SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Tagliapietra v. Cake*, 2023 NSSM 33

Date: 20230724
Docket: SCCH 23-519965
Registry: Halifax

Between:

Veronique Tagliapietra and Carol Tagliapietra

v.

John Kenneth Martin Cake

Adjudicator:	Dale Darling, K.C.
Heard:	May 25, 2023, in Halifax, Nova Scotia
Decision	July 24, 2023
Counsel:	Matthew Moir, for the Appellants Katie Brousseau, for the Respondent

By the Court:

[1] This is an appeal of a Decision and Order of the Director of Residential Tenancies rendered by Residential Tenancies Officer, Linda Hardy, dated December 15, 2022.

[2] In her decision, the Officer reviewed the Landlord's claim for $20,596.20 for damages to the unit and unpaid rent, and the Tenant's claim for rent relief, moving expenses, and return of security deposit and application fees.

[3] The Officer allowed $1,150 for unpaid rent for April, 2022, and disallowed the Landlord's claim for rent in May and June 2022. The Officer found that while the Tenant did not pay the rent for April, even though he moved out near month's end, the evidence supported that the Landlord had agreed to the termination of the fixed term contract which would have ended on June 30, 2022, as she found the Landlord had a buyer for the property. The Officer further found that the Landlord's claim for damages and repairs was largely intended to "make the premises presentable for potential buyers". She allowed the Landlord's claim as follows:

- $7,633.67 claim for contractor repairs to walls, baseboards, door and painting, reduced to $1,272.28 based on evidence and normal wear and tear.

- $240.35 for changing the locks

- $1,865.87 for cleaning and garbage removal.

- $4,242.42 for the cost of replacing flooring and laminate, and carpeting was disallowed due to lack of evidence to support the need for replacement.

- $1,286.68 for a fridge replacement was disallowed as the Officer found that only minor repairs were required. The replacement cost of a stove was disallowed based upon insufficient evidence.

- $454.25 as the cost of a microwave range hood replacement was disallowed due to lack of evidence.

- Various other relatively minor headings such as a missing curtain rod, lighting materials, shelf materials and vents were disallowed either due to lack of evidence or normal wear and tear.

[4] The Tenant's claim for rent relief, the cost of moving, return of security deposit and application fee were disallowed, and Mr. Cake has not pursued them in this appeal.

[5] The Landlord now comes before this Court and seeks the following:

Contractor expenses $7633.67.

Taylor Flooring expenses $4242.42

Fridge and stove replacement $2460.98.

Maid 4 U Cleaning Service $1865.87.

Basement window replacement $373.75.

Microwave range hood replacement $454.25.

Atlantic Locksmith, replacing and re-keying locks $240.35.

Shelf and rod replacement in master bedroom closet $66.34.

Unpaid rent for 2022 April, May and June. $3450.

Filing Fees Small Claims Court $199.30.

Bailiff fees $115

General damages $100.

Six months interest on restoration, expenses at 4% $381.25.

For a total claim of $21,549.38.

[6] An appeal from a decision of the Director of Residential Tenancies is, at the Small Claims Court, a hearing *de novo,* which means it is a “new” hearing in which I am not bound by the decision of the Director, can consider any new evidence tendered, as well as the record before the Officer, which was also

provided to me. I can affirm, reverse or vary the decision of the Officer, depending on what I find to be confirmed by the evidence.

[7] Both parties were represented by counsel in this matter and provided evidence to support their position. I do not know exactly what evidence was before the Officer in this case, as it is or has become the practice of the Director of Residential Tenancies not to provide the evidence submitted as part of the return to this Court on appeal. I have reviewed the evidence provided to me, as well as considered the testimony of the witnesses in arriving at my decision. I did not review an affidavit provided by Mr. Cake from his former partner, as she was not available at the hearing for cross examination and upon inquiry it became clear that her evidence would not have differed from Mr. Cake's regarding the move in status of the home.

[8] I am awarding the amount of $2968.72 to the Landlord in this matter. My reasons follow.

