

Residential Tenancies Tribunal

Decision 20-0172-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:10 am on 23 July 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing. The respondent, [REDACTED], hereinafter referred to as "the tenant", also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$1229.36, and
 - An order for a payment of late fees in the amount of \$20.00.
4. The tenant is seeking an order for a refund of the security deposit in the amount of \$400.00.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 14 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

7. The landlord amended her application at the hearing and stated that she was now seeking \$3030.08 in compensation for damages.

Issue 1: Compensation for Damages - \$3030.08

Relevant Submissions

The Landlord's Position

8. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 September 2018 and a copy of the executed lease was submitted with her application. The agreed rent was set at \$920.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$400.00.
9. In late January 2020, the tenant informed the landlord that he was terminating their rental agreement and he had all of his possessions removed from the property by 28 February 2020.
10. No walkthrough was conducted when the tenant moved out and there is no report of an incoming or outgoing inspection.
11. The landlord stated that after the tenant moved out she was required to carry out some cleaning at the unit, she had to replace some furniture coverings and she also had to repaint the walls in the apartment as the tenant had painted them black and dark brown. The landlord also stated that the tenant had allowed water to overflow in his bathroom causing water to enter the ceiling in her unit directly below. She is also seeking the costs of replacing her ceiling and replacing the bathroom flooring in the rental unit as it had suffered water damage. The landlord is also seeking compensation for her labour for shovelling the tenant's walkway and for her labour cleaning dog feces from her lawn.

Flooring

12. The landlord stated that because of the overflow which occurred in the tenant's bathroom, in January 2019, the floors in that bathroom have suffered water damage and need to be replaced. She stated that because of the water damage the edge of the floors have begun to "pucker up" and were pulling away from the edge of the toilet and shower.
13. She stated that these floors were vinyl cushion floors, but she did not know how old they were. The landlord purchased the property 6 years ago and the floors were there at that time. She acknowledged that the floor was already lifting up

near one part of the shower when the tenant moved in, but she claimed that, otherwise, they were in good condition.

14. The landlord submitted a quote with her application showing that it would cost \$1780.72 to purchase new flooring for that bathroom and to have it installed. That installation includes the removal of the vanity, toilet and baseboards and part of that quote includes the costs of hiring a plumber.
15. The landlord has not yet had these floors replaced and new tenants have now moved into the property.

Plaster and Paint Landlord's Ceiling

16. The landlord also stated that she has had to have her ceiling in her apartment repaired as well. She stated that there were 3 holes in her ceiling, about 2 feet apart, which was caused by the overflow. No photographs were submitted with her application. She had to have that ceiling cut out, allowed to dry and then new drywall had to be installed, plastered and painted.
17. The landlord stated that she hired a person to carry out that work and her submitted receipt shows that she was charged \$350.00. That work was carried out in March 2020.

Painting

18. The landlord stated that after the tenant moved in, she gave him permission to repaint the walls in the rental unit. However, she testified that she had instructed him not to use dark colours.
19. The landlord stated that despite her instruction, the tenant painted the walls brown and black. She also complained that the paint job was poorly done and he had gotten paint on some trims, on some baseboard heaters and on the ceiling.
20. She stated that she was required to repaint the walls and the trim work after the tenant vacated. The landlord stated that it took her 5 hours to paint the trim work and moldings and another 3 hours to paint the walls. She is seeking compensation for her labour in the amount of \$155.20. She also submitted a receipt showing that she was charged \$174.72 for paint and painting supplies.
21. The landlord stated that the unit was last painted 6 years ago and she acknowledged that there were some chips in the walls when the tenant moved in.

Cleaning

22. The landlord stated that the tenant had kept a pet dog at the apartment during his tenancy and she complained that she had found a large amount of dog hair at the apartment after he vacated. She stated that she found dog hair in the

electrical panel, on the baseboards, in the baseboard heaters, behind the kitchen appliances and on the ceiling fan.

23. She also testified that the tenant had not adequately cleaned the bathroom or the kitchen and she stated that she had to spend time cleaning the refrigerator, stove and kitchen cupboards.
24. The landlord is seeking compensation in the amount of \$116.40 for 6 hours of her personal labour and \$17.42 for cleaning supplies. No receipts were submitted with her application.

