

Residential Tenancies Tribunal

Decision 20-0245-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:03 am on 29 September 2020 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively, participated in the hearing.
3. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$79,427.41, and
 - Authorization to retain the \$900.00 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.

Preliminary Matters

7. Landlord2 amended his application at the hearing and stated that he was now only seeking \$32,092.11 in compensation for damages.

Issue 1: Compensation for Damages - \$32,092.11

Relevant Submissions

The Landlord's Position

8. Landlord1 stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 22 May 2018 and a copy of the executed lease was submitted with her application. The agreed rent was set at \$1800.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$900.00.
9. In the fall of 2018, landlord2 stated that he was contacted by a previous landlord of the tenant and he was informed that the tenant had allowed her cats to urinate in the apartment they had rented out to her, causing significant damage. As a result, 2 inspections were carried out in October and November 2018. Landlord2 stated that he did detect a musty odour, masked by a cleaner, during the first inspection and he also claimed that the apartment smelled "like a pet store". Landlord1 carried out the inspection in November 2018 and she testified that when she entered she was "hit in the face with a strong odour". She also testified that she had brought a black light with her to that inspection and she identified several areas on the walls and baseboards where the tenant's cats had urinated.
10. Landlord2 stated that other than the musty smell of cat urine, the rental unit appeared clean and no significant damages were detected at that time. He stated that he figured that when the tenancy ended, any lingering smell of cats or cat urine could be removed by merely cleaning the house, or using a special enzyme cleaner, and then allowing it to air out.
11. On 24 February 2019, the landlords sent a termination notice to the tenant informing her that their tenancy would end on 31 May 2019. The tenant vacated on 04 June 2019.
12. After the tenancy ended, the landlords discovered that the tenant had caused some damages to the rental unit which needed to be repaired. They also stated that there still remained a strong odour of cat urine at the apartment. Regarding that smell of urine, and despite their efforts, the landlords were unable to remove it from the apartment and after consultation with 2 restoration companies, it was determined that a significant amount of demolition and reconstruction would be required. In support of their claim, the landlords submitted letters and quotes from these 2 restoration companies, First General and Winmar.
13. According to the letter from Winmar, dated 23 August 2019, they report that they had visited the unit on 22 August 2019 and that "the odour of cat urine was very evident upon entering", and after an assessment they determined that the most severely affected rooms were the living room, kitchen, stairs, front entry and laundry room. The report also notes that although the landlords had attempted to "remediate against the odour", the smell still remained almost 3 months after the

tenants moved out. The report recommended that, because of the severity of the damage, the landlords ought to remove the flooring and subflooring throughout the house, remove 2 feet of drywall on the affected walls and remove the stairs. Once these items are removed, it was further recommended that the landlords then seal the exposed areas with an oil based stain blocker. Winmar estimated that it would cost \$3600.00 to remove the flooring, stairs and walls and then to treat the affected areas.

14. The landlords also contacted their insurance company about the matter and they provided them with a quote from First General for the costs of removing the affected floors and walls and also for the costs of restoring the house to its original condition by reinstalling the flooring, etc. and treating the apartment. First General estimated that it would cost \$62,227.41.
15. Landlord2 stated that he believed it would be less expensive for him to carry out the work himself and they therefore decided not to hire First General for the restoration, though they were hired for odour remediation in November 2019 after the landlords had already removed the affected flooring, baseboards and cabinetry. In a letter from 07 November 2019, First General report that the damage that they had viewed on that date, as a result of cat urine and spray, was extensive. They write that they had used “multiple chemical treatments” “including “enzyme, oxidizing, odour encapsulants”, applied “additional heat” and also carried out an ozone treatment. They write that although these treatments did produce effective results, the urine odour remained and they recommended, as Winmar had, that they apply a sealant to the affected areas. The landlords were charged \$1700.00 + tax for First General’s remediation services.
16. Regarding the restoration work that the landlords had carried out themselves, landlord2 testified that he wanted to keep his costs down to a minimum and decided that he would only remove any flooring or drywall that was necessary as a result of the urine contamination. He stated that he had spent several weeks removing the most badly affected pieces of flooring, subflooring and drywall but it soon became apparent that the smell was not dissipating and that all of the flooring in the house would have to be removed.
17. In support of his claim that the floors had suffered damage as a result of the tenant’s cat, landlord2 pointed to photographs showing all of the rooms at the rental unit. He stated that these photographs show that there is visible damage on the surface of the hardwood floor in many of these rooms and that when some of the hardwood boards were removed, urine stains were visible on their underside and in the subfloor beneath. Some of those stains are readily apparent in these photographs and landlord2 indicated that further evidence of urine is visible in the photographs showing the black light inspection.
18. Although he had initially tried to only remove a portion of the floors in hopes of minimizing his costs, he stated that the smell and staining was very prevalent and all the floors in the house had to be removed, both upstairs and downstairs. The flooring in the house was a mix of hardwood floors, laminate floors, vinyl

