

STATE OF VERMONT

SUPERIOR COURT
Essex Unit

CIVIL DIVISION
Small Claims
Docket No. 21SC673

LAWRENCE M. HASLAM,
Plaintiff

v.

KELLI DONOVAN and
BRIAN WEBB,
Defendants

DECISION

This matter came before the Small Claims Court for hearing on November 19, 2021 by Webex. Plaintiff Lawrence Haslam was present and represented himself. Defendants Kelli Donovan and Brian Webb were present and represented themselves.

Mr. Haslam owns a duplex in Gilman, Vermont. It is an old property that was not lived in for some years before he began renting it out. In June of 2019, he rented one of the units to the Defendants on a year-to-year lease. He says he had it cleaned before they moved in. A few days after they moved in, they emailed him, noting that it did not appear that the cleaners had come but that they had taken care of cleaning. They also noted that there appeared to be water damage in the ceiling of one bedroom, and that the upstairs carpet smelled of dog or cat urine, which they had tried to remove with carpet shampoo. The Defendants continued to live in the residence and paid rent.

In May of 2020, there was water dripping from the bedroom ceiling into a ceiling globe light. The tenants called it the "fishbowl," and sent a video of it to Mr. Haslam. His response was to put a tarp over the roof. This did not stop the problem, as noted below.

Around this time (May-June 2020), a family with children moved in to the other unit in the duplex. Mr. Haslam says that the Defendants were unhappy about the noise, and started making complaints about the property. He believes that their dissatisfaction with the noise from the children is the reason they started making complaints. Even if true, it does not have any impact on the respective responsibilities of landlords and tenants as to the condition of the property and notice requirements. For their part, the Defendants began to be concerned about moisture and mold in the premises. Mr. Webb began to have health problems, and was concerned that mold in the premises might be a cause. Such a cause and effect would require expert testimony, and there is insufficient testimony to link any condition on the property to Mr. Webb's health problems.

On June 29, 2020, the Defendants emailed Mr. Haslam about water stains in the bedroom ceiling, and also requested permission to conduct a test for mold, to which he agreed. The parties

signed a renewed lease in July of 2020 for another year. The Defendants began contacting health and safety officials about doing inspections of the property.

In an email in August in which he was responding to items that needed to be fixed, Mr. Haslam, who had become frustrated with the Defendants' complaints, stated that they were free to leave any time and he would not hold them to the lease.

An inspection was done in September by a fire safety official. His report details specific work that needed to be done. Smoke detectors and a CO alarm needed to be provided in 7 days. Other electrical repairs needed to be done in 30 days. The report specifically called for "inspection of all over head lights for corrosion frayed wires, water ect [sic] repair or replace fixtures."

Mr. Haslam was largely responsible about responding to the notices of problems and arranging repairs, although he was frustrated with what he perceived to be constant complaints. He arranged for new carpeting to be installed in the upstairs bedroom, which happened in October.

An inspection was done on January 18, 2021 by a Health Offider. He found mold in the basement stairwell, evidence of water damage in two bedrooms, and a globe light fixture upstairs filled with water. He required the light fixture problem to be fixed by February 5, 2021. On January 26th, the Defendants collected a mold sample and sent it away to a lab for testing. The report showed two kinds of mold. Defendants believe from online research that it is black mold. Mr. Haslam believes from the report that it was not black mold. There is insufficient expert evidence for the court to determine the type of mold and whether it had any effect on health.

At some time during the tenancy, the Defendants, believing that operation of the furnace in the basement was spreading unhealthy moldy air throughout the apartment, stopped using the furnace and blocked the air vents with foam and covered them with trash bags and/or duct tape to prevent air flow from the basement. They used many staples to affix the material to surfaces.

On February 1, 2021, the tenants moved out. By text message, they notified Mr. Haslam that they were returning possession to him that day, and made arrangements for return of the keys. They also notified him of the fact that there was no heat on in the premises. They stated that they were giving 30 days notice, and that he could apply their \$850 security deposit to the February rent. He protested in his response that they still needed to pay the rent and that the security deposit was not for rent but for damages that might be their responsibility following their departure.

In this suit, Mr. Haslam seeks \$850 for February rent, and claims a total of \$3,900 in damages related to the condition of the property as Defendants left it. Defendants seek return of their security deposit and damages of \$220 per month for 20 months (\$4,400) for loss of use of two bedrooms based on animal urine smell and water in the light fixture.

The court has heard the testimony of both parties concerning the condition of the property at the beginning of the tenancy and at the Defendants' departure, and has seen the photographs

taken by both parties, including those taken by Mr. Haslam within a few days of the Defendants' departure.

Plaintiff's claims

Defendants acknowledged when they left on February 1, 2021 that they owed rent for the month of February (giving 30 days notice), even though they turned over possession that day. Thus, Plaintiff is entitled to \$850.00 in rent for the month of February.

Plaintiff claims \$556.93 for carpet replacement. He replaced the carpet in October 2020, during the Defendants' tenancy, months after report of the animal urine smell. The invoices he relies on in making this claim are for this replacement. The evidence shows that this carpet replacement was to remedy the animal urine smell that was present when the Defendants took possession in June of 2019. When Defendants left, the carpet had been installed for a little over three months and thus was relatively new. While Mr. Haslam's photographs show a deposit of cat feces on the carpet, that is one spot, and there is insufficient evidence that the carpet needed a second replacement following Defendants' departure. Plaintiff's Exhibit 6 shows that Linda's Cleaning Service, which did a thorough cleaning after Defendants left, removed "cat poop" and did a complete scrubbing of all carpets. The court cannot find that carpet replacement was warranted following Defendants' departure. That item is not allowed.