Furniture Coverings

25. The landlord stated that the tenant had been supplied with covers for a sofa and chair when the tenancy began. She stated that they were about 1 year old and were in good condition.
26. She claimed that when the tenancy ended, she discovered that these covers were stained, that there were dog hairs on them and that there were several holes in the covers.
27. The landlord testified that she has since disposed of these covers, but they have not yet been replaced. She is seeking \$80.21 in replacement costs. No receipts or quotes were submitted at the hearing.

Ice Shield

28. The landlord claimed that the entrance to the tenant's unit was a flat, porch deck and she had installed an ice shield on that deck to prevent water leaking into her porch, located underneath it. That ice shield was installed in October 2019 and she submitted a copy of a receipt showing that she had paid \$300.00 to have the roof porch repaired at that time.
29. The landlord complained that during the winter of 2019-20, the tenant had damaged the ice shield while shovelling that deck. She stated that he had caused cracks in the shield and parts of it were ripped up. That deck has not yet been repaired and she stated that she has intentions of having it "torched on", at a cost of \$650.00. No quotes or estimates were submitted at the hearing. She is seeking compensation in the amount of \$300.00 to have it repaired.

Late Fees

30. The landlord also alleged that the tenant had been late paying his rent on 4 difference occasions: 02 August 2018, 02 November 2018, 02 July 2019 and 02 February 2020. She is seeking a payment of a fee of \$20.00 for those 4 late payments.

The Tenant's Position

Flooring

31. The tenant acknowledged that there was a small overflow in the bathroom in January 2019, but he stated that the cause of the overflow was a clog in the pipes which was caused by the previous tenants. He stated that the landlord would not hire a plumber to deal with the matter and he stated that he snaked the pipe himself and he discovered that there was a significant buildup in the pipes from the former tenants.
32. The tenant also complained that the floors had already been lifting when he moved into the unit and he stated that they obviously had not been professionally laid. He claimed that these floors had not been cut to fit underneath the quarter-round moldings and they were not secured by them.
33. Regarding the costs the landlord is seeking here, the tenant claimed that vinyl flooring is not that expensive and he also claimed that the bathroom is very small and can only fit 2 people in it.

Plaster and Paint Landlord's Ceiling

34. The tenant claimed that the overflow which occurred in his bathroom was minor and he questioned whether it was that incident which had caused the damage to the landlord's ceiling.
35. He stated that since he had moved into the unit there had been several issues with leaks and plumbing, and he also pointed out that the roof had been leaking. He stated that the landlord only informed him about the issue with her ceiling in September 2019, 8 months after the overflow, and he suggested that it may have been caused by an incident other than the bathroom overflow.

Painting

36. The tenant complained that the paintjob was poor when he moved in and he was disappointed that the landlord did not paint before his tenancy began as the paint was falling off the walls in places and there were numerous chips in the paint. He stated that the landlord had informed him that she did not have enough money to repaint the unit at that time.
37. The tenant testified that he had received permission from the landlord to paint the walls and he claimed that he had asked her if he could paint the walls blue and brown. He testified that the landlord had agreed to those colours but he denied that she had ever instructed him not to use dark colours.
38. The tenant did acknowledge that some paint had transferred to the baseboard and trim in some places, but he pointed out that he was not a professional

painter. He also stated that he was instructed by the landlord not to paint the baseboard and trim work and he claimed that there was only a layer of primer on them.

39. The tenant argued that he should not have to pay for any painting carried out by the landlord and he pointed out that he was not compensated by the landlord for the painting that he had carried out when he moved in.

Cleaning

40. The tenant claimed that he had thoroughly cleaned the unit prior to vacating and he pointed to his photographs which were taken when he vacated and he claimed that no dog hair can be seen in these photographs.
41. The tenant also stated that the unit was cleaner when he moved out than it was when he moved in, and he pointed to a text-message from the landlord, before he took possession of the property, informing him that she had not mopped the floors.

Furniture Coverings

42. The tenant denied the landlord's claim that these covers were stained when he moved out and he claimed that everything in the apartment was clean.
43. He did agree with the landlord that there are some small holes in the seams of these covers, but he argued that this was because the covers did not properly fit the sofa and chair.