flooring and carpets. Most of the flooring in the house was laid in 2014, though the carpets and the hardwood were already there when the landlords purchased the property in 2011.

19. For the kitchen, bathroom and front entrance, the landlords purchased vinyl flooring for those rooms and according to their submitted receipt, they were charged \$1079.34 for materials and installation.
20. The landlords purchased laminate flooring for the remainder of the rooms in the house and those floors were installed by landlord2. They pointed to a receipt from The Home Depot showing that they had paid \$4383.34 for the flooring (\$3811.60 + HST), and according to their submitted breakdown, installation took 50 hours.
21. In addition to the flooring, landlord2 stated that he also had to replace subflooring in the unit and an odour sealing primer had to be applied to the subfloor and studs. According to the submitted receipts, the landlords had spent \$658.94 on odour killing primers which were applied to these areas and a further \$120.57 on cat urine enzyme cleaner. And according to their breakdown, landlord2 had spent approximately 33 hours applying the enzyme cleaner to the various surfaces in the house, and priming and shellacking the subfloors and studs.
22. Landlord2 stated that the stairs at the unit had also suffered significant damage and he again pointed to his submitted photographs showing that that urine can be seen on the railings and balusters via the black light. He stated that these railings and balusters all had to be replaced and reinstalled and his submitted receipts show that he paid \$540.02 for replacements. Landlord2 stated that he did not need to replace the stair treads, but they did have to be sanded down and re-stained in order to remove the odour of urine. The new balusters and railings also had to be stained. According to his breakdown, landlord2 spent 6 hours installing the new railing and balusters and another 5 hours sanding the treads and further 8 hours staining the railing and steps.
23. He also testified that he had been advised by the restoration companies to cut out the drywall in the affected areas, 2 feet up from the floors. However, in order to keep his costs down, landlord2 stated that he had only cut out 1 foot of drywall. He testified that he was required to cut out the drywall in every room in the house as the cats urinated on all of these walls.
24. In addition to the drywall, landlord2 stated that all the baseboards had to be removed as well as the baseboard heaters. The landlords' photographs also show that there is urine staining on many of these walls behind the baseboards and on the baseboards themselves. He also pointed out that there was a significant amount of kitty litter found in behind the baseboards. He stated that all of these baseboards had to be disposed of and replaced. Additionally, many of the baseboard heaters had to be replaced as well as they were contaminated with cat urine. The landlords' photographs show that urine and cat hair can be

seen on some of these heaters and the urine had even caused some rusting in places.

