

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0273-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:04 AM on 26 October 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing. The respondents, [REDACTED] hereinafter referred to as “tenant1” and “tenant2”, respectively, also participated.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - An order for a payment of rent in the amount of \$1650.00,
  - An order for a payment of \$2019.00 in compensation for damages,
  - Authorization to retain the security deposit of \$1163.00, and
  - An order for a payment of hearing expenses totalling \$20.00.

### 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 section 18 of the *Residential Tenancies Act, 2018*.

### Issue 1: Compensation for Damages - \$2019.00

#### Relevant Submissions

##### The Landlord's Position

6. The landlord stated that he had entered into a 1-year, fixed-term lease with the tenants on 01 June 2020, and a copy of that executed agreement was submitted with his application (█ #1). The agreed rent was set at \$1650.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$1163.00.
7. The landlord stated that the tenants moved out of the unit on 31 May 2021, without providing him with any notice that they were vacating.
8. After he had regained possession of the unit, the landlord claimed that he was required to carry out some painting and cleaning, and he submitted the following breakdown of the costs he incurred to carry out that work (█ #2):
  - Paint and labour ..... \$1440.00
  - Paint cost ..... \$175.00
  - Paint supplies..... \$60.00
  - Cleaning..... \$250.00
  - Cleaning supplies..... \$50.00
  - Light bulbs..... \$44.00
  - Total ..... \$2019.00

Painting

9. The landlord stated that after the tenants moved out, he was required to repaint the whole apartment. He complained that the unit smelled of marijuana, even though it was agreed in the lease that no smoking was permitted in the unit, and he claimed that all the walls had to be washed and painted to rid them of that smell. He also claimed that the tenants had used a sticky tape on that walls to hang pictures, and when that tape was removed, some paint and plaster was removed from the walls. In support of that claim, the landlord pointed to his submitted photographs showing the areas where these strips of tape had been left behind (█ #3, #4).
10. The landlord also claimed that he was required to repaint the ceilings as the tenants had scuffed it in places when they were moving their furniture (█ #5) and he also stated that the ceiling in the kitchen had suffered water damage when the tenants allowed the bathtub to overflow.
11. The landlord testified that it took him 70 hours to repaint the apartment and he is seeking \$1440.00 in compensation for his personal labour. He also submitted a receipt (█ #6) showing that he had paid \$172.50 for 2 gallons of ceiling paint and 3 gallons of paint for the walls, and a second receipt (█ #7) showing that had paid \$60.89 for painting supplies. The landlord stated that the unit was last painted in the summer of 2019, about a year before the tenants moved in.

### Cleaning

12. The landlord stated that after the tenants moved out, extensive cleaning was also required at the unit. He again pointed out that there was a strong smell of marijuana smoke in the unit and he stated that all the walls at the unit needed to be washed down. He also testified that the bathroom had not been cleaned and that the bathtub, the sink and toilet needed scrubbing, and he claimed that the tenants had left behind bottles of toiletries in the bathtub. He also stated that the areas behind the refrigerator and the stove had not been cleaned and he pointed to one of his photographs as evidence (█████ #6).
13. He testified that it took 12.5 hours to carry out the cleaning at the apartment, and he pointed to a receipt showing that he was charged \$250.00 to have that work carried out (█████ #7) and a second receipt showing that he was charged \$50.00 for cleaning supplies (█████ #8).

### Light Bulbs

14. The landlord stated that after he regained possession of the unit, he discovered that many of the light bulbs at the unit had been removed and he was required to purchase 24 new bulbs. He submitted a receipt showing that he had purchased replacement bulbs at a cost of \$40.84.

### The Tenant's Position

#### Painting

15. The tenants denied that they had been smoking inside the apartment and they claimed that there was no smell of cigarette or marijuana smoke in the unit. Regarding the water damage to the kitchen ceiling, the tenants denied that that damage was caused by an overflow, but rather it was the result faulty overflow pipe. They testified that they had contacted the landlord early in their tenancy about that matter but it was never rectified.
16. The tenants did acknowledge, though, that they had scuffed the ceiling when they were moving their furniture and they also acknowledged that they had left some sticky tabs on the walls. However, they argued that this issues were minor and ought to be chalked up to normal wear and tear.
17. The tenants also stated that there were already marks on the walls, ceilings and trim-work when they moved into the unit and they argued that it already needed to be painted, regardless of whatever minor damage they had caused. In support of their claim the tenants pointed to their photographs showing the condition of the property when the tenancy began (Exhibits 01-16).