Ice Shield

44. The tenant agreed that he had been shovelling that deck when it had snowed, as required by his rental agreement. However, he stated that he was unaware that he had caused any damage to that deck and the landlord had not complained to him about that matter during his tenancy.
45. The tenant also pointed out that the walkway and the deck is shared with the landlord and he suggested that any damage to the shield could have been caused by someone else.
46. The tenant argued that if there is damage to the ice shield, he had not done it deliberately and it might even have been the case that it was not installed properly in the first place.

Late Fees

47. The tenant stated that he was unaware that he had paid his rent late on those 4 occasions. He testified that the landlord had not raised this issue with him beforehand.
48. The tenant did not present any banking records for 2019 or 2018, but he did submitted a copy of an MB-Email transfer he had sent to the landlord on 01 February 2020 for the rent of \$920.00. He stated that his evidence shows that that rent payment was made on time and it might just be the case that the landlord did not check her e-mail or deposit that transfer until the following day.

Analysis

49. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, 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)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

Order of director

47. (1) *After hearing an application the director may make an order*
 - (a) *determining the rights and obligations of a landlord and tenant;*
 - (b) *directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*

- (c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;
- (d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement

50. Regarding the flooring in the bathroom, I find that the landlord's claim for the costs of replacement does not succeed. First of all, not enough evidence was presented at the hearing to establish that the overflow was caused by any deliberate or negligent act on the part of the tenant and it seems just as probable that the overflow was a result of a defect or a clog in the pipe. Secondly, the landlord acknowledged that the floor was already damaged when the tenancy began and given that the floor was at least 6 years old, it was probably time that it be replaced anyhow.
51. I likewise conclude that the landlord is not entitled to the costs of repairing her ceiling as she has not established that the overflow was caused by any deliberate or negligent act on the part of the tenant.
52. With respect to the painting, I also find that the landlord is not entitled to an award. A paintjob deteriorates over time as a result of normal wear and tear through successive tenancies and it is expected that a landlord would have to repaint a rental unit every 3 to 5 years. Given that the rental unit was painted at least 6 years ago, and given that there was already some chipping and peeling on the walls when the tenant moved in, I find that the unit would have likely needed to be repainted after the tenant moved out anyhow. Furthermore, the text-messages submitted by the tenant do show that he had received permission to paint the apartment, but no evidence was presented at the hearing to establish that she had instructed the tenant not to use dark colours when he painted the apartment.
53. I do agree, though that the landlord is entitled to compensation for cleaning. Her photographs do show that the areas behind the appliances was dirty and that the stove was very dirty. And even in the tenant's photographs, I can see that there is a build-up of dust and hair on the ceiling fan. I find that the landlord is entitled to compensation for the 6 hours she had claimed—\$116.40.
54. With respect to the furniture coverings, I accept the landlord's evidence which shows that there were some small holes in those coverings after the tenant moved out. However, based on the evidence submitted at the hearing, I cannot determine if those holes were caused by any deliberate or negligent act on the part of the tenant, or if they were just a result of normal use of ill-fitting covers. In any case, the landlord presented no evidence (i.e., a receipt or quote) to justify the costs that she is seeking here.

55. Regarding the ice shield, I also find that the landlord had not established that this damage was caused by any deliberate or negligent act on the part of the tenant. The landlord alleged that the damage was caused by the tenant while shovelling his deck and the tenant conceded that he had been shovelling the deck. But no evidence was presented to show that the manner in which he shoveled was abnormal or unusual. If the tenant was shovelling the snow from his deck in a normal manner, he cannot be held accountable for any damage caused by the normal use of a shovel.
56. With respect to the late fees, I accept the tenant's evidence which shows that he had paid rent on time in February 2020, contrary to the landlord's contention. No other evidence was presented by the landlord (e.g., banking records) to establish that the tenant's rent was late on the other 3 occasions she had claimed. Hence, her claim for late fees does not succeed.

Decision

57. The landlord's claim for the costs of cleaning the apartment succeeds in the amount of \$116.40.

Issue 2: Security Deposit

58. The tenant submitted a copy of an INTERAC e-Transfer showing that he had paid a security deposit of \$400.00 on 20 August 2018 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim has been partly successful, the deposit shall be disposed of as follows:
 - a) Refund Security Deposit\$400.00
 - b) LESS: Compensation for Cleaning..... (\$116.40)
 - c) Total Owing to Tenant.....\$283.60

29 September 2020

Date

John R. Cook
Residential Tenancies Tribunal