25. According to the landlords' receipts, they had spent \$726.19 for replacement baseboard heaters. Landlord2 stated that this receipt was for the costs of 15 electric heaters, but he testified that he already had intentions of replacing 10 of the oil heaters in the unit anyhow, prior to the damage caused by the tenant's cats. As such, he is just seeking the costs of replacing 3 of the electric heaters that had been contaminated.
26. Landlord2's work log shows that it took him 10 hours to reinstall the new and existing heaters and to install thermostats. The landlords also pointed to their receipts showing that they had paid \$516.56 for replacement baseboards (\$71.28 + 445.28 (387.20 + HST)). And according to the log, it took landlord2 12 hours to paint these baseboards and another 25 hours to install them.
27. Regarding the drywall, after landlord2 had removed the 1 foot of drywall in all of the rooms in the house, he had hired a contractor to reinstall that drywall, and then prime and plaster those areas. The landlords submitted a receipt showing that they were charged \$2000.00 to have that work completed and their submitted receipts show that they had paid \$393.50 for replacement drywall and associated supplies (\$145.18 + 102.68 + 62.87 + 82.77).
28. After the new drywall had been installed, the landlords were then required to repaint the whole apartment. According to the work log, landlord2 spent 34 hours painting the main rooms in the house and their submitted receipts show that they had paid \$759.51 for paint and paint supplies. Landlord2 stated that the unit was last painted in 2018 just before the tenant moved in.
29. Other receipts submitted by the landlords show that, in addition to the purchases outlined above, they also had spent over \$120.00 on various other supplies, such as a drywall blade, tuck tape, brad nails, garbage bags etc. The labour log also shows that the landlords had, again, in addition to what has been recounted above, spent over 40 hours cleaning the walls, investigating the unit for urine odours, removing damaged items to the garage, loading a hired dumpster, cleaning the property and making trips to the dump.
30. Besides the damages caused to the unit by the tenant's cats, the landlords also complained that they were unable to rent the house for a full 12 months after the tenant vacated. Landlord2 pointed out that he initially thought the unit would only have to sit vacant for a couple of months over the summer of 2019 while he applied an enzyme cleaner to the property and allowed it to air out. It was only at the end of August 2019, after consulting with Winmar, that it became apparent that the walls, floors, stairs, etc. would have to be removed from the property. And it was at the end of September 2019 that he received the quote from First General for the costs of restoring the property to its original condition. According that quote, the work could have been completed in 6 to 8 weeks at a cost of \$62,227.41.

31. In order to reduce costs, landlord2 stated that he decided to carry out the work himself even though he knew it would take much longer for him to complete. Based on the landlords' submitted breakdown, they are seeking compensation for lost rent for the period from 01 June to 31 December 2019, a period of 7 months, at a rental rate of \$1685.00 per month, for a total claim of \$11,795.00. Landlord2 pointed out that this claim for lost rental income, plus his restoration costs, is far less than the costs he would have incurred had he hired First General to carry out the work instead.
32. The landlords' total claim comes to \$31,767.11, determined as follows
- 343.25 hours of personal labour \$6837.00
 - Lost rental income\$11,795.00
 - Repair Materials..... \$8355.77
 - Enzyme Treatment \$1700.00
 - Drywall Installation..... \$2000.00
 - Cushion flooring installation \$1079.34
 - Total.....\$31,767.11

The Tenant's Position

33. The tenant denied that her cats had been urinating in the house and she claimed that they were trained to use a litter box. She also testified that that she did not detect any smell of cat urine at the unit during her time living there and she pointed out that when landlord1 carried out the black-light inspection with her in November 2018, she did not see any evidence of cat spray on the walls or floors of the rental unit.
34. Regarding the reports from Winmar and First General, the tenant declined to make any comment on these submissions. The tenant also made no comment on the landlords' claims that they were required to remove the flooring and drywall at the rental unit or that they had to treat the unit with an enzyme cleaner or seal the subfloor with an odour blocking primer
35. She likewise declined to make any comment on the receipts and invoices submitted by the landlords for the costs of replacing the flooring throughout the house, the costs of cutting out and replacing the drywall, the costs of repairing the stairs, the costs of the baseboards, the costs of painting, etc.
36. The tenant also declined to comment on any of the photographs submitted by the landlords which they claim show damage from cat urine.
37. She also made no comment on the landlords' claim that they were required to exert over 300 hours of their labour during restoration and she made no comment on their claim that they had suffered a loss of rental income for a year while they were carrying out repairs.

38. Besides her denial that there was a smell of cat urine at the property when she moved out of the unit, the only other argument the tenant had presented at the hearing was left for her closing remarks. During those remarks, the tenant argued that she had the right, prior to the commencement of any judicial or quasi-judicial proceeding being brought against her, to be notified of any damages caused to the unit which were in excess of the amount of the security deposit. She pointed out that it was a full year after she had moved out before the landlords had served her with their claim. She stated that they had not been in contact with her at all during that intervening period and that they ought to have reached out to her if it was their belief that she had caused damages to the property so that she could have made efforts to resolve the issue.

