




OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2021-025

TO: Mayor and City Council

FROM: Kelea L. Fisher 
Deputy City Attorney

DATE: October 12, 2021

MEETING: October 26, 2021

RE: Damage claim of
Cristy Pelley
2326 NW 38th Place
Lawton, Oklahoma 73505

Submitted in the amount of \$15,472.00 on July 12, 2021

RECOMMENDATION: Approval in the reduced amount of \$6,316.98

BASIS OF CLAIM: Cristy Pelley is in a rent-to-own agreement with C&E Housing LLC., c/o Eric Sharum, for the property located at 2326 NW 38th Place. Mr. Sharum has given Cristy Pelley written authority to file, settle, and receive funds for the claim related to this property. Ms. Pelley alleges on April 13, 2021 at approximately 9:30 a.m. she went to the City of Lawton, Revenue Services Department to request her water be turned on. Ms. Pelly later stopped by the property after she got off work and water was running throughout the house and the property was flooded. Ms. Pelley submitted two estimates to repair the water damage. One estimate is from Hills Custom Homes, L.L.C. in the amount of \$12,730.00 to remove and replace the subfloor in the living room, install carpet and vinyl flooring, to remove and replace sheetrock in the bathroom, paint the bathroom, and to repair drywall patches in the laundry room. The other estimate is from Bob Davis Construction in the amount of \$15,472.00 to remove and replace the subfloor in the living room and bathroom, repair subflooring in the laundry room, dining room and hallway, to install carpet and vinyl flooring, to install a vanity with sink and faucets, to remove and replace sheetrock in the laundry room, to tape, texture and paint the laundry room, and to secure the substructure.

DATE OF ALLEGED DAMAGE: April 13, 2021

FACTS: According to Mark Moore, City of Lawton Meter Services Supervisor, Ms. Pelley scheduled water service restoration on April 13, 2021. At approximately 2:06 p.m. the same day, a City of Lawton Meter Services employee, in violation of departmental policy, turned the water on without making contact with Ms. Pelley or making sure someone was at the residence. At approximately 5:30 p.m., Ms. Pelley entered the house and the house was flooded. Mr. Moore pulled the City of Lawton, GPS records and water flow reports to confirm that the City of Lawton employee was at the residence and did turn the

water on. The water flow reports indicate that water was flowing for approximately two and one-half hours and emptied approximately 17,000 gallons of water into the house. The employee no longer works for the City of Lawton.

LEGAL BASIS FOR APPROVAL OF CLAIM: Pursuant to Title 51, Oklahoma Statutes, §151 *et seq.*, municipalities are held accountable in the same manner as private entities or individuals for negligent acts or omissions that result in harm to others. However, negligence is never presumed, and the burden of proving negligence and that it was the proximate cause of the harm complained of, is on the complaining party. Oklahoma Ry. Co. v. Ivery, 204 P.2d 978 (Okla. 1949).

The Claims Investigator obtained an independent estimate from Comanche Home Center for the replacement of all flooring that was affected by water damage and the repair to the sheetrock in the laundry room. The estimate total was \$6,790.80, less 50% depreciation on the carpet in the amount of \$973.79, for a total of \$5,817.01. After initially submitting her claim, Claimant also submitted a request for reimbursement for 20 hours of labor (at \$15.00 an hour) in the amount of \$300.00, for water extraction, cleanup, removal and disposal of carpet and pad. (It should be noted that the labor for some of these items was included in the initial estimates provided by Claimant but she performed the work herself with other individuals). Claimant also submitted a request for reimbursement of three high velocity fans at \$39.99 and the purchase of a bathroom vanity in the amount of \$80.00. Depreciation was not taken on the vanity due to claimant buying a used vanity to replace the damaged vanity. The additional reimbursement items, which total \$499.97, were reasonable and it is recommended that this amount be added to the Comanche Home Center estimate (less the depreciation).

In this instance, the City could be found negligent due to the City employee's negligence, therefore, this office recommends approval of this claim in the reduced amount of \$6,316.98.

KELEA L. FISHER
DEPUTY CITY ATTORNEY


Mincie Beamesderfer, CP
Claims Investigator