

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0288-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:08 AM on 22 November 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing. Her partner, [REDACTED] also participated.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, was also in attendance. His partner, [REDACTED] also participated.

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of \$4226.01 in compensation for damages, and
 - Authorization to retain the security deposit of \$400.00.

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.

Issue 1: Compensation for Damages - \$4226.01

Relevant Submissions

The Landlord's Position

- 7. The landlord stated that she had entered into a monthly rental agreement with the tenant on 08 January 2016 and a copy of the executed lease was submitted with her application (████ #1). The agreed rent was set at \$800.00 per month and it is acknowledged in the rental agreement that the tenant had paid a security deposit of \$400.00.
- 8. In April 2021, the tenant issued the landlord a termination notice and he vacated on 31 May 2021.
- 9. The landlord stated that the tenant had caused significant damage to the property during his tenancy, and with her application she submitted the following breakdown of those damages and the costs of carrying out repairs (████ #2):

- Ceiling paint \$31.04
- Doorstops..... \$12.63
- Paint..... \$28.73
- Outside lamp \$33.34
- Bathroom floor..... \$80.49
- Overhead range \$109.24
- Drip bowls for stove..... \$36.73
- Bathroom vanity light..... \$91.99
- Closet door top..... \$8.84
- Fridge paint \$42.00
- Stovetop elements \$74.73
- 4 window screens..... \$150.00
- Labour..... \$3526.25

- Total..... \$4226.01

Ceiling paint

- 10. The landlord stated that she was required to repaint the whole ceiling at the rental unit after the tenant moved out as she discovered that the tenant had put numerous holes in it. She also stated that the ceiling had been stained yellow as the tenant had been smoking in the apartment. In support of her claim, the landlord pointed to a submitted photograph showing that there was 1 screw hole in the ceiling. The landlord stated that she spent 10 hours plastering and repainting that ceiling and she submitted a receipt with her application (████ #3) showing that she was charged \$31.04 for a can of ceiling paint.

Doorstops

- 11. The landlord stated that 4 door stops were missing after the tenant moved out and she pointed to her receipts showing that she had paid \$12.67 for replacements. The landlord stated that it took 30 minutes to replace these doorstops.

Painting

12. The landlord stated that the whole unit needed to be repainted after the tenant moved out because of the smell of smoke and because of damages the tenant had caused to the walls. She pointed to her photographs (■■■■#4) which show that there were chunks of plaster missing on the ledges with go along the perimeter of the apartment and she also complained that there was a hole in a wall behind a door. She also stated that the tenant had carried out some painting during his tenancy, for which he had been given permission, but she claimed that the tenant had done a poor job. She testified that she had instructed the tenant to only use neutral colours when he was painting, but complained that one of the rooms had been painted purple. The landlord stated that the whole apartment had to be repainted—2 bedrooms, a bathroom, a laundry room and a porch—and she testified that it took her 150 hours to carry out that work. This unit was last painted about 6 years ago.

Outside lamp

13. The landlord testified that she was also required to replace the exterior lamp at the unit because it was broken. She stated that she did not know how it became broken or whether it was done by the tenant. She submitted a receipt with her application showing that she was charged \$28.99 for a new lamp. She stated that this lamp was about 5 or 6 years old.

Bathroom floor

14. The landlord stated that there was a burn mark “or something” on the canvas floor in the bathroom and it had to be replaced as a result. No photograph was submitted showing that damage and the landlord did not know how old the floor was. She pointed to her receipt showing that she was charged \$69.99 + tax for new flooring and BC stated that it took him about 8 hours to remove the old flooring and install this new one.

Overhead range

15. The landlord stated that after the tenant moved out she discovered that the fan in the range hood had been removed and the duct had been stuffed with plastic bags, and she pointed to her submitted photographs as corroboration. The landlord did not know the age of the range, as it was already in place when she purchased the property in 2016, but she claimed it was functioning when the tenant moved in. She pointed to her receipts showing that she purchased a new range hood at a cost of \$109.24 and BC stated that it took him 1 hour to install it.

Drip bowls

16. The landlord pointed to her photographs showing that the drip bowls under the elements on the stove were dirty and rusty. The landlord's receipts show that she purchased replacement bowls at a cost of \$36.73.

Bathroom vanity light

17. The landlord's photographs of the bathroom light fixture show that one of the glass shades was missing and she had to replace that fixture at a cost of \$91.99. No receipt was submitted with her application.

Closet door top

18. The landlord stated that the closet door in the spare bedroom was broken when the tenant moved out and she submitted a photograph with her application showing that door. That door has since been repaired, at a cost of \$8.84, but no receipt was submitted by the landlord.

Fridge paint

19. The landlord claimed that the tenant had been writing grocery lists on the refrigerator with a Sharpie marker and those marks were unable to be washed off. As a result, the landlord had to repaint the refrigerator with an epoxy paint, and she submitted a receipt showing that she was charged \$27.88 + tax for that paint, and she testified that it took her 2 hours to carry out that work. No photographs were submitted showing that refrigerator.

Stovetop elements

20. The landlord also testified that she was required to replace 2 stovetop elements after the tenant moved out. She claimed that 1 of these elements was not working, while the other had been replaced by the tenant during his tenancy with one that did not fit properly. Her submitted receipts show that she was charged \$74.73 for 2 new elements and she submitted photographs showing the stovetop.

4 window screens

21. The landlord claimed that 4 window screens were missing after she regained possession of the property and she submitted an invoice with her application (#5) showing that she was charged \$72.84 to have them replaced. He figured that these screens were damaged by the tenant's cat.