Legislation:

[9] The *Residential Tenancies Act* creates Statutory Conditions governing tenancy which require the tenant to maintain the rental premises in a state of "ordinary cleanliness", and to be responsible for repairs where damage is caused by a wilful or negligent act:

> Statutory conditions 9 (1)
>
> Notwithstanding any lease, agreement, waiver, declaration or other statement to the contrary, where the relation of landlord and tenant exists in respect of residential premises by virtue of this Act or otherwise, there is and is deemed to be an agreement between the landlord and tenant that the following conditions will apply as between the landlord and tenant as statutory conditions governing the residential premises:
>
> Statutory Conditions
>
> Condition of Premises - The landlord shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any statutory enactment or law respecting standards of health, safety or housing.
>
> ….
>
> 4. Obligation of the Tenant - The tenant is responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by wilful or negligent act of the tenant or of any person whom the tenant permits on the premises.

[10] What these sections mean is that Landlords who are the owners of the property are responsible for repairs to any damage, provided that that damage is not caused by either an intentional or negligent act by the Tenant or those the Tenant permits on the property. "Damage" caused by normal depreciation is exactly what it sounds like, the day-to-day diminution in value caused by the "wear and tear" of daily living. Paint gets chipped. Floors get scuffed. "Damage" caused simply by the act of living in the premises, is to be expected and is not the responsibility of the Tenant.

[11] In terms of cleaning of the rental property, the Tenant is responsible to maintain "ordinary cleanliness". What does "ordinary" mean? I take it that the Act intends a Tenant to sweep, vacuum as necessary, mop floors, and deal with

garbage appropriately. Ideally, those activities are conducted throughout the tenancy. However, at the very least, when the tenancy ends, the Landlord is entitled to expect the return of a rental which such cleanliness that one could walk in the front door and start living in the premises.

[12] The question before the Court in this case, is to determine whether the standards required by the Act were violated by the Tenant such that the amounts sought are justified. As the Landlord makes the claim that standards were violated, the onus rests upon them to establish on a balance of probabilities, that the breach occurred.

Decision:

(a) The history of the tenancy:

[13] The evidence showed that there existed between the parties a fixed term lease for a 3 bedroom house, renewed annually, from September of 2016 until 2021, initially with Mr. Cake, his partner and two children, and later with just Mr. Cake and his children as residents.

[14] On February 8th, 2022 Mr. Cake received a text message from the Landlord stating that they were selling the property and would not be renewing the lease.

Through a chain of events discussed below, Mr. Cake and his family moved out towards the end of April, 2022.

[15] All of the evidence suggests that the relationship between the parties up until the time of termination of the tenancy, was collegial.

[16] April 2022 came, and the evidence shows that Mr. Cake vacated around April 25, 2022. For the reasons described below, I have found that ending the lease at the end of April 2022 was a mutual decision between the parties. Mr. Cake told the Landlord by text that they could keep the damage deposit, saying, “there are a few small things that need to be fixed up do you (sic) 5-6 years of living there so take the damage deposit and do it.” He advised he was expecting a payment which would allow him to pay the rent for April, and that paying that rent as well as the damage deposit for a new property was challenging.

[17] The evidence is clear that Mr. Cake did not pay rent for April, May or June 2022.

[18] Ms. Tagliapietra filled out the “move out” portion of a Rental Unit Condition Report on April 25, 2022. Mr. Cake was not present when that occurred. I will review some of the headings in detail later in this decision, but about 98 % of the items under review were marked by her as “D” (damaged) or “DT” (dirty).

[19] Some time after that, the Landlord filed the claim described above (I do not know exactly when because that information was not filed before me), and Mr. Cake also filed as described above.

[20] With respect to a possible sale, at the hearing before me, Ms. Tagliapietra testified that the state of the property mean that she was “too ashamed to show a place like that”, and the decision was made to re-rent the home at $1950.00 per month.

[21] This statement was somewhat confusing, as the text sent to Mr. Cake on February 28, 2022 stated “sorry to inform you that we are unable to offer another fixed term lease for our rental as we have a potential buyer for the place and they require it to be vacant”.