## Cleaning

18. The tenant's stated that they had thoroughly cleaned the unit before they vacated and they pointed to a video they had taken before they moved out (Exhibit 22). They claimed that this video shows that all the floors at the unit had been cleaned, that the bathroom was thoroughly cleaned and that all the major kitchen appliances were cleaned out. They did acknowledge, however, that they had not cleaned the areas behind the stove and the refrigerator.

## Light Bulbs

19. The tenants stated that there were many light bulbs either missing or burnt out when the tenancy began. Tenant1 testified that he had replaced some of the burnt-out bulbs with colour-changing smart-bulbs during their tenancy, and he stated that he had taken them with him when he moved out. Tenant1 stated that they had only removed about 7 bulbs when they vacated.

## **Analysis**

20. 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*

21. Regarding the painting, I find that the landlord has not presented enough evidence to establish that the condition of the paintjob at the property, when the tenancy ended, was left in any significantly worse of a condition than when the tenants moved in. There was no report of any incoming or outgoing inspection, and the landlord presented no tangible evidence to the Board to establish that there was a smell of smoke in the unit. The evidence submitted by the tenants also shows that the walls and ceilings at the unit were already slightly damaged before they moved in and I agree with the tenants that the damage identified by the landlord ought to be chalked up to normal wear and tear.
22. Regarding the cleaning, the tenants' video shows that the unit was clean when they moved out and the tenants denied that that had been smoking in the unit. As the burden of proof lies with the landlord to establish his claims, I have to conclude that, based on the evidence submitted at the hearing, he had not met that burden. The tenants' acknowledged that they had not swept the areas behind the refrigerator and stove and I therefore award the landlord \$10.38 for 30 minutes of his personal labour to sweep and clean those areas.
23. Regarding the light bulbs, again, as there was no report of an incoming or outgoing inspection, there is no evidence to corroborate the landlord's claim that all of these bulbs were working when the tenancy began. The tenants acknowledged that they removed 7, and I therefore find that the landlord is entitled to an award of \$11.91 ( $\$40.84 \div 24 \times 7$ ).

## **Decision**

24. The landlords' claim for compensation for damages succeeds in the amount of \$22.32 ( $11.94 + \$10.38$ ).

## **Issue 2: Rent - \$1650.00**

### **Relevant Submissions**

#### The Landlord's Position

25. The landlord stated that the tenants gave him no notice that they were terminating their rental agreement and he only discovered that they were vacating on the same day that they were moving, 31 May 2021.
26. The landlord argued that he was entitled to at least a month's notice that the tenants were vacating, and he is seeking an order for a payment of rent in the amount of \$1650 in lieu of a proper notice of termination.

### The Tenant's Position

27. The tenant's acknowledged that they had not given the landlord any notice that they were moving out and they stated that they figured that they could move out on 31 May 2021 as that was when the lease expired.

### **Analysis**

28. The relevant subsections of section 18 of the *Residential Tenancies Act, 2018* states:

#### ***Notice of termination of rental agreement***

***18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises***

...

***(c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.***

29. According to this section of the *Act*, if the tenants wished to terminate their agreement on 31 May 2021, they were required to provide the landlord with a written notice of termination some time prior to 01 April 2021. As the tenants did not give the landlord a 2-month notice, they are considered to have abandoned the property.
30. Given that the landlord only found out that the tenants were moving on 31 May 2021, I find that it would have been very unlikely that he would have been able to secure new tenants for June 2021 and I accept his claim that he had suffered a loss of rental income for that month.
31. As the landlord suffered a loss of income for June 2021 because the tenants did not give him a notice of termination, I find that the tenants are therefore responsible for that loss. As such, the landlord's claim for a payment of 1 month's rent, \$1650.00, succeeds.

### **Decision**

32. The landlord's claim for a payment of rent succeeds in the amount of \$1650.00.

**Issue 3: Security Deposit**

33. The landlord stated that the tenants had paid a security deposit of \$1163.00 on 18 May 2020 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord’s claim has been successful, he shall retain that deposit as outlined in this decision and attached.

**Issue 4: Hearing Expenses**

34. As the landlord’s claim has been successful, the tenants shall pay his hearing expense of \$20.00 for the costs of filing this application.

**Summary of Decision**

35. The landlord is entitled to the following:

a) Compensation for Damages .....	\$22.32
b) Rent Owing .....	\$1650.00
c) Hearing Expenses .....	\$20.00
d) LESS: Security Deposit.....	(\$1163.00)
e) Total Owing to Landlords .....	<u>\$529.32</u>

10 March 2022

\_\_\_\_\_  
Date

