

Residential Tenancies Tribunal

[REDACTED] Decision 20-0241-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:42 am on 24 September 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", respectively, also participated.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$2975.16, and
 - Authorization to retain the \$550.00 security deposit.

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 decision is policy 9-3: Claims for Damage to Rental Premises.

Issue 1: Compensation for Damages - \$2975.16

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a monthly rental agreement with the tenants in November 2019 and a copy of the executed agreement was submitted with her application. The agreed rent was set at \$1100.00 per month and the landlord stated that the tenants had paid a security deposit of \$550.00.
8. The landlord stated that on 26 March 2020 her neighbours had reported to her that the tenants had moved out of the property and on that date the landlord stated that she posted a 24-hour notice to inspect the premises. She testified that she was contacted by tenant1 on the following day, 27 March 2020, and the tenants continued to remove the remainder of their items from the unit over the next 2 days. On 29 March 2020, the landlord stated that she had sent a text-message to tenant1 asking when he would like to meet and exchange keys, and he informed her that he had vacated the unit and that he had left the keys inside the unit. The landlord took possession of the property on that date.
9. After the tenants moved out, the landlord stated that she was required to carry out some cleaning and she also had to replace some flooring at the unit, as well as the washing machine. She submitted the following breakdown of the costs she is seeking through this application:

• Cleaning	\$155.20
• Flooring.....	\$2188.61
• Washer	\$631.35
• Total.....	<u>\$2975.16</u>

Cleaning

10. The landlord stated that the rental unit was freshly painted just prior to the tenants moving in and she complained that when the tenants moved out, just 5 months later, the walls were all marked up and they were very hard to clean. In support of her claim, the landlord submitted photographs showing these walls after the tenants moved out.
11. She also stated that the floors were “rotten” and that she was required to clean up urine from the tenants’ pets. She also stated that all of the kitchen appliances were dirty and that the window blinds were covered in grease. She again pointed to the photographs submitted with her application in support of her claim.
12. The landlord stated that it took 2 people 4 hours each to clean the apartment and she is seeking \$155.20 in compensation for those 8 hours of labour.

Flooring

13. The landlord stated that after the tenants moved out, she was required to replace the Berber carpet that was located in the living room, the hallway and in the 2 bedrooms. She also stated that she had to replace the vinyl cushion floor in the

kitchen. The landlord stated that except for the carpet in the hallway, which was only 3 months old, all of the floors were installed just 2 years ago.

14. The landlord stated that all of these floors were damaged by the tenants' dog and she submitted photographs at the hearing showing their condition when the tenants vacated. She pointed out that the carpets were torn up in several different places and it was unravelling in several areas as well. She also pointed to a photograph showing that there was a hole in the floor in the kitchen.
15. The landlord stated that she has had these floors replaced and she submitted a copy of a sales order from Atlantic Home Furnishings and Flooring for the costs of replacing the exact same types of floors damages by the tenants. According to that sales order, it would have cost \$2188.61 to replace all the floors in those rooms. The landlord stated that she had actually upgraded some of the flooring to laminate, instead of replacing it with carpet, and her actual replacement costs were closer to \$3000.00.

Washer

16. The landlord stated that the rental unit was furnished with a washer and dryer for the tenants use during their tenancy. She stated that these appliances were approximately 4 years old when the tenants moved in and were in good working condition.
17. The landlord stated that the tenants had been complaining to her that the washing machine had been ripping up their clothes whenever they used it, and in early January 2020 they informed her that they had switched out the washer with a second-hand one they had acquired from a friend. The landlord claimed that when tenant2 had telephoned her about this, the replacement had already occurred and was done without her permission.
18. After the tenants vacated, the landlord stated that she had received a complaint from her new tenant that the replacement washing machine was leaking. She stated that this washing machine could not be repaired and she was required to purchase a new one. She submitted a receipt with her application showing that she was charged \$550.00 + tax for a new washing machine.

The Tenants' Position

Cleaning

19. Tenant2 stated that they were out of town when the landlord had posted the 24-hour notice to enter and she stated as there was no cellular service in the town she was visiting, she was unable to contact the landlord to inform her that they had not moved out. Tenant2 complained that the landlord had prematurely taken possession of the rental unit before she had had an opportunity to carry out the cleaning.

20. Tenant2 also complained that the unit was not properly cleaned when she first moved in. She claimed that the rental unit smelled of dog when she first moved in and she complained that there was kitty litter found on the floor. She also submitted a photograph showing that she had found some cat feces on the floor after she had moved in. Furthermore, she complained that there was so much cat hair in the dryer vent that she was unable to dry her clothes properly.

Flooring

21. Tenant2 acknowledged that her dog has caused the damage to the flooring in the kitchen and in the smaller bedroom.

22. However, she denied that she was responsible for the damage to the carpeted flooring in the other bedroom, or in the living room and hallway. She testified that the “knobbing” on these floors was already there when she moved into the property and she attributed that damage to the pets of the previous tenants—she claimed that they had kept a pet dog, a cat and a rabbit at the unit.