[22] I can only take that to mean that the Landlords had a potential buyer who had not seen the property. Certainly, by July 1, 2022 the property was rented, and so could have been shown sometime before that time. The Officer found that the intention of the Landlord was to prepare the house for sale, but that is not so clear on the evidence before me. In any event, the lease was a fixed term lease, and so the reason for termination, is not an issue that I must decide.

[23] In the February text, the Landlord also offered to provide Mr. Cake with a reference letter for a prospective Landlord. That letter was provided March 5th,

2022 and it also referenced that an offer of sale was the reason for the termination of vacancy. Mr. Kenny was described in that letter as a "good tenant" who was "conscious to pay his rent on time."

(b) The Condition of the property, and "normal wear and tear":

[24] I heard from a number of witnesses in this proceeding on this point. For the Appellant, Mr. Patrick Wood from Taylor Flooring testified with respect to the invoices relating to replacement floor surfaces and carpeting. Mr. Tracey Melanson testified with respect to the maintenance services that he had provided to the landlord over the term of the tenancy and the repair services provided after the tenant vacated the property. Ms. Leah Munroe, owner of Maid 4 U Cleaning Services, testified as to the extensive cleaning services provided.

[25] In addition, Ms. Tagliapietra testified as to the lease, the work that was done on the premises after termination of the tenancy, and what she observed after Mr. Cake vacated the premises on or after April 25, 2022, by way of a video walk around the interior of the premises with her cell phone. Central to her evidence was an "in and out report" refenced above. Mr. Tagliapietra testified briefly as to his text messages with Mr. Cake regarding the ending of the lease, and Mr. Cake testified as to his understanding of the lease and the condition in entered, and left the tenancy.

[26] There are two documents of relevance with respect to the expectations of the parties. One is the Rental Unit Condition Report referenced above, and the other is Schedule “B” to the Lease signed in June of 2021 between the parties, which outlined the expectations of the Landlord, largely with respect to cleaning.

(a) The Rental Unit Condition Report (the “Report”):

As referenced in *Hage Investments Limited, v. Fakhra, 2017 NSSM 19,* a case provided to me by the Respondent, rental condition reports such as that used here are a form provided by Service Nova Scotia to protect the interests of the parties. Generall speaking, they are not an admission of liability.

Even if these forms could ever be used as some form of admission or contract, this one could not be used in that way, as the “parties” as the “in” and “out”, were not the same. At the beginning of the tenancy the evidence confirmed that the Report was filled out by a property manager and Mr. Cake, but at the end of the tenancy, it was filled out only by Ms. Tagliapietra, who says that Mr. Cake was avoiding doing an out inspection.

Whether that was the case or not, what the parties ended up with, was a snapshot opinion as to the status of the house in 2016, from Mr. Cake and the property manager, and another snapshot in 2022 at the out inspection from Ms. Tagliapietra. The form therefore proves nothing, except where some link can be drawn between the in an out inspections, as I will reference below as appropriate.

(b) *Schedule B* of the 2021 Lease:

This Schedule was signed as part of the Lease by Mr. Cake, and contains a large amount of cleaning requirements upon termination of the Lease. As they relate to the claims made, I will reference them in this decision.

(c) The claims for compensation:

i) Maid 4 U Cleaning Service $1865.87

[27] I am going to start with this head of damages, as it informs many of the other claims being made.

[28] Ms. Munroe's evidence was very clear – the house was very dirty, and difficult to clean. The video evidence provided by the Landlord also shows evidence of a lack of cleaning before departure. Mr. Cake himself admits that the house was not as clean as it should have been (although he disputes that it amounts to damage).

[29] Certainly, anyone who has vacated rental accommodation can confirm that what Mr. Cake says he did, sweeping, would not be adequate. Like the Officer, I find that based upon the evidence, the money paid to Maid 4 U Cleaning Service, to conduct two days of cleaning, was necessary in order to create a state of ordinary cleanliness to the rental unit.

ii) Fridge and stove replacement, $2460.98

[30] The fridge and stove are one of the categories where the lines are drawn between the parties as to what constitutes normal wear and tear and what constitutes damage. The Report on the "in" portion said nothing about the refrigerator. The "out" stated "to be replaced". Schedule B had a requirement that the refrigerator be cleaned upon vacating the unit (which, from the photos provided, I find was not done).

