

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0196-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:15 AM on 24 January 2022 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as “landlord1” and “landlord2”, respectively.
3. The respondents, [REDACTED] hereinafter referred to as “the tenants”, were not in attendance.

### Issues before the Tribunal

4. The landlord is seeking the following:
  - An order for a payment of \$8073.15 in compensation for damages,
  - An order for a payment of rent in the amount of \$258.06, and
  - Authorization to retain the security deposit of \$750.00.

### 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 is section 22 of the Residential Tenancies Act, 2018, policy 9-3: Claims for Damage to Rental Premises and rule 29 of the *Rules of the Supreme Court, 1986*.

## Preliminary Matters

7. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the start of the hearing. 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 respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as she has been properly served. The landlords submitted an affidavit with their application stating that the tenants were personally served with the application and notice of the hearing on 11 January 2022. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlord, I proceeded with the hearing in their absence.
8. The landlord called [REDACTED] as a witness.

## Issue 1: Compensation for Damages - \$8073.15

### Relevant Submissions

9. Landlord1 stated that she had entered into a 1-year, fixed-term lease with the tenants on 01 July 2019, and a copy of that executed lease was submitted with her application. The agreed rent was set at \$1000.00 per month and it is acknowledged in the lease that the tenant had paid a \$750.00 security deposit.
10. On 02 July 2020 the landlords issued the tenants a termination notice and a copy of that notice was submitted with the landlords' application. That notice was issued under section 22 of the *Residential Tenancies Act, 2018* (notice when tenant's obligations not met) and it had an effective termination date of 08 July 2020. The tenants vacated on 08 July 2020 and the landlord entered and took possession on the following day.
11. Landlord1 stated that the tenants had caused significant damages to the property during their tenancy and with their application they submitted a list of 26 different receipts and invoices showing the purchases they had made for various materials needed for the repairs, as well as the charges that they had incurred to hire contractors to carry out the various repairs.

### Painting and Plastering

12. Landlord1 stated that the unit was last painted in 2018, about a year before the tenants moved in. With her application the landlord submitted 466 photographs, showing the condition of the unit before the tenants moved in and after they had moved out. These photographs show that the unit was clean and that the walls were in good shape in 2019.

13. The photographs taken in 2020, though, show that the walls were in very poor condition. Landlord1 pointed out that there was a brown liquid spilled on many of the walls and she testified that her contractor was unable to remove that substance by cleaning. She also pointed out that the walls were heavily marked up with mascara, lipstick, markers, pens and paint. They also show that there were numerous holes in the walls in the hallway and the living room, and the doorknobs from most of the doors had been pushed through the drywall.
14. Because of this damage, the landlords had to repaint the whole unit. They submitted receipts with their application showing that they had spent a total of \$714.30 (\$115.35 + \$598.95) on paint and painting supplies, and the invoice from her contractor shows that he had charged her \$1475.00 to repair the holes in the walls, prime the unit and repaint it.

#### Cleaning

15. Landlord1 claimed that extensive cleaning was also required and she again pointed to her photographs which show that the oven was dirty and that none of the other kitchen appliances had been cleaned. She also complained that the bathroom was dirty and her photographs show paint and dirt in the bathtub. The floors had also not been cleaned and the carpets on the stairs had to be shampooed as they were "filthy".
16. The landlord submitted receipts with her application showing that she spent \$112.63 on various cleaning supplies, \$14.47 for 2 cans of oven cleaner, \$24.15 for garbage bags and bleach, and \$42.53 for carpet cleaner. Her invoices from her contractor show that she was charged a total of \$505.00 to carry out that work, and he indicates in his invoice that it took him 4 days to get the oven cleaned.

#### Repair toilet

17. ■■■ stated that after the tenant moved out, it was discovered that the 2 toilets were leaking and rocking on their bases. Those toilets had to be removed and new gaskets were installed, and then the toilets were re-caulked. Landlord1 pointed to a submitted receipt showing that they had spent \$25.50 on the gaskets and caulking, and a second receipt (Exhibit 24) shows that they purchased toilet bolt sets at a cost of \$20.90. The invoice from the contractor shows that he charged the landlord \$150.00 to have that work carried out.

#### Removal of Garbage and Damaged Items

18. The invoice submitted by the landlord's contractor also shows that they were charged \$680.00 to have garbage and other damaged items removed from the property. Landlord1 stated that there was garbage and broken furniture left on the grounds of the property, as well as inside the house that needed removal and the photographs also show that some clothing had been left behind as well broken toys and other garbage. All 8 of the interior closet doors were broken and had to be disposed of and the contractor also removed the damaged flooring

from the kitchen, bathroom and en suite. The bathroom vanity was also damaged and had to be removed.