Plaintiff claims \$63.73 for purchases of items for the bathroom, and \$1,700 for repairs/replacements of bathroom and kitchen appliances and other items. Mr. Haslam's photographs show that the bathroom was dirty, above and beyond normal wear and tear. However, there is insufficient evidence that the entire bathroom needed an overhaul. The receipts show that the entire bathroom was redone, including replacing the toilet, vanity, faucets, cabinet, light, tile floor, backsplash, fittings, toilet paper holder, and shower curtain, and that in the kitchen there was replacement of a pipe, faucet and drywall. The evidence does not support that these expenses are attributable to damage caused by Defendants. Extra cleaning is warranted, but not the cost of redoing and upgrading the bathroom or repairing and replacing kitchen items.

Plaintiff claims \$11.00 in cleaning supplies (mop, window spray, paper towels). Landlords are expected to do routine cleaning between tenancies, and these items are normal expenses for routine cleaning. This expense is not attributable to damage by Defendants.

Plaintiff paid Linda's Cleaning Service \$600.00 and \$174.66 for thorough cleaning (including the cat feces on the carpet) and for extra work having to remove staples, duct tape, foam from vents, tape on walls, and miscellaneous items from rooms and closets. Some of this cost is for regular cleaning between tenants, but some of it clearly was required as a direct result of the condition in which the Defendants left the apartment: cat feces on carpet, vents plugged with foam, staples in walls, and left-behind items. The court finds that half of the \$600 and all of the \$174.66 is for the extra work needed as a result of the condition left by Defendants. Thus, Plaintiff is entitled to \$475 in extra costs for cleanup.

Plaintiff seeks reimbursement of \$137.95 and \$655.70 for invoices from Home Depot. However, all of the items on these invoices appear to be for appliances and supplies for Paul's

Home Repair to use in redoing the bathroom and making repairs in the kitchen. For the same reason previously stated, these are not items of damage caused by Defendants.

Because Plaintiff is entitled to the \$850 rent and \$475 in damages, he is also entitled to the \$90 filing fee for a total of \$1,423.00.

Defendants' Counterclaim

Defendants seek return of their security deposit of \$850. At no time has Mr. Haslam returned the deposit or an account of how it was applied. 9 V.S.A. § 4461, a section of Vermont law on Residential Rental Agreements, provides as follows:

(c) A landlord shall return the security deposit along with a written statement itemizing any deductions to a tenant within 14 days from the date on which the landlord discovers that the tenant vacated or abandoned the dwelling unit, or the date the tenant vacated the dwelling unit, provided the landlord received notice from the tenant of that date. . .

(d) The landlord shall comply with this section by hand-delivering or mailing the statement and any payment required to the last known address of the tenant.

(e) If a landlord fails to return the security deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. . .

When Defendants left, they proposed to Mr. Haslam that he keep the deposit as February rent, but he clearly did not accept their proposal. Thus, no agreement was reached and landlord/tenant law applies. Because Mr. Haslam failed to comply with the sections above, Defendants are entitled to the return of their security deposit. They are also entitled to interest at the legal rate of 12% per annum, or \$8.50 per month for 8 months (March 1, 2021 to November 1, 2021) or \$68.00.

Defendants also claim \$4,400 for the loss of use of two bedrooms over 20 months for animal urine smell and water in the overhead light fixture. There is insufficient evidence of the loss of use of that much space over that period of time. However, a landlord's obligation is to provide premises that are "safe, clean, and fit for human habitation." 9 V.S.A. § 4457 (a). If a tenant gives notice of a habitability problem and "the landlord fails to make repairs within a reasonable time and the noncompliance materially affects health and safety," the tenant may recover damages. 9 V.S.A. § 4458 (a).

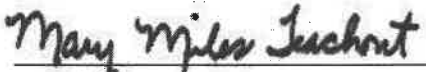
Defendants gave notice of the animal urine smell in the bedroom carpet in June of 2019, and the carpet was not replaced until October of 2020. There is no evidence that anything was done by the landlord prior to that date to remove the smell. The evidence does not support a finding that the room was completely unusable although a constant urine smell would affect use. The court finds that a reasonable amount of compensation for the effect of the carpet smell was \$10 per month for the 15 months between notice and replacement of the carpet, or \$150.

Notice of the problem of water in the overhead globe fixture was given to Mr. Haslam on May 3, 2020. This was clearly a significant safety issue, and was noted as a violation in the Health Inspection Report off January 19, 2021. It was serious enough that the inspector called for prompt correction more quickly than for other corrections. Although Mr. Haslam initially made the effort of covering the roof with a tarp, that clearly was insufficient to correct the problem since it was noted as a safety hazard requiring immediate action at the inspection months later. The court finds that a reasonable amount of compensation for this safety violation from June 1, 2020 to January 31, 2021 is \$50 per month for 7 months, or \$350.

Because Defendants are entitled to the \$850 security deposit plus interest of \$68 and \$150 + 350 in damages, they are also entitled to the \$35 counterclaim filing fee for a total of \$1,418.00.

The evidence shows that Plaintiff is entitled to \$1,423 and Defendants are entitled to \$1418, with a net difference in favor of Plaintiff of \$5.00. The court therefore issues judgment for Plaintiff in the amount of \$5.00.

Electronically signed pursuant to V.R.E.F. 9(d) on November 30, 2021 at 12:29 PM.



Mary Miles Teachout
Superior Court Judge