

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

RESIDENTIAL TENANCIES DIVISION

RESIDENTIAL TENANCIES LIST

VCAT REFERENCE NO. R2019/3769

CATCHWORDS

Application for bond and compensation pursuant to sections 210, 417, 418, 419 of *Residential Tenancies Act 1997*.

APPLICANTS	Motty George Reena George
RESPONDENTS	Anastasia Papalaskaris Andrew Caruana
WHERE HELD	Moorabbin
BEFORE	K. Kirmos, Member
HEARING TYPE	Hearing
DATE OF HEARING	21 February 2019 and 16 April 2019
DATE OF ORDER	25 July 2019
CITATION	George v Papalaskaris (Residential Tenancies) [2019] VCAT 1110

ORDERS

The Tribunal orders and directs:

1. The Residential Tenancies Bond Authority to pay the landlords \$1144.25 of the bond, and to pay the balance of \$1853.75 to the tenants.
2. All other claims are dismissed.

K. Kirmos
Member

APPEARANCES:

For Applicants:

Ms Reid, and Mrs George and Mr George, in person

For Respondents:

Mr Caruana in person

REASONS

Background

- 1 Mr and Mrs George (the landlords) entered into a tenancy agreement in January 2018 with Ms Papalaskaris and Mr Caruana (the tenants) for a fixed term of 12 months at a rent of \$2988 per calendar month (the lease). The tenancy ended on 18 January 2019. The premises consisted of a main house and a rear self-contained unit sized approximately 14 squares.
- 2 The landlords claimed compensation pursuant to sections 417, 418, 419 and 210 of the *Residential Tenancies Act 1997* (RT Act) of \$3601.95 for unpaid rent, cleaning and the tenants' damage to the rented premises. The bond of \$2998 is lodged with the Residential Tenancies Bond Authority. With the exception of the cleaning, none of the work claimed had been undertaken at the time of the hearing.
- 3 The landlords were represented at the hearing by their agent, Ms Reid, and Mr Caruana gave evidence for the tenants.

The evidence

- 4 I have very briefly summarised the relevant evidence given by the parties, the agents and the witness below. I was given documents, including lease, unsigned condition report, photographs, correspondence, emails, quotes, invoices and miscellaneous other documents filed with the Tribunal. Ms Reid had taken the vacate photos on 18 January 2019.

The landlords' claims

Rent owing

- 5 The landlords said that there was rent owing of \$394.25 from 15 January 2019 to the date that the tenancy ended on 18 January 2019.
- 6 The tenants did not dispute the claim.

Cleaning and carpet cleaning

- 7 The landlords claimed \$1214 for internal cleaning and carpet cleaning. Their agent, Ms Reid, stated that the property was spotless at the commencement of the tenancy and filthy at the end. Rubbish had been left on the front lawn which was not removed, and the carpet had been ruined. There were blood stains on the carpet and drapes. The rangehood filters in the main house kitchen were dirty. The landlords claimed that the premises were not let before the tenants moved in, and the landlords had cleaned the premises just before the tenancy. The property was in magnificent condition before the tenancy. They bought the premises in December 2017, it was about 13 years' old but they did not know its history.
- 8 The landlords said that there were six stains on the concrete outside from the tenants' barbecue which could not be removed, and there was blood

inside the premises. The landlords intended to move in after the tenants vacated, but had not done any of the repairs. The landlords said that Anex Services Pty Ltd had cleaned the premises. They provided a quote for \$1034 but no invoice.

- 9 The tenants stated that they engaged a cleaner throughout the tenancy and paid \$190 each fortnight. A professional cleaner cleaned the premises just before they vacated. The rear unit's rangehood was dirty at the commencement of the tenancy and the stove was unsafe. They felt that the unit was not habitable. They pressure cleaned the outside concrete, but it was unsealed and exposed aggregate dirtied easily.
- 10 The tenants denied that there was any blood on the carpets and drapes. They said that they did not smoke inside so there were no burns. They queried the reliability of the landlord's evidence.