[31] My short answer is replacement of appliances, is that appliances that no longer work due to established negligence or intentional acts on the part of the Tenant, are the responsibility of the Tenant. Anything less than that I cannot find to impose a replacement requirement on the Tenant.

[32] Certainly the evidence provided indicates that the fridge was dirty, and that there was a cracked bar and a missing butter dish cover. Ms. Tagliapietra says that the repair of these items would cost more than the cost of a refrigerator. No evidence was provided on this point.

[33] There were also a few light indentations of the outside door of the refrigerator.

[34] I disagree that a refrigerator could be rendered useless because of those two missing elements, and I disallow the cost of the refrigerator.

[35] The stove "in" Report states "working". The "out" Report states it must be replaced. Schedule "B" creates a requirement to clean the stove and oven upon vacating the unit, which I find was not done.

[36] Ms. Tagliapietra says that she did not attempt to turn on the stove, as it constituted a fire hazard. There is no evidence to this effect, and clearly, no attempt made to clean the stove (which Ms. Munroe confirmed). The photos

submitted show a stove that is dirty, but dirt alone does not render a large, expensive appliance useless in the absence of evidence of any attempt to remediate the dirt. I disallow this claim.

iii) Contractor expenses $7633.67:

[37] The Officer reduced this portion of the claim to $1,272.28 based on "normal wear and tear, depreciation, testimony and evidence. The Landlord was also making the premises presentable for buyers".

[38] An invoice was provided in support of this portion of the claim from Ultra Clean Carpet and Upholstery Repair. Approximately half of that amount ($6637.99) relates to an item titled "paint all surfaces and trim throughout the unit". The other half is largely associated with minor expenses such as repairing baseboards, but there are also large expenses for a new screen door for the front entry ($647.99 plus $200.00), which was described by Mr. Tracey Melanson, the owner of Ultra Clean who did the repairs as "damaged beyond repair" while suggesting it had been getting caught in the wind. There was a $450.00 cost for pressure washing the deck, and $250.00 for a new bathroom door.

[39] The "in" report indicated "front screen door to be fixed" and scratches on front door.

[40] Mr. Cake admitted in his evidence that the bathroom door had been damaged after his minor son locked himself in and could not get out, and he had to break the door to release him.

[41] Of these expenses claimed, I allow $250.00 for the bathroom door, as although I take Mr. Cake's point about the necessity, the damage was intentional.

[42] I disallow all other claims from this invoice. After the amount allowed for cleaning, painting the entire house goes well beyond normal cleanliness, although it is the Landlord's option. I find that the screen door needed repair in a manner that cannot be attributed to the Tenant. There is no evidence that the Tenant created a requirement to pressure wash the deck, which would be part of normal maintenance.

[43] I find that the expenses incurred were with the intent to restore the property to a pristine condition, not one of ordinary cleanliness and repair, and I therefore disallow them.

[44] The amount awarded under this heading is therefore $250.0 plus HST for a total of $287.50.

iv) Taylor Flooring expenses $4242.42

[45] This claim was accounted from in two invoices, one for $2,964.42 for carpet install on two flights of stairs, and replacing planks on steps, as well as vinyl install in a bedroom.

[46] The other invoice is for $1, 278.02 with for the living room, saying, “the client is looking to replace vinyl click flooring in living room with laminate.

[47] Mr. Patrick Wood who is a Sales Manager for Taylor Flooring testified for the Appellant. He never saw the floors in question, but was shown pictures of the floors in question, identifying scratches that he testified meant the entire floor had to be replaced (patching was not possible). He described the damage to the stairs as “more than normal wear and tear”, but in cross examination said that the damage was more soil engrained in the carpet, rather than damage.

[48] Ms. Woods, who cleaned the house, testified that she vacuumed the stairwells. On cross examination, she testified that she “didn’t recall” if she used a rug shampooer.

[49] Schedule B of the Lease stipulated that the “carpets are to be professionally cleaned upon vacating unit”.

[50] I have reviewed the photos and videos provided by the Landlord of both the flooring and the stair carpets at issue. The “in” report for the living room floor

states “indents in front of window”, and the other elements at issue are listed as “clean”.

