to remove all the garbage.
14. This portion of the landlords' claim succeeds in the amount of \$155.25.
15. The landlords claim \$7142.00 for the removal of the old carpet and the installation of new carpet. The landlords and LLW1 both testified that the carpet was heavily stained throughout. They also testified that a professional carpet cleaning company had attempted to clean the carpet but this was unsuccessful and replacement was necessary. Photos were provided showing the damage to the carpet (LL#5, LL#18,

LL#40-41, and LL#45-46). This damage includes what seems to be Play-Doh brand modeling compound pressed into the fibres, mice feces, and water damage. A quote was provided from a flooring company for \$6211.25 plus HST for a total cost of \$7142.94.

16. Considering the evidence in its totality, I accept on a balance of probabilities that the tenants or a person they allowed on the premises wilfully or negligently caused the damage to the carpet and they are therefore responsible for the cost of replacement.
17. Depreciation must be considered. The landlords testified that the original carpet was installed in 2017. The purpose of this tribunal is restorative, i.e., to put the landlord in the same position they would be in had the tenants not violated the rental agreement and/or the *Act*. The landlords lost the value they were entitled to, which was 7-year-old carpet. In order to calculate the value lost, the cost of the replacement must be multiplied by the remaining expected lifespan of the carpet and divided by the total expected lifespan of carpet. The general range for the lifespan of carpet is 8-10 years.¹ I accept that the carpet in this case was relatively high quality and thus the top end of the range is appropriate. $\$7142.94 \times (3/10) = \2142.88 .
18. This portion of the landlords claim succeeds in the amount of \$2142.88.
19. Finally, the landlords claim \$9660.00 for the refinishing of damaged hardwood flooring. They testify the premises had solid hardwood which was last refinished in 2017. Photos were provided showing multiple sections of hardwood with what appears to be water damage (LL#48-55). Another photo (LL#56) shows a moisture meter held to one of these damaged portions of hardwood, and it displays a reading indicating a high level of moisture.
20. LLW3, a contractor with more than 40 years of experience, testified that he attended the premises and believed the hardwood was damaged with animal urine. He indicated this was a major concern as animal urine can damage the floor and the subfloor below. He provided the landlords with a quote for the cost of refinishing the damaged hardwood in the amount of \$9660.00, HST included.
21. Considering the evidence in its totality, I accept on a balance of probabilities that the tenants or a person they allowed on the premises wilfully or negligently caused the damage to the hardwood and they are therefore responsible for the cost of the repair. Genuine hardwood is expected to last a lifetime.² Depreciation is therefore not relevant.
22. This portion of the landlords' claim succeeds in the amount of \$9660.00.
23. The landlords' claim for damages succeeds in the amount of \$14350.13.

¹ Seiders, D., Ahluwalia, G., Melman, S., Quint, R., Chaluvadi, A., Liang, M., Silverberg, A., Bechler, C., National Association of Home Builders, & Bank of America Home Equity. (2006). Study of life expectancy of home components. In National Association of Home Builders/Bank of America Home Equity [Report]. Page 13. <https://hiabc.ca/wp-content/uploads/2011/09/Study-of-Life-Expectancy-of-Home-Components.pdf>

² Ibid.

Issue 2: Security Deposit

24. The landlords are owed money and are therefore entitled to apply the security deposit to the sum owed. In this case, the security deposit was \$1200.00.
25. S. 14(7) of the *Act* mandates that a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord. For the relevant time period prior to 2024, the regulations prescribed an interest rate of 0%. For 2024, the regulations prescribe a cumulative simple interest rate of 1% annual. This results in a total amount of interest accrued of \$7.21 to the date of the hearing. The total of the security deposit plus interest is therefore \$1207.21.

Decision

26. The landlords' claim for damages succeeds in the amount of \$14350.13.
27. The landlord may apply the security deposit and interest of \$1207.21 against the sum owed.
28. The landlords were successful in their claim and are therefore entitled to have their reasonable hearing expenses covered. In this case, their hearing expenses consisted solely of the \$20.00 application fee.

Summary of Decision

29. The tenants shall pay to the landlord \$13162.92 as follows:

Damages.....	\$14350.13
Hearing Expenses.....	\$20.00
Less Security Deposit.....	(\$1207.21)
Total.....	\$13162.92

14-August-2024
Date


Seren Cahill
Residential Tenancies Office