Missing, Damaged and Dirty Fittings

- 11 The landlords claimed \$1350 for various items listed in a quote, none of which had been repaired, replaced or cleaned. They said there was a special light over the bench in the kitchen and in the lounge, and both globes were missing. There was a special clause in the tenancy agreement which required the tenants to replace them when they burned out. The landlords said that the globes did not burn out because of an electrical fault. They had their electrician check the lighting and it was all fine. The cost reflected what it cost the landlords to purchase the globes. There was also a stainless steel plug missing from the double sink in the kitchen and a missing bedroom latch
- 12 The tenants conceded that they may have lost one of the plugs but that \$50 appeared to be a lot to replace it. There had been light issues with the two-way switch flickering, but did not know why any globes would be missing. They were unaware if the globes were missing, but the replacement price also appeared high.
- 13 The landlords claimed that the filters from the rangehood had been tossed in the garden and they needed to replace the bits that were missing. The tenants agreed with the claim.

Floor ducts

- 14 The landlords said that there were two covers to the ducted heating with broken slats, and the box that held the duct outlet was bent. They believed that the floor duct covers in the living room and in bedroom two had been pulled out and maliciously damaged.
- 15 The tenant conceded that someone may have stood on the duct covers, but did not agree that there was any damage to the box. If they were broken, they were agreeable to pay \$80 to repair them.

Filters

- 16 The landlords explained that there were two separate claims related to the rangehood filters: they had to clean the filters in the main house kitchen rangehood, and replace filters that had been pulled out of the back unit's rangehood. While they produced two different quotes for what might appear to be the same thing, there was no duplication of filter clean.
- 17 The tenants did not agree with the claim and said that their cleaner had cleaned the filters in the kitchen.

Speakers

- 18 The landlords said that there were wall mounted speakers hardwired into the back unit, which had been pulled out, and tendered photographs of the damage.
- 19 The tenants denied that the speakers were hardwired. They had removed the speakers, placed them under the sink and put up a curtain without consent.

Curtain rail

- 20 The landlords claimed that the tenants removed one of the existing curtain rails in the kitchen of the main house, moved it to another position and drilled new holes without consent. It was going to cost them \$250 to make good.
- 21 The tenants said that they had not touched the curtain at all.

Blood

- 22 The landlords believed there was blood on the back of the curtains and on the carpet and tendered photographs and an emailed "report" from the carpet cleaner. The tenants denied the claim and reiterated that the premises were left clean.

Concrete clean

- 23 The landlords said that although the tenants returned the keys at 5pm, there was a man unsuccessfully trying to clean the concrete with a pressure hose at the premises. The landlords said that the concrete was left greasy and stained and the spots could not be removed.
- 24 Mr Caruana said that that was him trying to remove the barbecue stains, but it was exposed aggregate and the pressure cleaning could only remove some of the stains.

Tiles

- 25 The landlords said that tiles had fallen off the external steps and landing, and therefore the tenants should be responsible to replace them. They had no evidence as to how or under what circumstances they fell off. They refuted the tenants' assertion that the problem was with how the tiles were laid, by stating that he had only just purchased the house a year or two

previously, and it would not have been sold that way. Tiles would not fall for off for no reason.

- 26 The tenants stated that they were not responsible for any damage to the tiling which had been laid on top of old tiles. They believed that the adhesive had failed. There was no bullnosing on the steps, and the tiles were drummy and moving. The damage was not related to anything they had done, but was due to bad workmanship.

Landlord's application for incidental expenses

- 27 The landlords stated they were disadvantaged as they could not move into the rented premises and still hadn't moved in. They arranged annual leave to move in on 14 January 2019, but the tenants did not move out on the termination date in the notice to vacate (14 January 2019), which was the end of the fixed term tenancy agreement. They had to share with a friend for four days. They had to pay for two mortgages. The landlords claimed \$580 and the application fee of \$63.70. They did not present any documents in support of this claim.
- 28 The tenants did not agree with the claim but were willing to pay rent until the vacate date.