23. Tenant2 also pointed out that the unit was advertised as pet friendly, and she argued that given that the landlord had chosen to lay Berber carpets in the unit, she should have expected some minor damage and fraying from the animals she allowed in there. Tenant2 claimed that the “knobbing” of the carpet should be regarded as normal wear and tear.

Washer

24. Tenant2 reiterated the landlord’s claim that she had been complaining to her about the fact that the washing machine had been damaging her clothing when she used it. She stated that she had repeatedly asked the landlord to replace the washing machine, but the landlord refused as it was too expensive. She also contested the landlord’s claim that the washing machine was only 4 years old. She claimed that it was rusty and yellowed, and that it was likely manufactured in the early 2000s.

25. Tenant2 did acknowledge that she had replaced the washing machine with one she had acquired from a friend, but she testified that she had received the landlord’s permission to do so and when she had telephoned her about the exchange, she was still in possession of the old, broken washer. Tenant2 stated that the only condition the landlord had put on the exchange was that she had to commit, in writing, that she would leave behind the replacement washing machine when she vacated.

26. Tenant2 claimed that the replacement washer worked fine during her tenancy and she had no issue with leaking.

Analysis

27. 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*

28. I accept the landlord's claim that the unit was not properly cleaned before the tenants vacated and her photographs show that the fridge and stove were left dirty, that the floors needed cleaning and that the walls needed to be washed down. However, the tenants' evidence does show that the unit was not properly cleaned when they moved in and I agree with tenant2 that there is no

requirement that a unit be left in a cleaner state when a tenant vacates than it was when she moved in. Accordingly, I find that the landlord is entitled to half the costs she is seeking here: \$77.60 for 4 hours of her personal labour.

29. With respect to the carpets, the landlord's evidence does show that there is significant damage in one room where the tenant's pet dog's kennel was located and tenant2 acknowledged that she is responsible for that damage. She also acknowledges that her pet dog had caused the damage to the floor in the kitchen. I therefore find that the tenants are responsible for the costs of replacing the carpets in those 2 rooms. Based on the sales order submitted at the hearing, and given that these floors had about 6 years left in their expected 8 year life span, I find that the landlord is entitled to an award of \$653.42 (\$285.74 for vinyl flooring, \$279.85 for carpet for small bedroom ($\$899.40 + \$220.00 \div 4$), \$192.00 for labour ($\$480.00 \times 2/5$) \times HST \times 6/8 depreciation)).
30. Regarding the flooring for the remaining rooms, I find that the landlord has not presented enough evidence to establish that the tenants were responsible for any damage noted in those rooms. There was no report of an incoming or outgoing inspection and the landlord presented no evidence establishing the condition of that flooring when the tenancy began. Furthermore, it was the testimony of tenant2 that that damage was there when they moved in.
31. Regarding the washing machine, I find that that claim does not succeed. Again, there was no report of an incoming or outgoing inspection and in that respect I have insufficient evidence to make a determination on the condition of the old washing machine when the tenancy began, or a determination on the condition of the replacement washer when the tenancy ended.
32. Furthermore, based on the photographs of the text-messages submitted by the landlord, it appears more likely that she had indeed given the tenant permission to exchange the washing machine. According to that exchange, on 03 January 2020 tenant2 states that she is getting a new washing machine and in that message she seeks confirmation from the landlord if it "is okay" with her if she got rid of the old one. In her response, the landlord did not object to the exchange but only requested that tenant2 provide her with a written promise that the replacement washer would be left at the property when tenancy ended.

Decision

33. The landlord's claim for compensation for damages succeeds in the amount of \$731.02 (\$77.60 for cleaning + \$653.42 for new flooring).

Issue 2: Hearing Expenses

34. The landlord submitted a receipt showing that she had paid a fee of \$20.00 to file this application, and 2 receipts showing that she had paid a total of \$21.30 (\$10.71 + \$10.59) to develop photographs. She also submitted a receipt

showing that she had purchased ink cartridges at a cost of \$122.91, and she is seeking \$20.00 in printing costs.

35. As the landlord's claim has been successful, the tenants shall pay her hearing expenses. I find that the landlord is entitled to her receipted expenses, and I find that she is entitled to an additional \$5.00 for printing. As such her claim succeeds in the amount of \$46.30.

Issue 3: Security Deposit

36. The landlord stated that the tenants had paid a security deposit of \$550.00 on 05 October 2019. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

37. The landlord is entitled to the following:

a) Compensation for Damages	\$731.02
b) Hearing Expenses	\$46.30
c) LESS: Security Deposit	(\$550.00)
d) Total Owing to Landlord	<u>\$227.32</u>

02 December 2020

Date

John R. Cook
Residential Tenancies Tribunal