

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0454-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:24 AM on 30 June 2022 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”, was also attendance.

Issues before the Tribunal

3. The landlord is seeking an order for a payment of \$5645.99 in compensation for damages.

Legislation and Policy

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

Issue 1: Compensation for Damages - \$5645.99

Relevant Submissions

The Landlord's Position

6. The landlord and tenant entered into a verbal rental agreement in October 2002. The agreed rent was set at \$750.00. At the end of August 2020, the tenant

informed the landlord that she was terminating their agreement and she vacated on 30 September 2020.

7. The landlord stated that the tenant had caused some damages to the property during her tenancy, and with her application she submitted the following breakdown of the costs to carry out repairs:

- Replace vinyl floor..... \$181.72
- Replace kitchen countertop..... \$348.29
- Replace refrigerator \$549.00
- Paint and plaster \$849.79
- HST \$289.32
- Cleaning and carpet removal \$800.00
- Labour..... \$1736.60

Total..... \$4754.72

Vinyl floor

8. The landlord stated that she had installed new vinyl flooring in the kitchen in 2018. After the tenant moved out, she discovered that there was a red stain on that floor where the tenant had spilled something. That stain could not be removed, and the landlord therefore replaced that flooring. With her application, the landlord submitted a copy of an invoice showing that she had purchased new flooring at a cost of \$208.98.

Kitchen countertop

9. With her application, the landlord submitted a photograph of the kitchen countertop and she pointed out that there is hole in it, about “half the size of a twenty dollar bill”. Because of that damage, the landlord had to replace that countertop and she submitted an invoice with her application showing that she was charged \$348.29. The landlord stated that the countertop was installed in 1996 when the house was built.

Replace refrigerator

10. The landlord stated that about 3 or 4 years ago, she provided the tenant with a replacement refrigerator, which she had bought second-hand. She claimed that it was in “immaculate” condition. The landlord claimed that the refrigerator must have been leaking since it was installed, but she claimed that the tenant had not informed her of this issue. After the refrigerator was cleaned, the landlord stated that she discovered mould inside the refrigerator and underneath, behind the grate. The landlord claimed that the mould underneath the refrigerator could not be cleaned and she therefore replaced it. She submitted an invoice with her application showing that she had purchased a new refrigerator at a cost of \$803.84.

Paint and plaster

11. The landlord stated that the whole unit had to be repainted after the tenant moved out, and she stated that some plastering was required as well. The landlord claimed that there were some holes in the walls and she claimed that the tenant had stuck pins in the walls as well. She also complained that there was some “electrical stuff” that needed repairing. The landlord submitted receipts with her application showing that she had spent \$849.79 for paint, plaster, and other painting supplies. She stated that her boyfriend had carried out the plastering and painting, as well as all the other repairs, and she claimed that it took him 90.5 hours to complete all of that work. The landlord stated that the tenant had painted the unit about 4 years ago, and she claimed that she had supplied her with the paint at that time.

Cleaning and carpet removal

12. The landlord stated that the whole unit needed cleaning after the tenant vacated and she stated that it appeared that the unit had not been cleaned for quite some time. The landlord stated that the tenant had been keeping pet cats and rabbits in the apartment, and she complained that there was a strong smell of cat urine in the tenant’s unit, and she claimed that rabbit feces was found on all the floors. Because of the urine and feces, and also because the rabbits had been chewing holes in the carpets, the carpets at the unit had to be disposed of. Beside the carpets, the countertops and the tops of the cupboards had to be washed, as well as all of the windows. The landlord drew my attention to her submitted photographs showing the condition of the unit after the tenant vacated, and she also pointed to a letter, from [REDACTED] in which she writes that she had carried out the cleaning and the removal of the carpet, and she also writes that the landlord had paid her \$800.00 for her work.

Labour

13. In addition to the costs quoted above, the landlord stated that her boyfriend had spent 90.5 hours carrying out the painting, installing the kitchen countertop, installing the vinyl flooring, and she claimed that he had carried out some additional repairs. The landlord is seeking \$1736.60 in compensation for his time, calculated at a rate of \$19.20 per hour.

The Tenant’s Position

Vinyl floor

14. The tenant claimed that in 2018, after the new floor was installed, she had laid a cheap rug in front of the sink, and she claimed that some dye had transferred from that rug to the floor, causing the red mark seen in the landlord’s photograph.