Analysis

39. 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

40. I accept the landlords' testimony and evidence regarding the issue of the odour of cat urine at the premises during the fall of 2018 and after the tenant moved out in June 2019. The landlords' testimony about the smell they encountered at the unit was corroborated by employees of the 2 restoration companies that had visited the unit in the summer and fall of 2019 and the photographic evidence they submitted with their application does seem to show evidence of urine on the floors in the unit, behind the baseboards and heaters, on the subfloors and on the stairs and the railings.
41. I also accept the landlords' claim that despite their efforts during the first few months after the tenant had moved out, they were unable to rid the house of the smell of cat urine. Based on the advice they had received from the 2 professional restoration companies they had hired to visit the unit, I also find that they had no choice but to resort to removing from the house the physical materials (floorings, walls, baseboards, etc.) that were contaminated by the cat urine, then seal the underlying areas with odour killing primer and then reinstalling new floors, walls, etc.
42. Furthermore, given the scope of the work that was required, I agree that the landlords had mitigated their damages by, for the most part, carrying out the work themselves and that the costs they had incurred were almost half of what they would have been had they hired a professional. The landlords' evidence was meticulously presented to the Tribunal and all of their receipted expenses and logged hours were carefully documented. I am satisfied that all of the costs that they had claimed had in fact been incurred in the course of trying to rid the unit of the smell of urine caused by the tenant's cats.
43. However, as indicated above, depreciation must be taken into account when awarding an applicant compensation for the costs of replacing or repairing damages caused to a rental unit. In the case at hand, this particularly applies to the costs of replacing the flooring at the rental unit.
44. With respect to the costs, then, of replacing the flooring in the bathroom, kitchen and front entrance, I adjust the award here to \$431.74 ($\$1079.34 \times 4/10$) to reflect the fact that these floors were already 6 years old and only had 4 years remaining in their expected 10 year lifespan. Hardwood floors are expected to last a lifetime and I therefore make no adjustment on the costs the landlords had incurred to install new laminate flooring in those rooms where the hardwood flooring had to be removed.

45. Regarding the baseboard heaters, landlord2 stated that he had intentions of replacing most of those heaters anyhow, and he was only required to replace 3 electric heaters as a result of the cat urine that he had not originally intended to switch out. I accordingly adjust the claim for costs of purchasing and installing the baseboard heaters to \$185.24 (\$726.19 in materials + \$200.00 in labour (10 hours x \$20.00 per hour) x 3/15).
46. With respect to the painting and drywall, I make no adjustments on the costs the landlords had incurred here as the unit was last painted just before the tenant had moved in. I do note however, that the landlords had included in their breakdown a claim for 32 hours of their personal labour to prepare for this hearing. I deal with that claim in section 2, below.
47. I also agree with the landlords that they are entitled to compensation for the loss of rental income that they had suffered from the time the tenant moved out through to December 2019. Based on all of the evidence submitted to the Board, I agree with the landlords that there was no way that they would have been able to re-rent the unit with the smell that they had reported. And although it did take the landlords longer than the 8 weeks they were quoted for a full restoration of the property by a professional company, they had in fact minimized their damages by doing the work themselves.
48. Accordingly, I find that the landlords are entitled to the following:
- Cushion flooring installation \$431.74
 - Baseboard heater installation \$185.24
 - Enzyme Treatment \$1700.00
 - Drywall Installation..... \$2000.00
 - 301.25 hours of personal labour \$6025.00
 - Repair Materials..... \$7629.05
 - Lost rental income\$11,795.00

 - Total.....\$29,766.03

Issue 2: Hearing Expenses

49. The landlords submitted a receipt showing that they had paid a fee of \$20.00 to file this application and a receipt showing that they were charged \$300.00 to hire a process server. As the landlords’ claim has been successful, the tenant shall pay those hearing expenses.
50. The landlords had also indicated on their breakdown that they had spent 32 hours preparing their evidence for this hearing and they are claiming \$640.00 in compensation. Policy with this section is that time spent preparing for a hearing is not a claimable expense, and therefore that portion on their claim does not succeed.

Issue 3: Security Deposit

51. The landlords stated that the tenant had paid a security deposit of \$900.00 on 06 May 201. As the landlords' claim has been successful, they shall retain that deposit as outlined in this decision and attached order.

Summary of Decision

52. The landlords are entitled to the following:

- a) Compensation for Damages.....\$29,766.03
- b) Hearing Expenses \$320.00
- c) **LESS: Security Deposit..... (\$900.00)**
- d) Total Owing to Landlords.....\$29,186.03

13 January 2021

Date



John R. Cook
Residential Tenancies Tribunal