Reasons for Decision

Proving the claims

- 29 The burden of proof rests with whoever brings an application to the Tribunal. This means that an applicant must produce sufficient evidence during the course of a hearing to support what they say, and to prove their case. An applicant should also produce quality evidence to back up what they say.
- 30 The RT Act relevantly provides that a tenant or a landlord may apply to the Tribunal for compensation because the other party failed to comply with the tenancy agreement or that party's duties under the Act (section 210). Even though a fixture or fitting has been damaged by the end of a tenancy when it was undamaged at the start, it does not automatically mean that the landlord is entitled to compensation. The landlord has to prove and not merely assert, that the tenant was the person who damaged it and that the tenant failed in his or her obligation to avoid damaging the rented premises. Normal living is expected to have a deleterious effect on the state of rented premises. Breakages, scuff marks, scratches and dents are not necessarily inconsistent with normal wear and tear, and the landlord is not entitled to compensation simply because things wear out.
- 31 Section 211 of the RT Act details matters which may be considered by Tribunal in making its decision in respect of applications made under section 210, including whether or not the person from whom compensation is claimed has taken all reasonable steps to comply with the duties under this Act or the tenancy agreement, whether or not the applicant has

consented to the failure to comply with the duties, whether or not money has been paid to or recovered by the applicant by way of compensation, whether any reduction or refund of rent or other allowance has been made to the applicant, whether or not action has been taken by the applicant to mitigate the loss or damage, any offer of compensation, and any action taken by the person from whom compensation is claimed to repair the damage at that person's own expense.

32 I consider the evidence that the parties bring to the hearing, and decide if an applicant has proven, through evidence, their claim. I take into account whether the loss is reasonable, having regard to the general conduct of the parties, the age and condition of any items damaged, whether items have been repaired or replaced, and whether attempts have been made to ensure the loss is the least that is reasonably possible. The fact that a landlord has not undertaken repairs is not necessarily a block to a claim for compensation, but it may make the task of proving loss problematic. In this instance, I am satisfied that the landlords intend to make good the tenants' damage. I consider their quotes a mere approximation of their loss since the quotes have not been accepted, and open to challenge.

33 In summary and relevant to this application, a tenant is duty bound to report damage to the rented premises (section 62), keep premises reasonably clean (section 63) and avoid damaging the rented premises (section 61), fair wear and tear excepted.

Rent and Other Conceded Amounts

34 The tenants already agreed to the claims for rent until the date they vacated and to replace the unit's rangehood filters, and they were prepared to pay for the damaged ducts. Having regards to the parties' evidence, I consider that these claims are well founded and allow \$674.25.

Missing Items

35 Section 27 of the RT Act provides that a term of a tenancy agreement is invalid if it purports to exclude, restrict or modify the application to that tenancy agreement of all or any of the provisions of this Act. I consider that the special clause which purported to place the obligation to replace light globes on the tenants is an attempt to modify the application of the RT Act, in that it purports to oblige the parties to ignore the concept of fair wear and tear, and make the tenants' obligation to replace the globes absolute. The clause is therefore invalid. The landlords claim that the globes were missing. The tenants deny removing the globes, but also suggested in their evidence that they may have simply burned out. If globes burn out or door latches fall off through the course of a tenancy, in the absence of clear evidence to the contrary, this is consistent with fair wear and tear and a landlord is not entitled to be compensated by a tenant. The landlords have not proven that the tenants broke or damaged the globes, or that they were removed for any reason other than that they burned out. The claim is dismissed.

- 36 Having conceded that the stainless steel plug may have been lost, and having provided no evidence to contradict the landlords as to the replacement cost, I find that the tenants are required to compensate the landlords \$50.

Speakers

- 37 Having looked at the landlord's photographs of the relocated speakers, I am satisfied that, on balance, they were indeed hardwired, and their unauthorised removal by the tenants caused damage for which they should compensate the landlords. I allow \$100 for rectification.

