

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0219-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:16 AM on 28 September 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing.
3. The respondents, [REDACTED] hereinafter referred to as “tenant1” and “tenant2”, respectively, also participated.

### Issues before the Tribunal

4. The landlord is seeking the following:
  - An order for a payment of \$1768.54 in compensation for damages, and
  - Authorization to retain the security deposit of \$900.00.

### 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 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 now seeking a total claim of \$1351.04 in compensation for damages.

## Issue 1: Compensation for Damages - \$1351.04

### Relevant Submissions

#### The Landlord's Position

8. With his application, the landlord submitted a rental agreement showing that he had entered into a 1-year lease with the tenants, and a third person, ■■■ on 01 May 2020. ■■■ never did move in, and in November 2020, a new lease was signed and J■■■ name was removed. This new lease states that the rent is set at \$1350.00 per month and it is acknowledged in this lease that the tenants had paid a security deposit of \$900.00.
9. In February or March 2021, the tenants informed the landlord that they were terminating their agreement and they vacated on 29 April 2021.
10. After the tenants moved out, the landlord stated that he was required to carry out some repairs to the unit as a result of damage caused by the tenants, and he submitted the following breakdown of the costs he is seeking:
  - Refrigerator shelves ..... \$87.86
  - Front lawn ..... \$100.00
  - Plastering and painting..... \$1150.00

Total ..... \$1337.86

#### Refrigerator shelves

11. The landlord stated that the clips that held the shelves in the refrigerator were broken off and he had to purchase new replacement shelves. The landlord stated that he was charged \$87.86 for the new shelves. No photographs were submitted with his application showing this damage and no receipt for the purchase of the shelves was submitted either. The landlord stated that this refrigerator was about 9 years old.

#### Front Lawn

12. The landlord stated that during the winter, the tenants are not allowed to park on the street in front of the rental unit, so he allows them to park partway on the grass on the front lawn so that they can fit 3 cars in the driveway, instead of 2. His agreement with his tenants is that if their cars cause any damage to the lawn, they are responsible for the costs of re-sodding. He stated that the tenants' cars had caused damage to the front lawn and he had to pay \$100.00 to have between 15 and 18 new sods laid. No photographs were submitted with his application, nor any receipt.

### Plastering and Painting

13. The landlord complained that the tenants had allowed hair dye to splash onto 3 walls in the bathroom, and as a result, those walls had to be primed and re-painted. He testified that it had only been painted about a year before the tenants moved in. He also stated that the tenants had put up LED strip lights in the master bedroom and side bedroom, and when these lights were removed, some of the paint and plaster had also peeled away. He also complained that there was damage in that side room where a TV had been mounted and that the tenants' furniture had damaged a 6 foot section of wall in the living room. The landlord was required to have the damaged areas in the 2 bedrooms and the living room plastered and then touched up with paint. He claimed that these walls were last touched up about 3 years ago.
14. The landlord stated that he hired [REDACTED] to carry out this work and he stated that he was charged \$1000.00 plus tax. No photographs were submitted with his application nor a receipt from the painters.

### The Tenant's Position

15. Tenant1 stated that they were paying \$1400.00 in rent during this tenancy, not \$1350.00. She also claimed that they vacated on 27 April 2021, and that the new tenants were moving in on that same date.

### Refrigerator shelves

16. Tenant1 acknowledged that the tray in the refrigerator door became damaged during their tenancy, but she claimed that it was not done deliberately, and that it was the result of normal wear and tear.

### Front lawn

17. Tenant1 acknowledged that they had caused damage to the front lawn and she also acknowledged that they owe the landlord \$100.00 for the costs of repairs.

### Plaster and Painting

18. Tenant1 stated that they had left the LED lights up for the new tenants to use and she claimed that, during their walkthrough, the landlord had informed them that it was fine to leave those lights there. Regarding the living room, tenant1 stated that that damage was already there when she moved in. She did acknowledge that there were 2 screw holes in the wall from her TV, but she argued that this should be regarded as normal wear and tear. With respect to the bathroom, tenant1 agreed that it probably needed to be painted.

## Analysis

19. 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*

20. With respect to the refrigerator and the painting, the landlord submitted no photographs showing that damage and he submitted no evidence (receipts, invoices, estimates, etc.) to establish the costs that he is seeking. As such, those claim do not succeed.

21. With respect to the damage to the lawn, the tenants acknowledged that they had caused that damage and they agreed that they owe the landlord \$100.00. As such, that part of his claim succeeds.

**Decision**

22. The landlord’s claim for compensation for damages succeeds in the amount of \$100.00.

**Issue 2: Security Deposit**

23. The tenants paid a security deposit of \$900.00 and receipt of that deposit is acknowledge in the submitted rental agreement. As the landlord’s claim for compensation for damages has been partly successful, that deposit shall be disposed of as follows:

- a) Refund of Security Deposit ..... \$900.00
- b) LESS: Compensation for Damages ..... (\$100.00)
- c) Total Owing to Tenants..... \$800.00

28 July 2022

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Date

