

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0083-03

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:06 AM on 16 June 2021 via teleconference, and was reconvened on 25 June and 04 November 2021.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as “the landlord”. The respondent, [REDACTED] hereinafter referred to as “the tenant”, also participated in the hearing.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - An order for a payment of \$8205.23 in compensation for damages,
  - An order for a payment of late fees in the amount of \$272.00, and
  - An order for a payment of \$150.00 in cleaning costs.

### Preliminary Matters

4. The landlord amended his application at the hearing. He reduced his claim for damages by \$15.56 and he struck his claim for late fees.

### Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this decision policy 9-3: Claims for Damage to Rental Premises.

## Preliminary Matters

7. The landlord amended his application at the hearing and stated that he was no longer seeking an order for a payment of late fees.

## Issue 1: Compensation for Damages - \$8205.23

### Relevant Submissions

#### The Landlord's Position

8. The landlord stated that he had entered into a monthly rental agreement with the tenant on 01 November 2018 and a copy of the executed agreement was submitted with his application (█ #1). The agreed rent was set at \$525.00 per month and it is acknowledged in the submitted agreement that the tenant had paid a security deposit of \$390.00.
9. On 03 October 2019, the tenant contacted the landlord, by text-message, and informed him that she would be moving at the end of that month. The landlord informed the tenant that her notice did not meet the 1-month notice requirement set out in the *Residential Tenancies Act, 2018*, and she agreed that she would pay rent for November 2019, as well as \$75.00 for the utilities for that month. He argued that even if the tenant had moved out on 01 November 2019, she was still responsible for the property up to the end of that month, as agreed.
10. The landlord stated that when he regained possession of the unit on 01 December 2019, he discovered that there were significant damages caused to the property, and he submitted the following breakdown of the costs to carry out repairs (█ #2):
  - Remove/Dispose flooring ..... \$200.00
  - Remove/Replace subfloor ..... \$350.00
  - Install flooring ..... \$960.00
  - Materials ..... \$2170.23
  - Labour for painting and plastering ..... \$850.00
  - Loss of 7 months' rent ..... \$3675.00
  - Total ..... \$8205.23
11. The landlord stated that when he entered the unit on 01 December 2019, he found that the faucet, which was used to supply water to the washing machine, had been left on by the tenant and the water had caused damage to all the floors at the rental property, as well as to the subfloors. With his application, the landlord submitted a video showing him turning off the running faucet when he had regained possession of the unit. He also submitted 2 other videos showing that he had removed most of the flooring in the unit and that water damage can be seen on the subfloors (█ ##14-16).

12. The landlord stated that all of the flooring at the unit needed to be replaced as a result of this damage. He stated that all the floors at the property were either carpet or cushion flooring and that they had all been installed in 2015. All these floors were replaced, and with his application the landlord submitted a receipt showing that he had paid \$1146.89 for new carpet and cushion flooring (█ #2). He also stated that he had laid laminate flooring in the bedrooms and with his application he had also submitted a receipt showing that he had been charged \$260.00 + tax for that flooring (█ #3). The carpet and cushion flooring were installed by a contractor and the landlord pointed to a 3<sup>rd</sup> receipt showing that he was charged \$560.00 to have that work carried out (█ #4).
13. In addition to the costs of replacing the flooring, the landlord also pointed to his other receipts showing that he had to purchase reducers (█ #5), floor registers (█ #6), plywood and deck screws for the subfloor (█ #7), and some materials to repair the plumbing at the property (█ #8).
14. Besides this water damage, the landlord also complained that the tenant had caused damage to the walls in many of the rooms at the rental unit and he was required to repaint the whole unit. He pointed to the video he had taken after the tenant had vacated and stated that some of this damage can be seen there. He stated that there was a hole in the porch where a rod a punctured the wall, that there were chips off many of the walls, and that there was some damage to a wall by the refrigerator. The landlord also pointed out that there was significant water damage caused to the walls in the laundry room as a result of the running faucet.
15. The landlord stated that it took him approximately 43 hours to plaster and repaint the property, and he is seeking \$850.00 in compensation for his personal labour. The landlord stated that he mostly used materials that he already had on hand, but he did point to 1 receipt (█ #9) showing that he was required to purchase a gallon of paint at a cost of \$49.97 and another receipt showing that he had paid \$21.10 to purchase paint brushes (█ #10).
16. The landlord also complained that because of all the work that he was required to carry out at the unit, compounded by the fact that the unit was vacated in winter and because of the onset of the COVID-19 pandemic, he was not able to re-rent the unit for another 7 months after the tenant moved out. He stated that he had lost a total of \$3675.00 in rental income during that period. He argued that had the tenant not caused the water damage to the unit, he would have been able to rent in December 2019. He testified that he had a potential tenant lined up to move into the unit on 01 December 2019, but she declined to move in because of the condition of the property on that date.