The Tenant's Position

Ceiling paint

22. The tenant testified that he had not been smoking in the apartment, and claimed that he had always smoked outside on the porch. Regarding the ceiling, he acknowledged that he had put 4 screws in the ceiling to affix a shelf, but he claimed that the landlord had given him permission to install that unit. He claimed that this damage was very minor and argued that it should not take 10 hours to those 4 holes. The tenant submitted several videos as evidence (█████ #1) and he pointed out that, besides the shelf, no damage can be seen on the ceiling.

Doorstops

23. The tenant acknowledged that he had removed 3 doorstops, but questioned whether it would really take 30 minutes to replace them.

Painting

24. The tenant again pointed to his submitted video showing the condition of the property when he vacated and he claimed that, except for 1 hole, which he had plastered before he vacated, there was no damage to these walls. He acknowledged that he had not painted the repaired wall, but he claimed that this was because the landlord had intentions of repainting anyhow, and he argued that the unit would have to be freshened up after his 6 year tenancy.

Outside lamp

25. The tenant claimed that this exterior light was already several years old when he moved in and he claimed that it was rusty and expressed surprise that it had not fallen off during his tenancy. He argued that he is not responsible for the costs of replacement as he had not caused the light fixture to rust on purpose.

Bathroom floor

26. The tenant denied that there was a burn mark on the floor and claimed that it was merely a drop of glue, about the size of the top of a pen. He stated that he had not removed it as he was fearful the floor would rip. He again pointed to his submitted video and claimed that that video shows that the bathroom floor was in good condition when he vacated.

Overhead range

27. The tenant claimed that since he moved in, there was a problem with the fan knocking off the hood. He stated that he had informed the landlord about the matter and she did nothing to address it. The tenant acknowledged that he had removed the fan and stuffed the duct with plastic bags, but he claimed that he

was instructed to do so by the tenant's then-boyfriend. He claimed that the motor for the fan was still working when he moved out.

Drip bowls

28. The tenant stated that the top of the stove was "nice and clean" when he moved out and he again pointed to his submitted videos.

Bathroom vanity light

29. The tenant acknowledged that he had removed that light shade so that he could install an electrical outlet, as there was no outlet in the bathroom. He stated that he had placed that shade in the cupboard and one day he found that it was broken.

Closet door top

30. The tenant stated that the closet door was broken when he moved in and he claimed that that door never did close properly during his tenancy.

Fridge paint

31. The tenant stated that the refrigerator did not need to be painted, and he again pointed to his videos showing the condition of the apartment when he vacated.

Stovetop elements

32. The tenant stated that all the elements were working when he vacated. He did acknowledge that one of the elements was damaged during his tenancy and that he had replaced and he submitted his own receipt showing the costs that he had incurred (█ #2). He denied, however, that that stove element did not fit and directed my attention to his submitted videos.

Window screens

33. The tenant stated that only 2 window screens were missing, not 4. He claimed that these screens became damaged because a couple of the windows at the property could not be opened and they had to be replaced during his tenancy.

Analysis

34. 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

35. With respect to the costs of repainting the walls in the unit, as well as the ceiling, I find that the landlord's claim does not succeed. Much of the damage identified by the landlord did not seem to exceed to what one ought to expect after a tenancy which ran for almost 6 years, and I was also not persuaded that it would take 150 hours to paint a 2 bedroom unit. In any case, as landlords are expected to repaint a rental property every 3 to 5 years, as a result of normal wear and tear, and since this unit was last painted before this tenancy began in 2016, it is due to be repainted soon anyhow.

36. With respect to the exterior light and the range hood, I find that the landlord had failed to establish that they were damaged by any deliberate or negligent act on the part of the tenant, and it seems more probable that they became damaged, or stopped functioning, as a result of repeated, but normal, use.
37. Regarding the painting of the refrigerator, I find that the landlord had also failed to establish that the tenant is responsible for the costs of repainting it. The landlord submitted no photographs with her application showing that there were any marks on it, and I cannot discern any markings on it in the videos submitted by the tenant. Neither was any photographic evidence submitted by the landlord to establish that the bathroom floor needed replacing. If the drop of glue on that floor is as small as the tenant claimed, I would chalk that up to normal wear and tear.
38. With respect to the elements for the stovetop, no evidence was presented by the landlord to establish that they were not working after the tenant moved out, and it also appears, after reviewing the tenant's video, that the replacement element he had installed fits properly. The tenant stated that the closet door was not working when he first moved in, in 2016, and, in any case, the landlord submitted no receipt or invoice for the costs she is seeking here. No invoice or receipt was submitted showing the costs of purchasing a new light fixture for the bathroom, either.
39. With respect to the doorstops and the window screens, the tenant did acknowledge that some of these items were missing and I agree with the landlord that she is entitled to an award for the costs of their replacement—\$85.47 (\$12.63 + \$72.84). The drip pans in the stove also appear to be dirty and rusty, and compensation is warranted here as well—\$36.73. I also allow compensation for 3 hours of the landlord's labour to install these items. Policy with this Section is that a landlord may claim up to \$21.70 per hour for their personal labour.

Decision

40. The landlord's claim for compensation for damages succeeds as follows:

• Doorstops.....	\$12.63
• Drip bowls for stove.....	\$36.73
• 4 window screens.....	\$72.84
• Labour.....	\$65.10
Total.....	<u>\$187.30</u>

Issue 2: Security Deposit

41. The tenant paid a security deposit of \$400.00 on 08 January 2016, and receipt of that deposit is acknowledge in the submitted rental agreement. As the landlord's

claim for damages has been partly successful, that deposit shall be disposed of as follows:

- a) Refund of Security Deposit \$400.00
- b) LESS: Compensation for Damages (\$187.30)
- c) Total Owing to Tenant..... \$212.70

12 October 2022

Date

