

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 20-0341-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:16 pm on 05 April 2021 via teleconference.
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”, did not participate.

### Issues before the Tribunal

3. The landlord is seeking an order for a payment of \$4243.50 in compensation for damages.

### Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this decision is policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rules of the Supreme Court, 1986*.

### Preliminary Matters

6. The tenant was not present or represented at the hearing and I was unable to reach her by telephone. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondents fail to attend the hearing, Rule 29.11(1) states

that the hearing may proceed in the respondents' absence so long as they have been properly served. The landlord submitted an affidavit with her application stating that the tenant was personally served with the application on 09 March 2021. As the tenant was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in her absence.

## **Issue 1: Compensation for Damages - \$4243.50**

### **Relevant Submissions**

7. The landlord stated that she had entered into a 1-year, fixed-term rental agreement with the tenant on 01 November 2018 and a copy of the executed lease was submitted with her application (█ #1). The agreed rent was set at \$1400.00 per month and it is acknowledged in the lease that the tenant had paid a security deposit of \$1050.00.
8. On 01 June 2020, the tenant informed the landlord that she was terminating her agreement and she vacated the unit on 30 June 2020.
9. With her application, the landlord submitted 2 invoices from █ (█ #2) showing that she was charged \$517.50 to have the unit cleaned and to have garbage removed from the property, and an additional \$3726.00 to have the rental unit repainted and to replace 2 interior doors.
10. With respect to the cleaning, the landlord pointed to her photographs showing the condition of the property after the tenant moved out (█ #3). These photographs show that there was a significant amount of garbage left around the property, both inside and out, and that there were pieces of clothing left behind as well as dishes, needles, a needle disposal box, and foodstuffs were left in the cupboards and the refrigerator.
11. The landlord also complained that no cleaning had been carried out by the tenant before she vacated. She stated that all the floors and carpets were dirty and all the walls needed to be washed down. The submitted photographs also show the kitchen appliances were very dirty, as well as the bathroom.
12. With respect to the painting, the landlord's pointed to her photographs which show that there were numerous holes in the walls and that there was graffiti painted on some walls. She also complained that there were places on the walls where dry blood was found. The landlord also stated that the whole unit smelled of cigarette smoke and she found burn marks on the floors and cigarette ashes were also found throughout the unit. The whole unit was repainted after the tenant vacated and the submitted invoice shows that the landlord was charged \$3312.00 to have that work carried out (\$3200.00 x 10% discount + tax).

13. The landlord stated that the unit had not been painted since at least 2018, when she began managing the property. She testified that the walls were noted as being “splotchy” when the tenant moved, as a result of normal wear and tear, but there were no holes in the walls and no graffiti.
14. The landlord also stated that she was required to replace 2 interior doors and her submitted invoice shows that she was charged \$414.00 (\$400.00 x 10% discount + tax).
15. The landlord stated that there were numerous holes in these 2 doors and she stated that it appears as if the doors had been punched or kicked. The landlord did not know how old those doors were but she testified that they were at the unit when she began managing that property in 2018.

## **Analysis**

16. 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 willful 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*

17. Regarding the cleaning, I accept the landlord's claim that the unit had not been cleaned after the tenant vacated and her photographs show that the appliances are very dirty, that the carpets are soiled and that the bathroom had not been cleaned. They also show that there was a significant amount of garbage left behind at the property. Based on that evidence, I find that the landlord is entitled to a payment the \$517.50 she claimed here.
18. I also accept the landlord's evidence showing that the walls were badly damaged at the unit and I agree that the whole apartment had to be repainted. The landlord stated that the walls had already exhibited some minor wear or tear when the tenant moved in, and I conclude that the paintjob was therefore at least 3 years old when the tenant moved out. A paintjob has an expected lifespan of between 3 and 5 years, and as the landlord would soon have to paint these walls anyhow, and factoring in depreciation, she is not entitled to the full costs she is seeking here. Given that significant plastering was required though, I find that an award for half of what she was charged is fair—\$1657.50 ( $\$3312.00 \times \frac{1}{2}$ ).
19. I also accept the landlord's testimony and evidence concerning the interior doors and I find that she is entitled to an award for their replacement. Interior doors have an expected lifespan of 20 years and depreciation must also be factored in here. Although the landlord was not sure of the age of the doors, given that they were already there in 2018, I will award the landlord  $\frac{3}{4}$  of their replacement costs—\$310.50 ( $\$414.00 \times \frac{3}{4}$ ).

## **Decision**

20. The landlord's claim for compensation for damages succeeds in the amount of \$2485.50 ( $\$517.50 + \$1657.50 + \$310.5$ ).

## **Issue 2: Security Deposit**

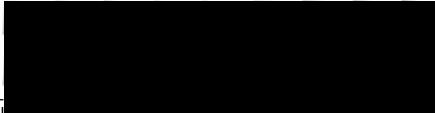
21. The landlord stated that the tenant had paid a security deposit of \$1050.00 on 07 November 2018 and receipt of that deposit is acknowledged in the submitted lease. As the landlord's claim has been successful, she shall retain that deposit as outlined in this decision and order.

**Summary of Decision**

22. The landlord is entitled to the following:

- a) Compensation for Damages..... \$2485.50
- b) LESS: Security Deposit ..... (\$1050.00)
- c) Total Owing to Landlord ..... \$1435.50

17 September 2021  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John  
Residential Tenancies Tribunal