[51] I understand Mr. Wood’s evidence as to how the floors could be replaced, but that does not answer the question of whether scratches constitute grounds for replacement. I have no evidence as to how such scratches occurred, and Mr. Cake was not asked in his evidence to account for them. With respect to the carpeting, I find that (in a similar vein as with the stove), no attempt was made to clean the carpets, and the evidence (including the photos provided) supported that dirt, rather than wear was the issue, and that no attempt at shampooing the carpet was made.

[52] I therefore disallow these claims, as I find that “normal wear and tear” means that a landlord cannot expect floors and carpets to be like new, and that that was the standard being sought by the Landlord in this case.

v) Basement window replacement $373.75

[53] There is no evidence before me that establishes on a balance of probabilities that the window in question was broken by Mr. Cake. It is in fact impossible to assess anything about this window as it does not appear on the Report. I am denying this claim.

vi) Microwave range hood replacement $454.25

[54] Ms. Tagliapietra's evidence was that she was informed that the microwave was broken in January of 2022, and that it was on "backorder for 4 months". However, there is no evidence that prior to the filing of this claim, the Landlord told the Tenant that replacing the range hood or its door was their responsibility. I am denying this claim due to insufficient evidence of negligence on the part of the Tenant.

vii) Atlantic Locksmith = Replace/Rekey Locks $240.35

[55] I am allowing this expense, as the evidence confirms the keys were not left in the unit. Had they been, I would not have allowed the cost of rekeying, as that is a cost to be borne by the Landlord.

[56] In the circumstances, I agree with Officer Hardy that for payment for re-keying the locks should be allowed.

viii) Unpaid rent 2022 April, May and June - $3450

[57] I agree with Officer Hardy that rent for April 2022 should be granted. The evidence is clear that the parties had an agreement that Mr. Cake would move out by the end of that month. Ms. Tagliapietra in her evidence stated that "We agreed if he wanted to leave early he could provided he paid rent for April", but there are repeated texts which make it clear the agreement was that his oligations for rent, ended on April 30, 2022.

[58] I cannot find any evidence that the parties ever commonly understood payment as a quid pro quo. The most that can be said was that rent for April was expected, by both, but I cannot find that the failure to pay April's rent made May and June somehow payable as a result. The Amount of $1,150.00 for April is allowed, and the claim for rent for May and June is therefore disallowed.

ix) Filing Fees Small Claims Court $199.30

[59] As this decision largely repeats that of the Board, success is divided, and it is an appropriate case for parties to bear their own expenses. This amount is not allowed.

x) Bailiff fees $115

[60] For the reasons described filing fees, this amount is not allowed.

xi) General damages $100

[61] This amount is not allowed. The behaviour of the Tenant in leaving the house dirty was upsetting to Ms. Tagliapietra, but it does not amount to high handed or cruel behaviour meriting an award for general damages.

xii) Six months interest on restoration, expenses at 4% $381.25

[62] In my discretion I decline to award interest in this case.

Conclusion:

[63] I have reviewed all of the documentation that was provided to me , as well as considering the oral evidence provided by the parties and their witnesses.

[64] The amount awarded by the Officer was $2,681.22. I found the calculation in the decision to be confusing, as the Officer's decision initially added up to $4528.50, to which it appears that a 28% reduction was applied to that amount, apparently on the grounds that "the landlord's claim for damage and repairs was to make the premises presentable to potential buyers". I find that the reasons for such a reduction should have been addressed under the heads of compensation awarded, if applicable, as they contradict some of the findings made, especially as to cleaning costs. There are no grounds established by the Officer for a blanket reduction.

[65] I appreciate the thorough review of evidence provided by counsel for both parties, and in summary, I award the following:

Cleaning: $1865.87

Contractor expenses: $287.50

Lock replacement: $240.35

April 2022 rent: 1150.00

For a total of $3543.72 less the $575.00 damage deposit to be retained by the Landlord, for a total of $2,968.72.

[66] An order will issue accordingly.

____

Dale Allane Darling KC
Adjudicator

Dated at Halifax, Nova Scotia on July 24, 2023