#### Mow Lawn

19. The landlords were also charged \$75.00 by their contractor to have the lawn mowed after the tenants moved out. Landlord1 stated that the tenants were responsible for lawn maintenance during their tenancy, but she claimed that the grass was overgrown in July 2020 when they vacated. She also testified that the tenants had thrown a glass shelf from the refrigerator onto this lawn as well, and the contractor charged the landlord an additional \$100.00 to collect the broken glass and have it removed.

#### Window handles

20. ■■■ stated that the crank handles for many of the windows at the unit were either missing or broken when the tenancy ended. In particular, the handles for the living room, kitchen, master bedroom, laundry room and rec room had to be replaced, and landlord1 pointed to a receipt (Exhibit 16) from Kent showing that she was charged \$169.50 for 5 replacement handles. She stated that these windows were installed about 5 years ago.

#### Bathroom Vanity

21. As indicated above, the landlords were required to dispose of the bathroom vanity and landlord1 stated that this was because it was impossible to clean and there was paint spilled on it, and her photographs also show that the handles had been removed. ■■■ also stated that there was a hairline crack in the sink. With her application, landlord1 pointed to a receipt (Exhibit 17) showing that she was charged \$98.89 for a replacement vanity and \$22.95 for some moulding which ■■■ stated was required to go around the vanity after it was installed. ■■■ also pointed out that this receipt contains charges for switch plates, totalling \$10.25, which had to be replaced throughout the house as they were either missing or cracked. The landlords' invoice from the contractor shows that they were charged \$75.00 to have that vanity installed.

#### Interior Doors

22. Landlord1 pointed to her photographs showing the condition of the interior doors, and the bi-fold closet doors, in the rental unit after the tenants moved out. She pointed out that almost all of these doors were marked up with markers or pens, and there were numerous cracks and holes in all of these doors. She figured these doors were about 12 years old when the tenancy ended. The landlord pointed to her receipts showing that she was charged \$545.45 for 6 new doors (Exhibits 18 and 20) and her other receipts show that she also had to purchase installation hardware at a cost of \$8.61. She was charged \$80.00 by her contractor to have those doors installed.

### Back door

23. ■ stated that the glass in the back door had been “beat out” and it appears that the door had been kicked in. He also stated that the tenants at one point must have tried to pry the door open with something, causing further damage to the door and causing the door box to split. Landlord1 pointed to her photographs showing this damage. ■ stated that the door and door box could not be repaired and landlord1 submitted receipts showing that she had purchased a new door at a cost of \$622.44 (Exhibit 23) and some sealant for that door at a cost of \$12.06 (Exhibit 26). The landlords’ contractor charged her \$200.00 to install that door and the new lock.

### Light Fixture in Basement

24. Landlord1 also submitted a receipt for a new light fixture showing that she was charged \$68.98 (Exhibit 29) and her invoice from her contractor shows that she was charged \$25.00 to have it installed. This light fixture was at least 12 years old. Neither landlord1 ■ knew why the light fixture needed to be replaced, but they figured it was either damaged or missing.

### Replace Refrigerator

25. Landlord1 stated that the glass shelves to the refrigerator were found broken in the back yard and she also complained that the door baskets for that refrigerator were missing after the tenants moved out. She also pointed to 7 photographs submitted with her application showing that the refrigerator was left in a very dirty condition. Initially, the landlord had intended to order the parts for the refrigerator, but she submitted a note from ■ stating that these parts were no longer available (Exhibit 33). The landlord purchased a new refrigerator and a receipt was submitted with the application showing that they were charged \$832.60. Landlord1 figured that the refrigerator was approximately 4 years old.

### Window Screens

26. Landlord1 also pointed to several photographs showing that 4 window screens at the unit were broken and bent and she claimed that they no longer fit the windows. She submitted a receipt with her application (Exhibits 38) showing that she had been charged \$85.79 for 1 of those screens and Exhibit 37 shows that she was quoted the same price for the other screens. The landlord is seeking a total award here in the amount of \$343.16.

### Other Purchases

27. ■ stated that the rod for the closet in the last bedroom had been “beat up” and the landlord pointed to her receipt (Exhibit 21) showing that she had paid \$21.18 for a replacement. ■ also claimed that 2 smoke detectors had been removed from the ceiling and they were also “bet up” and had to be replaced. No receipt was submitted with the application but the invoice from the contractor shows that the landlord was charged \$20.00 to install 4 detectors. Landlord1 also claimed

that there were many missing lightbulbs at the property and the submitted receipt (Exhibit 21) shows that she was charged \$21.80 for 3 3-packs of replacement lightbulbs.

