

Residential Tenancies Tribunal

Decision 20-0345-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 am on 05 October 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, also participated.

Issues before the Tribunal

3. The landlord is seeking the following an order for compensation for damages in the amount of \$778.33.
4. The tenants are seeking an order for a refund of the security deposit in the amount of \$500.00.

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 his application at the hearing and stated that he was now seeking \$801.40 in compensation for damages.

Issue 1: Compensation for Damages - \$801.40

Relevant Submissions

The Landlord's Position

8. The landlord stated that he had entered into a rental agreement with the tenants on 15 February 2018. The agreed rent was set at \$1000.00 per month and the tenants had paid a security deposit of \$500.00. On 29 June 2020 the tenants informed the landlord that they were terminating their agreement and they vacated on 01 August 2020.
9. The landlord stated that after the tenants moved out he discovered that they had caused some damages to the rental unit and he submitted the following breakdown of the costs to carry out repairs:
 - Replace missing curtains \$45.00
 - Remove cable wires \$100.00
 - Odour remediation, carpet removal \$600.00
 - 1 day rent \$33.33
 - Total \$778.33

Curtains

10. The landlord complained that the tenants had removed the curtains from the living room when they moved out and he submitted receipts showing that he had spent \$41.40 to purchase replacements. He stated that these curtains were about 2 years old when the tenants moved out.

Cable Wires

11. The landlord submitted photographs with his application showing that the tenants had cable wires running from the outside of the house, up and through a wall, into the master bedroom, and through a wall in that room and into 2 other adjoining rooms. He claimed that none of these wires or holes were in the walls when the tenants moved in and he claimed that the tenants had not asked his permission to have cable installed in the rented premises.
12. The landlord stated that after the tenants moved out he had to remove the cable wires, patch all of the holes that had been drilled in the walls and then he had to

repaint those affected areas. He testified that it took him about 3 hours to carry out that work and he estimated that he used approximately \$20.00 worth of materials that he already had on hand.

Odour Remediation, Carpet Removal

13. The landlord testified that the tenants had kept pet dogs at the rental unit and he claimed that there was a smell of dog urine on the carpeted landing at the top of the stairwell after they had moved out. He testified that he was required to remove that carpet because of the smell and he submitted photographs showing that there was urine staining on the subfloor underneath the carpet.
14. Based on the advice of a professional restoration company, the landlord applied an enzyme cleaner to the stained area to remove the smell and he replaced the carpets with laminate flooring. With his application, the landlord submitted receipts, totalling \$651.26, for the costs of purchasing the new laminate flooring and associated materials.
15. The landlord testified the carpet was approximately 10 years old when the tenancy began and he stated that the carpets were in "fine" condition when the tenancy began.

Rent

16. The landlord stated that he had accepted the tenants' notice that they would be moving out at the end of July 2020, but he pointed out that the tenants stayed on at the unit and continued moving their possessions on the following day, 01 August 2020. He is seeking an order for a payment of rent for that 1 day in August 2020 and calculated that he is entitled to a payment of \$33.33.

The Tenants' Position

Curtains

17. Tenant1 acknowledged that they had mistakenly removed these curtains when they moved out, but she claimed that she was willing to give them back to the landlord and had made attempts to contact him about this matter after she had moved out. She complained that the landlord would not return her calls or messages so that arrangements could be made.

Cable Wires

18. Tenant1 stated that Rogers installed the cable at the rental unit and she claimed that they would not have drilled any holes in the walls there if they did not have the landlord's prior permission. She claimed that they had received his permission to drill one single hole from the exterior of the house to bring the cable into the unit and then it was weather-sealed.

19. Regarding the other holes that the landlord complained about in the unit, landlord1 stated that all of these holes were already there when she moved in from previous tenancies. She acknowledged that she had left the cable wires behind, but she claimed that she had done this so that they could be used by the next tenants.

Odour Remediation, Carpet Removal

20. Tenant1 stated that her 2 dogs are house-trained and she claimed that they have never had any accidents or urinated in the house at any time during their tenancy. She also testified that their dogs are never left alone at the property and that if they ever have to leave the house the dogs either come with them or are brought to a kennel.

21. Tenant1 further claimed that she deodorized and vacuumed the carpets in the unit once a week during her tenancy and she pointed out that the landlord had been at the unit on numerous occasions during their time there and he never once complained about any smell.

22. Tenant2 acknowledged that a stain on the subfloor is visible in the photographs submitted by the landlord, but he argued that that stain could have been 20 years old.

Rent

23. Tenant1 acknowledged that they vacated on 01 August 2020, but she complained that if the landlord had informed them that he was going to charge them an extra day's rent, they would have vacated on 31 July 2020 and stayed at a hotel instead. She also pointed out that there are 31 days in August and the daily rate of rent ought to be calculated at \$32.27.

Analysis

24. 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*

25. In any claim for compensation for damages, it must be determined whether the applicant had taken all reasonable steps to mitigate those damages. Regarding the curtains, I was not satisfied that the landlord had taken all reasonable steps to minimize his costs in this case. Although he argued that the tenants could have delivered the curtains to his house, he acknowledged that he was not returning their calls or messages when they were reaching out to make arrangements for the return of the curtains. Had he cooperated with the tenants, he could have had his curtains returned at no charge. As such, this portion of his claim does not succeed.

26. Regarding the cable wires at the unit, I find that the landlord's evidence does establish that there are holes in numerous walls at the property that were used to run cable wires from room to room. However, his evidence does not establish that these holes were drilled during this tenancy. There was no report of an incoming or outgoing inspection and no photographs were submitted showing the condition of the property before the tenants moved in. Regarding that one single hole that the tenants do take responsibility for, I am of the view that having cable TV or internet in a rental unit is typical and that any minor modifications to the

walls in a unit to allow the installation of cable ought to be regarded as normal wear and tear.

27. I also find that the landlord's claim for the costs of replacing the carpets does not succeed. Firstly, as there was no report of an incoming or outgoing inspection, I find that the landlord has failed to establish the condition of the carpets when the tenancy began and their condition when they had moved out. Furthermore, carpets have an expected lifespan, depending on quality, between 6 and 10 years, and as these carpets were 10 years of age when the tenancy ended, I find that they had come to the end of their useful lifespan and would soon have to be replaced anyhow.
28. With respect to the rent, though, I agree with the landlord's claim that he is entitled to rent for 1 day as the tenants did not move until 01 August 2020. The rental period in this tenancy ran from the 1st day to the last day of each month and the tenants had only paid their rent for the period ending 31 July 2020. I calculate the amount owing to be \$32.26 (\$1000.00 rent for August 2020 ÷ 31 days).

Decision

29. The landlord's claim for compensation for damages succeeds in the amount of \$32.26 determined as follows:
 - Rent for August 2020\$32.26

Issue 2: Security Deposit

30. The tenants stated that they had paid a security deposit of \$500.00 on 16 January 2018. As the landlord's claim has been partly successful, the deposit shall be disposed of as follows:
 - Refund Security Deposit\$500.00
 - LESS: Rent for August 2020(\$32.26)
 - Total Owing to Tenant.....\$467.74

20 January 2021

Date

John R. Cook
Residential Tenancies Tribunal