

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0274-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:16 AM on 16 November 2021 via teleconference.
2. The applicant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as “landlord1” and “landlord2”, respectively.
3. The respondent, [REDACTED] hereinafter referred to as “the tenant”, did not participate.

### Issues before the Tribunal

4. The landlord is seeking an order for a payment of \$833.60 in compensation for damages.

### 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 and rule 29 of the Rules of the Supreme Court, 1986.

### Preliminary Matters

7. The tenant was not present or represented at the hearing and I was unable to reach her by telephone at the commencement 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 they have been properly served. The landlord submitted an affidavit with its application stating that the tenant was personally served with claim and notice of the hearing, by e-mail, on 29 July 2021, and a copy of that e-mail was attached to that affidavit. 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 - \$833.60

### Relevant Submissions

8. Landlord1 stated that she had entered into a monthly rental agreement with the tenant on 25 July 2018, and a copy of that executed agreement was submitted with her application (█ #1). The agreed rent was set at \$349.00 per month.
9. In June 2020, the tenant informed the landlord that she was moving out of the unit, but she provided no written notice of termination. The landlord posted a notice of abandonment on 30 June 2020, and she entered and took possession of the unit of 02 July 2020.
10. Landlord1 stated that the tenant had caused some damages to the property during her tenancy and she submitted the following breakdown of the costs to carry out repairs (█ #2):

• Prime walls in living room and kitchen .....	\$226.00
• Replace thermostat in living room .....	\$61.00
• Replace missing lights shade in living room.....	\$14.00
• Replace missing lights shade in kitchen.....	\$14.00
• Replace vinyl flooring in kitchen .....	\$51.60
• Replace screen in dining room.....	\$50.00
• Replace missing lights shade in hallway .....	\$14.00
• Repair hole in wall in bedroom 1 .....	\$101.00
• Replace missing lights shade in bedroom 1 .....	\$14.00
• Replace missing lights shade in bedroom 2 .....	\$14.00
• Replace missing lights shade in bedroom 3 .....	\$14.00
• Dispose of contents.....	\$100.00
• Pre-clean prior to refurbishing .....	\$210.00
 Total .....	 <u>\$883.60</u>

11. With her application, the landlord submitted 34 photographs showing the condition of the property after the tenant had moved out (█ #3). Landlord2 pointed out that many of these photographs show that the tenant had taken a

buckets of blue and brown paint and had splashed that paint onto several walls, onto the floors, onto the windows sills and on window screens.

12. Landlord2 stated that he had intentions of painting the walls when the tenant vacated, anyhow, but because of the dark coloured paint that had been splashed on the walls, he also was required to prime these walls before he commenced the painting and he is seeking those costs only. With respect to those costs, the landlord submitted a "Client Back Charges" form (████ #4) which details the amounts a tenant would be charged by the landlord's maintenance staff for any damages caused at the unit. No other receipts were submitted. Besides the priming of these walls, the landlord also had to repair a large hole in one wall in one of the bedrooms, as seen in the submitted photographs.
13. Landlord2 also pointed out that the paint had been splashed onto a thermostat, rendering it unusable, and paint was also smeared all over the kitchen floor and on a window screen. He reference the same Back Charges form for the costs of addressing these issues.
14. Landlord2 also directed my attention to his photographs showing 6 different light fixtures at the unit and he pointed out that the lightshades are missing on each one. His maintenance staff charges \$14.00 to replace each lightshade, according to the Back Charges form.
15. Landlord2 also pointed out that the tenant had left behind about 4 soiled mattresses, several end-tables, a large mirror, some laundry baskets, as well as a large amount of garbage and debris. The landlord is seeking \$100.00 for the costs of collecting and removing that garbage. He also stated that no cleaning had been carried out at the unit, and before any of the repairs, just listed, could get started, the unit needed to be cleaned. He again pointed to his photographs which show that the refrigerator had not been cleaned out, and that the walls and floors were dirty.

## 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 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*

17. The photographs submitted by the landlord clearly show that the tenant had deliberately splashed large amounts of paint onto the walls, floors and windows in the rental unit and they also show that there is a large hole in the wall in one bedroom, which cannot be attributed to normal wear. The landlord's claim to repair that damage comes to less than \$500.00, which I find to be generous. As such, those claims succeed.
18. I also accept the landlord's claim that 6 lightshades were missing, and as they are only seeking \$14.00 for each shade, which again is more that reasonable, that claim also succeeds.
19. The photographs submitted by the landlord also show that there was a significant amount of garbage and personal belongings left behind at the unit which needed to be disposed of, and it was evident from these photographs that the tenant had carried out no cleaning before she vacated. As such, the landlord's claim for garbage removal and cleaning also succeeds.

**Decision**

20. The landlord’s claim for compensation for damages succeeds in the amount of \$883.60.

**Hearing Expenses**

21. The landlord paid a fee of \$20.00 to file this application. As her claim has been successful, the tenant shall pay this hearing expense.

**Summary of Decision**

22. The landlord is entitled to the following:

a) Compensation for Damages .....	\$883.60
b) Hearing Expenses .....	\$20.00
c) Total Owing to Landlord.....	<u>\$903.60</u>

06 September 2022

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Date