## Analysis

28. 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*

29. The photographs submitted by the landlords show that the rental property was left in a very bad state, and the landlords' evidence supports almost all of the claims that they have made through their application.
30. Regarding the cleaning, I find that the landlord is entitled to the full costs that they have claimed here, as the unit was left in a deplorable condition: \$586.15. The submitted photographs also show that there was a significant amount of garbage, debris, clothing and furniture left at the unit and on the grounds, and the landlord was additionally charged to remove damaged items that needed replacing. I find that they are also entitled to the full \$680.00 they were charged. Additionally, I agree with the landlord that the tenant is responsible for the costs the landlord had incurred to have the lawn moved and the broken glass removed: \$175.00.
31. As indicated in the previous paragraph, depreciation has to be taken into account when issuing an award for damages.
32. With respect to the painting and the plastering, the evidence clearly shows that the whole apartment had to be repainted. As this unit was last painted in 2019, and as it is expected that a rental property would be painted at least every 5 years as a result of normal wear and tear, I find that the landlords are entitled to a depreciated award of \$1751.44 ( $\$2189.30 \times 4/5$ ).
33. The landlords purchased the property in 2008, and almost all of the remaining damaged items were about 12 years old. So, for the damage to the toilets, as these items have an expected lifespan of 10 years, they had probably come to the end of their useful lifespan and would soon have to be replaced anyhow, so that claim does not succeed.
34. The window handles, though, were only installed 5 years before the tenancy ended. As they are expected to last 15 years, I find that the landlord is entitled to \$113.00 ( $\$169.50 \times 10/15$ ). The broken window screens also have the same life expectancy, and I find that the landlord is entitled to \$228.77 ( $\$343.16 \times 10/15$ ) for their replacement costs.
35. A bathroom vanity should last 20 years, so I find that the landlord is entitled to \$82.84 ( $\$207.09 \times 8/20$ ). The evidence also shows that numerous doors were broken up and I accept the landlords' evidence showing that they had replaced 6 of them. Interior doors also have an expected 20 year lifespan, so I find that the landlord is entitled to \$253.62 ( $\$634.06 \times 8/20$ ). Exterior doors, though, are only expected to last 15 years, so the costs of replacing the back door succeeds in the amount of \$166.90 ( $\$834.50 \times 3/15$ ).
36. With respect to the light fixture in the basement, the landlords did know why that fixture needed to be replaced, and in that respect I find that they have failed to establish that the tenants are responsible for the replacement costs. In any case, as light fixtures only have an expected lifespan of 12 years, this fixture had probably come to the end of its useful life anyhow.

37. I also accept the testimony and evidence of the landlords which shows that the glass shelves of the refrigerator were broken and that the trays for the doors were missing, and as those parts are no longer able to be ordered, I find that that refrigerator is now useless, and I agree with the landlords that the tenants are responsible for the replacement costs. This refrigerator was 4 years old, and as they have an expected lifespan of 12 years, the landlord is entitled to \$555.07 ( $\$832.60 \times 8/12$ ).
38. I also find that the landlord is entitled to the \$62.98 claimed for the costs of replacing the closet rod, the smoke detectors and the light bulbs.

**Decision**

39. The landlord’s claim for compensation for damages succeeds in the amount of \$4655.77, determined as follows:

- Cleaning..... \$586.15
- Garbage removal ..... \$680.00
- Mow lawn, glass removal..... \$175.00
- Painting and plastering..... \$1751.44
- Window handles..... \$113.00
- Window screens..... \$228.77
- Bathroom vanity ..... \$82.84
- Interior doors..... \$253.62
- Back door..... \$166.90
- Refrigerator ..... \$555.07
- Closet rod, detector, lights ..... \$62.98

Total..... \$4655.77

**Issue 2: Rent - \$258.06**

**Relevant Submissions**

40. Landlord1 stated that the tenants moved out of the unit on 08 July 2020, but the landlords received no rent for that month. The landlords are seeking a pro-rated rent of \$258.06 for those 8 days of July 2020.

**Analysis and Decision**

41. I accept landlord1’s claim that the tenants had not paid rent for July 2020. As the tenants had use and enjoyment of the property during the first 8 days of that month, the landlords are entitled to the pro-rated rent of \$258.06, as claimed.



**Issue 3: Security Deposit**

42. Landlord1 stated that the tenant had paid a security deposit of \$750.00, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord’s claim has been successful, the landlords shall retain that deposit as outlined in this decision and attached order.

**Issue 4: Hearing Expenses**

43. Landlord1 is seeking compensation for the 40 or 50 hours it took to track down the tenants to serve them with the claim and notice of the hearing, and to prepare for the hearing. She is also stated that she had paid a fee of \$20.00 to file this application.

44. Policy with this Section is that applicant’s may claim up to \$25.00 for the costs of personally serving respondents with the claim and notice of the hearing. The filing fees is also a claimable expense, so the landlord’s claim for hearing expenses succeeds in the amount of \$45.00. The costs associated with the time spent preparing for the hearing are not claimable.

**Summary of Decision**

45. The landlords are entitled to the following:

- a) Compensation for Damages ..... \$4655.77
- b) Rent ..... \$258.06
- c) Hearing Expenses ..... \$45.00
- d) LESS: Security Deposit..... (\$750.00)
- e) Total Owing to Landlords ..... \$4208.83

22 July 2022

\_\_\_\_\_  
Date

