

## Residential Tenancies Tribunal

Decision 20-0074-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:30 pm on 15 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 an order for compensation for damages in the amount of \$4225.82.

### 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.

### Preliminary Matters

6. This is the second application this Board has heard concerning this tenancy. As a result of the first hearing ([REDACTED]), held on [REDACTED], the landlord was ordered to refund the \$1500.00 security deposit to the tenants.
7. The landlord amended her application at the hearing and stated that she was now seeking \$3314.07 in compensation for damages.

## Issue 1: Compensation for Damages - \$3314.07

### Relevant Submissions

#### The Landlord's Position

8. The landlord and tenants had entered into 1-year, fixed-term lease on 01 June 2019. The agreed rent was set at \$1500.00 per month and the tenants had paid a security deposit of \$1500.00.
9. The tenants issued the landlord a termination on 16 November 2019 and they vacated on that date.
10. The landlord stated that the tenants had caused some damages to rental unit during their tenancy and she submitted the following breakdown of the costs to carry out repairs:
  - Countertop ..... \$25.98
  - Wall holes ..... \$130.00
  - Vinyl flooring ..... \$462.20
  - Laminate flooring ..... \$15.99
  - Garbage removal ..... \$120.00
  - Labour ..... \$1280.00
  - Vivint..... \$1279.90
  
  - Total ..... \$3314.07

#### Countertop

11. The landlord stated that the kitchen countertop was approximately 14 years old and was in good condition when the tenancy began. She complained that one of the endcaps was missing after the tenancy ended and she stated that tenant1 had removed the other endcap during their walkthrough.
12. The landlord is seeking \$25.98 for the costs of replacing those endcaps. No receipt was submitted with her application. She also stated that 2 contractors carried out that work and charged her \$80.00 each per hour. The landlord did not indicate how many hours it took to have that work completed and no receipt from these contractors was submitted.

#### Wall Holes

13. The landlord also stated that there were 5 holes in the walls that needed to be repaired—4 of these holes were in the hallway and 1 was in one of the bedrooms. These holes had to be plastered and then the affected area was plastered and repainted.

14. No receipts were submitted for the costs of the materials or for the costs of hiring contractors to complete that work.
15. The landlord stated that the unit was last painted in the summer of 2019 and she claimed that there were no holes in these walls when the tenants moved in.

#### Vinyl Floor

16. The landlord also stated that she was required to replace the vinyl, cushion flooring in the laundry room as there was a rip in that floor where the tenants' clothes dryer had been located. She stated that that floor had been laid in 2012 and was in perfect condition when the tenants moved in.
17. No receipts were submitted for the costs of replacing that floor and the landlord stated that her contractors were carrying out these repairs for 9 hours.

#### Laminate Flooring

18. The landlord also complained that a reducer strip was missing and she paid \$15.99 to purchase a new one. No receipt was submitted at the hearing. The landlord stated that she did not know how old that strip was.

#### Garbage Removal

19. The landlord is also seeking \$120.00 in compensation for the costs of collecting garbage at the unit and making a trip to the dump to dispose of it.
20. She claimed that the tenants had left behind a table in the basement and there were also some baby items that had to be disposed of. She also complained that there was dog feces left in the yard that had to be collected and that the tenants had left behind the 3 trees that they had cut down.

#### Vivint

21. The landlord stated that in 2011 she had a Vivint security system installed and when this tenancy began in 2019, all of the equipment for this system—the key pad, smoke detectors, motion detectors, door sensors, etc.—was in place and ready for the tenants' use. If the tenants did wish to make use of that equipment, they merely had to call Vivint to have it connected.
22. The landlord claimed, though, that after the tenants moved out, she discovered that the tenants had removed the Vivint equipment and that they had a Bell security system installed instead.
23. The landlord stated that the Vivint equipment was purchased by her, over a period of 42 months, at a cost of \$1279.90. She is seeking an order for that amount as the replacement costs of the missing equipment.

## The Tenants' Position

### Countertop

24. Tenant1 stated that the countertop was very old and that because of its age, the glue holding the endcap in place was not longer working. She claimed that only one of the endcaps had come off while the other one was still partly attached. She also stated that the endcap came off on its own and denied that she had done it deliberately.