Cleaning

- 38 I received an invoice of \$120 for carpet cleaning, and \$60 for the preparation of a "report" by the carpet cleaner in the form of an email to support the landlord's claim that there was blood in the premises. Having considered the photographs, I accept that \$120 is fair for cleaning the stains off the carpets, but I do not consider that the landlords are entitled to be compensated for the report. I am not satisfied that the stains were blood. I give no weight whatsoever to the "report". The document does not comply with the Tribunal's practice note (PNVCAT2) about expert evidence. It is unsigned, it does not detail the author's qualifications and experience, it does not detail the chemical tests, if any, that were done to ascertain that there was blood or that it related to the tenants. It is, in short, devoid of any merit. The compensation is ordered simply because there was staining on the carpets, and that is inconsistent with the carpets being reasonably clean.
- 39 While I was given a very large additional cleaning quote by the landlords, I was not presented with an invoice or other evidence of payment. I am not persuaded that additional cleaning of \$1034 was required to bring the inside of the premises generally to the level of being reasonably clean, or that the landlords in fact spent the \$1034 they claimed. Their photographs nevertheless support a view that the premises were not uniformly reasonably clean at the end of the tenancy. While there were some items left behind and some surfaces requiring additional attention, I consider \$150 would be sufficient to cover a fair cost for the additional cleaning.
- 40 As to the barbeque stains outside, I accept that unsealed aggregate is inherently prone to staining. The tenants are not using the premises unreasonably in cooking outside, however, once it became apparent that allowing their barbeque to drip onto the unsealed concrete might cause staining and damage, they ought to have taken measures to prevent it. I allow \$50 towards removal of the stains.
- 41 The claim to reposition the curtain rail which the landlords believed was moved is dismissed. The photographs in the entry condition report are small. The photographs at the end of the tenancy are zoomed in and invite an unfair comparison. It is impossible to ascertain if the curtains were in fact moved, and there may well have been other screw holes both at the

start and well as at the end of the tenancy. The landlords have simply failed to prove the curtain rail was indeed removed and repositioned by the tenants.

- 42 In respect of the claim to repair the tiles, telling the Tribunal that tenants ought to be responsible to pay to fix tiles that have come loose during the tenancy because “they must have damaged them”, or because “no one would sell house like that” is unhelpful. Conjecture is not proof. The landlords have failed to prove that the tenants damaged the tiles through any fault of their own, and the claim is dismissed.
- 43 The landlords had done no work to the premises other than the cleaning. They claimed that the tenants’ failure to vacate promptly and the state in which the tenants left the premises caused them additional expense, for which they claimed compensation of \$580 and the application fee of \$63.70. They are not entitled to be compensated for that. They could have mitigated their loss and moved in sooner by ensuring repairs were done promptly. It is no answer that they cannot afford to do the repairs. It was their choice to delay. As to the entitlement to be compensated simply because the tenants’ failed to vacate on the termination date stipulated in the notice to vacate, if it were of such significance as to justify compensation, then they could have sought a possession order which could have been heard on or immediately after the termination date.
- 44 Section 115B of the *Victorian Civil and Administrative Tribunal Act 1998* (VCAT Act) requires the Tribunal to have regard to the nature of and issues involved in the proceeding and the conduct of the parties (whether occurring before or during the proceeding), including whether a party has caused unreasonable delay in the proceeding or has failed to comply with an order or direction of the Tribunal without reasonable excuse and the result of the proceeding, if it has been reached, before making an order as to fees.
- 45 In the absence of the factors which enliven section 115B, respondents are generally entitled to their “day in court”. They may require applicants to prove their claim in a hearing, to have the opportunity to defend their position, and allow the Tribunal to decide the claim on its merits. In this instance, there is nothing before me to suggest that the tenants acted in any way which delayed or prolonged the proceeding, or in a manner that was otherwise unreasonable. I make no fees order.
- 46 I dismiss all other claims.

CONCLUSION

47 The tenants are required to pay the landlords \$1144.25. Accordingly, I direct the Residential Tenancies Bond Authority to pay the landlords \$1144.25 of the bond, and to pay the balance of \$1853.75 to the tenants. All other claims are dismissed.

K. Kirmos
Member