Kitchen countertop

15. The tenant claimed that there was a bubble in the countertop when she moved into the unit in 2002. She stated that over the course of her 18 year tenancy, that bubble began to crack and peel, resulting in the small hole seen in the landlord's photograph. The tenant denied that she was responsible for that damage.

Replace refrigerator

16. The tenant claimed that the refrigerator that the landlord provided her with 4 years ago was a second-hand refrigerator, and she claimed that it was old. She also claimed that a seal was broken in the refrigerator and she was told that there was also a problem with the compressor. The tenant claimed that she had raised her concerns about the refrigerator with the landlord on several occasions, but nothing was done. With respect to the costs the landlord is seeking here, the tenant pointed out that the landlord is seeking the costs of purchasing a brand new refrigerator to replace an old, second-hand one.

Paint and plaster

17. The tenant acknowledged that the landlord had once supplied her with paint so that she could paint the apartment, and she testified that on another occasion during this tenancy, she had purchased her own paint. The tenant did not contest the landlord's claim that the unit needed painting, but she pointed out that she had been living in that apartment for 18 years, and argued that after such a long tenancy, the landlord would be expected to repaint it anyhow.

Cleaning and carpet removal

18. The tenant acknowledged that the unit required cleaning after she moved out. She claimed that she had vacated in September 2020, and when she would return to remove her items and to carry out the cleaning, the landlord would be verbally abusive towards her. Out of concern for her mental health, the tenant stated that she decided not to return to carry out the remaining cleaning. With respect to the carpet, the tenant argued that she was not responsible for the costs of removing them as they were old and needed to be replaced anyhow.

Labour

19. Regarding the labour costs, the tenant reiterated that the carpets needed to be replaced anyhow, as they were so old, and she argued that she should not be held accountable for the costs of removing them. She also claimed that the unit was not maintained by the landlord during her 18 year tenancy, and there was an accumulation a repairs that needed to be done now, for which she was not responsible, and for which she should not have to pay. She complained, for instance, that the air exchanger did not work and that it had been recalled. She also stated that the dehumidifier was not working properly. She also complained

that the recently added porch was not built to code, the door was not hung properly.

Analysis

20. 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 willful 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

21. The tenant acknowledged that she had stained the vinyl floor with her rug, and I therefore find that she is responsible for the costs of replacing that floor. Vinyl

floors have an expected lifespan of 8 years, and given that this floor was already 2 years old when tenant vacated, I find that the landlord is entitled to a depreciated award of \$185.54 (\$208.98 + \$38.40 for 2 hours of labour x 6/8).

22. With respect to the kitchen countertop, it was the tenant's contention that this countertop was damaged when the tenancy began. As there was no report of an incoming inspection, and no photographs showing the condition of that countertop in 2002, I have to conclude that the landlord had not establish that this damage occurred during this tenancy. I reach the same conclusion about the refrigerator, and I conclude that the landlord had not establish that the tenant had caused it to leak.
23. I also agree with the tenant that she cannot be held responsible for the costs of repainting the apartment. As a result of normal wear and tear, a landlord is expected to repaint a rental unit every 3 to 5 years, and given that this tenancy had ran for 18 years, it is beyond time for the landlord to repaint anyhow, even if the tenant did some painting herself during the tenancy. I do agree with the landlord, though, that some of the holes and scratches on the walls do exceed the standard of normal wear and tear, and I therefore find that she is entitled to an award of \$100.00 for the costs of plastering those areas.
24. I accept the landlord's claim that the apartment was left in a very poor state, and her photographs show that there is cat feces on the floors and her cleaner reports that there was rabbit feces found everywhere. Because of that mess, I also find that there would have likely been a bad smell in the apartment. Based on that testimony and the landlord's photographs, I find that the landlord is entitled to the full \$800.00 she has claimed here.

Decision

25. The landlord's claim for compensation for damages succeeds as follows:

• Replace vinyl floor.....	\$185.54
• Plaster walls.....	\$100.00
• Cleaning and carpet removal	\$800.00
Total	<u>\$1085.54</u>

Issue 2: Hearing Expenses

26. The landlord submitted a hearing expense claim form with her application, along with a receipt for \$20.00 for the costs of filing this application, and a receipt for \$18.32 for the costs of sending the application to the tenant by registered mail. As the landlord's claim has been successful, the tenant shall pay these hearing expenses.

Summary of Decision

27. The landlord is entitled to a payment of \$1123.86, determined as follows:

- a) Compensation for Damages \$1085.54
- b) Hearing Expenses \$38.32

- c) Total Owing to Landlord..... \$1123.86

07 December 2022

Date

