

Causon v Bush (Tenancy) [2012] NSWCTTT 20 (11 January 2012)

**CONSUMER, TRADER AND TENANCY TRIBUNAL
Tenancy Division**

APPLICATION NO: RT 11/59526

APPLICANT: Nicola Causon

RESPONDENT: Karel Bush

APPLICATION: Compensation for alleged damage by tenant

HEARING: 21 December 2011

APPEARANCES: Ms Victoria Bromhead appeared for the applicant;
The respondent was present in person and represented herself

ISSUES: Whether tenant is liable for alleged damage to carpet and if so, in what sum;
Whether tenant is liable for cost of removal of Foxtel cable

LEGISLATION: *Residential Tenancies Act 2010*

ORDERS

On 21 December 2011 the following orders were made:

1. The tenant, Karel Bush is to pay the landlord, Nicola Causon the sum of \$1,727.00 immediately.
2. The Rental Bond Service is directed to pay the landlord, Nicola Causon the whole of the bond plus interest of Rental Bond number K486953-3. Any amount received is to be credited against the money order.

REASONS FOR DECISION

APPLICATION/ BACKGROUND

1. This application for orders was filed by the landlord's agent on 5 December 2011. The application sought orders for payment of the sum of \$1,732.00 to the landlord.

2. The application was set down for hearing before me on 21 December 2011 at which time the parties were represented as noted above.
3. In accordance with the provisions of the Consumer Trader and Tenancy Tribunal Act 2001, s 54 the parties were encouraged to settle their dispute by conciliation. A Tribunal member assisted the parties in that regard. However, as no agreement could be reached a hearing was necessary.
4. The procedure was explained to the parties who agreed that they understood and that they were ready to proceed with a hearing immediately. No request for an adjournment was made by either party for any reason.
5. At the conclusion of the hearing the above orders were made and *ex tempore* reasons given. These written reasons are provided in response to a request from the respondent received on 4 January 2012. They have been prepared from my notes made at the hearing and my recollections of the hearing.

JURISDICTION

6. It was not disputed that the parties had entered into a residential tenancy agreement on 13 August 2010 and accordingly that the Tribunal has jurisdiction pursuant to the provisions of the Consumer Trader and Tenancy Tribunal Act 2001, s 21 and Schedule 1.

APPLICANT'S SUBMISSIONS

7. The applicant's representative gave relevant evidence on affirmation to the following effect.
8. The respondent entered into a residential tenancy agreement for the subject premises on 13 August 2010. The agreement was for a term of twelve months, commencing on 14 August 2010 with the usual continuation clause.
9. The tenant had vacated the premises on 1 November 2011.
10. The carpet in the lounge room was brand new at the commencement of the tenancy there having been no one in occupation of the premises for the previous two years.
11. At the end of the tenancy the landlord's representative was not satisfied with the condition of the lounge room carpet. The carpet was re-inspected and photographs were taken.
12. The cost of replacement of the carpet with equivalent quality was \$3,096.00. However, a "standard grade" carpet could be obtained for

\$1,657.00. Accordingly the landlord was seeking only \$1,657.00 and would pay any additional cost incurred in replacement of the carpet herself. The tenant's suggestion to patch the carpet was unacceptable because there was insufficient carpet available to carry out the work and in any event patching would create an unacceptable appearance.

13. The tenant was given permission to install Foxtel, but in doing so cables had been attached to the outside of the building. Those cables had been removed by the landlord at a cost of \$70.00 on request of the Owners Corporation.
14. The applicant relied on the ingoing condition report, photographs and quotations for replacement carpet.
15. An application for payment of water usage in the sum of \$80.00 was withdrawn.

RESPONDENT'S SUBMISSIONS

16. The respondent gave relevant evidence on affirmation to the following effect.
17. The respondent did not dispute the claim of \$70.00 for removal of the Foxtel cables.
18. In respect of the claim for compensation for the carpet it was the respondent's position that the carpet was indeed damaged. However the compensation sought by the landlord was excessive as the carpet could be successfully patched for a lesser amount.

FACTS

19. I am satisfied on the basis of the sworn evidence of the applicant's representative, the tax invoice dated 28 May 2008 and the ingoing condition report that the carpet, if not brand new at the commencement of the tenancy was unused, unmarked and in "as new" condition.
20. I am satisfied from the photographic evidence, and it is not disputed, that the carpet was significantly damaged in two places at the end of the tenancy.

FINDINGS AND CONCLUSIONS

21. I am satisfied that the proposal to patch the carpet is impractical due to there being insufficient original carpet available to do the patching. Even if there was sufficient carpet available I am not persuaded that the result would be of acceptable appearance due to the wear and tear on the remainder.

22. I am satisfied therefore that the respondent is liable for the cost of rectifying the damage to the carpet by paying damages.
23. Normally the method of calculation of damages in these circumstances is to apply a discount of 10% per year of age of the carpet (for depreciation) to the replacement cost. The cost of replacement with similar carpet has been quoted at \$3,096.00. If that sum was reduced by 30% for depreciation (as the carpet was laid in 2008) the respondent's liability would be more than \$2,000.00.
24. In this case the applicant has limited her claim to \$1,657.00, being the cost of replacement with inferior carpet. I allow compensation in that sum.
25. There is no dispute that the respondent is liable in the sum of \$70.00 for the removal of the Foxtel cable.
26. The total sum owed is therefore \$1,727.00.

J Smith
Senior Member
Consumer Trader and Tenancy Tribunal

11 January 2012