### Wall holes

25. Tenant2 stated that the holes identified by the landlord were already there when they moved into the unit and he claimed that the previous tenants were responsible.

### Vinyl Floor

26. Tenant2 stated that the floor was already torn when they moved into the unit.

### Laminate Flooring

27. Tenant2 stated that the reducer strip did come loose during their tenancy and it was removed and placed in the laundry room. He argued that the laminate flooring was old and that there was a dip in the floor where that strip was located which was responsible for it coming loose. He chalked that damage up to normal wear and tear.

### Garbage Removal

28. Tenant1 stated that the table that was left in the basement did not belong to her and she claimed that it was already in the unit when she moved in. Regarding the trees, tenant1 claimed that she had permission from the landlord to cut down these trees as they had been damaged by the previous tenants.
29. With respect to the dog feces, tenant1 acknowledged that there was some feces on in the yard which had accumulated over a couple of days, but she claimed that when she offered to clean it, the landlord told her to leave the property.

### Vivint

30. Tenant1 acknowledged that they had installed a Bell security system at the unit when they moved in. She testified, however, that she had the landlord's permission to install that system and she stated that before Bell installed it, they also had to get permission from the landlord. Tenant2 claimed that Bell would never have carried out the installation without the landlord's permission.

31. With respect to the equipment that Vivint had installed, Tenant2 stated that all of that equipment remained at the unit and the only thing that was changed by Bell was the key pad.
32. Regarding that key pad, tenant2 stated that it was old and that the Bell technician was unable to get it to work. Instead, a new touch-screen key pad was installed in its place.
33. Tenant2 stated that all of the Bell equipment was left at the unit for the landlord and he claimed that she should consider it an upgrade from the older system that was there when they moved in.

## **Analysis**

34. 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*

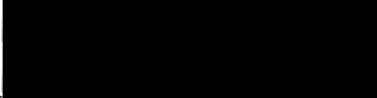
35. Regarding the endcaps on the countertop, I find that the landlord has failed to present enough evidence to justify an award. No receipts were submitted showing the costs of replacing the endcaps and no receipt was submitted for the costs of hiring a contractor. I was also not satisfied that the tenants had removed the endcaps deliberately or through any negligent act. Furthermore, as a vinyl countertop has an expected lifespan of 15 years, it had just about reached the end of its useful life anyhow.
36. I also find that the landlord is not entitled to the costs of repairing the walls as she failed to establish that this damage occurred during this tenancy. There was no report of an incoming or outgoing inspection and no photographs were submitted by the landlord showing the condition of the property when the tenancy began.
37. I reach the same conclusion with respect to the vinyl floor in the laundry room as there was again no evidence showing that that damage occurred during this tenancy. I also note that a cushion floor has an expected lifespan of 8 years and it soon would need to be replaced anyhow.
38. Regarding the laminate reducer, the landlord failed to establish the costs of replacing that strip and, in any case, I accept tenant2's argument that that damage was the result of normal wear and tear.
39. Regarding the garbage removal, I agree with the landlord that the tenants are responsible for the costs she incurred to remove the dog feces, the 3 trees that they had cut down and the baby items. I accept tenant1's claim, though, that the table was there when she moved in and I therefore find that the landlord has to bear the costs of removing that item. For the remainder, I find that \$75.00 is a fair award.
40. Regarding the security system, I found the tenants' testimony on that matter to be believable and it seems probable to me that they had the landlord's permission to install a Bell security system at the unit. I also find it probable that a new security system installed in 2019 is an upgrade from the 2011 model that was there when the tenants moved in. In that respect, I don't believe that the landlord had been put in any worse of a position by the tenants when they upgraded the security system and I agree with the tenants that the landlord is therefore not entitled to any compensation.

**Decision**

41. The landlord's claim for compensation for damages succeeds in the amount of \$75.00 for the costs of removing garbage from the property.

12 February 2021

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John R. Cook  
Residential Tenancies Tribunal