## The Tenant's Position

17. The tenant acknowledged that the landlord's evidence shows that there was a significant amount of water damage at the rental unit. She did not dispute his claim that he would have been required to replace those floors and she also did not dispute his claim concerning the costs he would have incurred to carry out the repairs.
18. However, the tenant denied that she was responsible for that water damage. She stated that she had unhooked the faucets for the washing machine in mid-October 2019, over 2 weeks before she vacated, and she claimed that there was no leaking or water running from those faucets from mid-October 2019 through to 01 November 2019, when she vacated the property.
19. With her application, the tenant submitted a copy of a [REDACTED] exchange she had had with the landlord on 01 November 2019 ([REDACTED] #1). In that exchange, the landlord writes: "I need the keys to get in. Can you drop them off at [REDACTED] The tenant responded: "Yes I can do that after work". The tenant stated that around 5:00 PM that day, she dropped the keys off, as requested, and she testified that she no longer had possession of, or access to, the unit after that date.
20. The tenant argued that as she had relinquished possession of the property to the landlord on 01 November 2019, if any damaged had occurred to the unit after that date, it was not her responsibility.
21. With respect to the landlord's claim for repainting the unit, she acknowledged that she had hung some pictures on the walls during her tenancy, but she argued that this should not be regarded as damage, but just normal wear and tear. She also claimed that the damage to the wall in the porch and in the kitchen occurred when she was moving into the unit and that the landlord was aware of that damage at the time
22. She did acknowledge, though, that when she was moving her couch had made some marks on the ceiling in the porch and she agreed with the landlord that she is responsible for the costs of repainting that ceiling.

## **Analysis**

23. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

### **Order of director**

*47. (1) After hearing an application the director may make an order*

*(a) determining the rights and obligations of a landlord and tenant;*

*(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*

*(c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;*

*(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement*

24. It was not disputed that the rental unit had suffered water damage after the tenant moved out, and that the subfloor and the flooring throughout most of the unit needed to be replaced. The question is whether that damage had occurred during the time that the tenant was renting the unit, or whether it had occurred after the tenancy had ended.
25. The tenant stated that although she had agreed to pay the rent and utilities for November 2019, as she had not given the landlord a full 1-month's notice of termination, she pointed out that she had returned the keys to the landlord on 01 November 2019, as requested, and that the unit was no longer under her care after that date. The tenant testified that the faucets were not left on when she vacated and she argued that any water damage that had occurred at the unit happened after she had moved out and while the unit was in possession of the landlord.

26. The landlord argued that as the tenant had agreed to pay the rent and utilities for the unit for November 2019, she was therefore responsible for the property during that period. As the water damage occurred sometime prior to 01 December 2019, that damage occurred during her tenancy and she was therefore liable for the costs the landlord incurred to carry out the repairs.
27. I was not persuaded by the landlord's argument. The tenant's evidence shows that on 01 November 2019 the landlord had requested that the tenant drop off the keys to [REDACTED] house. The tenant testified that she had indeed dropped the keys off on that date and I accept that testimony. The landlord initially denied that he had made that request, but later conceded that he had, when the tenant produced a copy of their Facebook messages. The landlord also claimed that he had a witness who could testify that those keys were not dropped off until 08 November 2019, but even though the hearing was postponed so the landlord could make arrangements to produce that witness, he failed to do so.
28. I conclude, therefore, that the tenant no longer had access to the property after 01 November 2019 and that she cannot be held responsible for any maintenance issues after that date. No walkthrough was conducted with the tenant when she moved out and there was no report of an outgoing inspection showing the condition of the unit on 01 November 2019. The tenant testified that no faucets were running when she vacated and I find that testimony probable. As such, the landlord's claim for the costs of removing and replacing the subfloors, carpets and cushion flooring at the property does not succeed.
29. With respect to the painting, as some of this damage was a result of the water damage, the tenant cannot be held responsible for the costs of those repairs. I also agree with the tenant that as some of the damage identified by the landlord was merely as a result of hanging pictures on the walls, that should be chalked up to normal wear and tear. The tenant did acknowledge that she had caused some damage to the ceiling in the porch and I find that \$200.00 is a reasonable award to repair that damage.
30. Regarding the landlord's claim for a loss of rental income, as he had possession of the unit on 01 November 2019, and as the tenant had paid rent for all of November 2019, I am of the view that if there was any need for plastering or painting, it could have been carried out during that month. As such, that claim does not succeed.

## **Decision**

31. The landlord's claim for compensation for damages succeeds in the amount of \$200.00.

## Issue 2: Cleaning - \$150.00

### Relevant Submissions

#### The Landlord's Position

32. The landlord stated that after the tenant vacated, he was required to carry out 7.5 hours of cleaning at the rental unit and he is seeking \$150.00 in compensation. The landlord testified that the he was required to clean the refrigerator and the oven after the tenant moved and he also complained that there was a spot in the bathroom that required cleaning. In support of his claim, the landlord submitted photographs showing the inside of the oven and the refrigerator [REDACTED]##11-13).

#### The Tenant's Position

33. The tenant claimed that she had thoroughly cleaned the unit before she vacated, including the bathroom. She did acknowledge, however, that she had overlooked the oven and she conceded that that she had missed a spot in the refrigerator.

### Analysis

34. The evidence submitted by the landlord does show that the tenant had not cleaned the oven before she had vacated and the tenant conceded that the refrigerator had not been perfectly cleaned as well. No evidence was presented by the landlord to establish that, besides these 2 appliances, any other cleaning was required at the rental unit. Based on the evidence, I find that the landlord is entitled to compensation for 2 hours of his personal labour. Policy with this Section is that a landlord may claim up to \$20.75 per hour for his personal labour and I therefore find that the landlord is entitled to \$41.50.

### Decision

35. The landlord's claim for compensation for the cost of cleaning succeeds in the amount of \$41.50.

## Issue 3: Security Deposit and Summary of Decision

36. The tenant paid a security deposit of \$390.00 when she moved into the unit and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim for damages and the costs of cleaning has been partly successful, the deposit shall be disposed of as follows:

- a) Refund of Security Deposit..... \$390.00
- b) LESS: Compensation for Damages..... (\$200.00)
- c) LESS: Cleaning ..... (\$41.50)

d) Total Owing to Tenant ..... \$148.50

04 February 2022

Date



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Residential Tenancies Tribunal