

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0356-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:08 PM on 21 October 2021 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$2215.00 in compensation for damages, and
 - Authorization to retain the security deposit of \$650.00.

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.

Issue 1: Compensation for Damages - \$2215.00

Relevant Submissions

The Landlord's Position

6. The landlord stated that she had entered into a rental agreement with the tenant on 01 September 2019 and a copy of the executed agreement was submitted

with her application. The agreed rent was set at \$1300.00 per month and it is acknowledged in the agreement that the tenant had paid a security deposit of \$650.00.

7. The tenant issued the landlord a termination notice on 01 June 2021 and he vacated at the end of that month.
8. 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:

• Broken dishwasher.....	\$200.00
• Countertop damage	\$300.00
• Leaky hot water boiler	\$25.00
• Leaky window water damage basement	\$60.00
• Water damage laundry room.....	\$50.00
• Broken stovetop control panel.....	\$500.00
• Missing pantry shelves.....	\$30.00
• Door knob missing	\$30.00
• Water damaged ceiling tiles	\$60.00
• Mildew in basement bedroom	\$20.00
• Chewed handrail by dogs.....	\$20.00
• Shed latch missing.....	\$15.00
• Screen missing in storm door.....	\$25.00
• Keys were not returned	\$150.00
• Missing curtain rods and curtains.....	\$140.00
• 3 days of cleaning	\$500.00
• Broken fan in bathroom.....	\$20.00
• Broken door sweep	\$20.00
• Broken microwave handle.....	\$50.00
 Total	<u>\$2215.00</u>

Dishwasher

9. The landlord stated that after the tenant moved out, she discovered that the dishwasher was leaking and she surmised that the cause of the leak was a hose which the tenant had allowed to clog with bones and food debris. In support of her claim the landlord pointed to a photograph showing the debris that she had cleaned out of that hose (Exhibit 9). The landlord replaced that dishwasher with a second-hand one, and she claimed that she had paid \$200.00 for it. No receipt was submitted with her application. The landlord testified that the dishwasher was approximately 7 years old.

Countertop

10. The landlord stated that there is a gouge in the kitchen countertop, and she surmised that it had been caused by the tenant laying something hot directly on it. She stated that that countertop was installed in 2018. That countertop has not been repaired, but she submitted an estimate (Exhibit 17) showing that it would cost \$239.11 to purchase a replacement section.

Hot water boiler

11. The landlord submitted a photograph with her application (Exhibit 6) showing that the hot water boiler had been leaking and it had caused there to be mould on the floor underneath the boiler. The landlord argued that the tenant ought to have informed her that the boiler was leaking so that she could have addressed the issue and that would have prevented the damage to the floor. The landlord had to replace a part of the flooring because of the water damage and she is seeking \$25.00 in compensation. No receipt was submitted with her application.

Leaky window

12. The landlord stated that the basement window had been leaking during this tenancy and the tenant did not notify her about the issue. Because of the leaking she had to replace the trim around the window. She is seeking \$60.00 in compensation but no receipt was submitted with her application.

Water damage in laundry room

13. The landlord complained that the baseboards in the laundry were water-soaked and had to be replaced. She figured that this damage was caused by the tenant's washing machine. She is seeking \$50.00 in compensation. No receipt was submitted with her application.

Control panel

14. The landlord submitted a photograph with her application (Exhibit 1) showing that there was a crack in the control panel on her stove. She stated that she was unable to purchase a replacement control panel, as they are no longer available, so she purchased a replacement stove. No receipt was submitted with her application showing that purchase, but she did submit a copy of her banking records showing that she had spent \$805.00 at [REDACTED]. The landlord stated that that stove was about 10 years old.

Missing pantry shelves

15. The landlord stated that there are 3 pantry shelves missing and she is seeking \$30.00 for the costs of replacing them. No receipts or quotes were submitted with her application.

Missing doorknob

16. The landlord stated that a doorknob to the walk-in closet was missing after the tenant moved out and she pointed to a receipt (Exhibit 16) showing that she had paid \$24.71 (\$21.49 + tax) for a replacement. She stated that that doorknob was 13 years old.

Ceiling Tiles

17. The landlord stated that the ceiling tiles in the basement were installed in 2019 just before the tenant moved in and she pointed to a photograph, taken after the tenancy ended (Exhibit 4), showing that several of those tiles were stained. She stated that she was informed by the tenant that these tiles had suffered water damage when the dishwasher backed up. The landlord is seeking \$60.00 in compensation. No receipt was submitted with her application.

Mildew

18. The landlord pointed to her photographs of the basement bedroom which she stated shows mildew on the walls (Exhibit 7). She claimed that the mildew was caused by the tenant having a pile of clothes in that room. She is seeking \$20.00 for the costs of purchasing mildew spray. No receipt was submitted with her application.

Handrail

19. The landlord pointed to a photograph of the handrail to the deck (Exhibit 15), showing that the end of that rail was damaged. She stated that that damage was caused by the tenant's dogs chewing on that rail. The landlord is seeking \$20.00 for the costs of purchasing a piece of 2x4. No receipt was submitted with her application.

Shed latch

20. The landlord also complained that the latch to the shed was missing and she is seeking \$15.00 for the costs of a replacement. No receipt was submitted with her application.

Keys

21. The landlord stated that the tenant had not returned the keys to the house after he moved out and she was required to change the locks. She submitted receipts with her application (Exhibit 18) showing that she had purchased a new lock, in 2020, for \$113.26, and she also had new keys cut at a cost of \$17.10.

Missing curtains rods and curtains

22. The landlord stated that the curtains and curtain rods for the living room, bedroom and dining room were missing after the tenant moved out. She pointed to her before-pictures showing that these rods and curtains were in place before the tenant moved in (Exhibit 27). Those rods and curtains have not been replaced and the landlord did not submit any receipts or quotes for the costs of replacement.

Cleaning

23. The landlord stated that it took 3 days, with 3 other people helping her, to clean the rental unit after the tenant moved out. She claimed that she had to clean out all the cupboards, and all the windows needed to be washed because there was mould on them. She also claimed that there was mould and mildew in the basement and she also had to clean out all the cupboards. In support of her claim, the landlord submitted a photograph showing that there was some dust on top of the refrigerator and dirt and dust underneath that appliance (Exhibit 10), that there was mildew on the siding on the exterior of the house (11), that there were stickers on a French door and a mirror (12), and photographs showing that the areas under the dishwasher and under the sink were dirty (9). She also submitted 3 affidavits from those who helped her clean the property.

Bathroom fan

24. The landlord stated that the fan in the bathroom was not working after the tenant moved out and she had it replaced. The landlord is seeking \$20.00 in compensation. No receipt was submitted with her application. The landlord stated that she did not know why the fan was not working, but she claimed that the moisture buildup that resulted caused there to be a mould issue in that room and she also complained that the ceiling speakers had rusted as a result.

Door sweep

25. The landlord also stated that the door sweep for the door to the back deck was broken. She stated that her neighbours had told her that the tenant never shovelled the back deck and he would use the door to push the snow away from it so he could get onto the deck. No photographs were submitted showing this damage. The landlord stated that the door sweep has not been replaced and no quotes or receipts were submitted with her application.

Microwave handle

26. The landlord also pointed to a photograph showing that the handle to the microwave is cracked. She stated that she does not know whether it will be able to be fixed or whether she will be able to get a replacement part, and she also stated that she has no idea how much it will cost. She is seeking \$50.00 in compensation.

The Tenant's Position

Dishwasher

27. The tenant stated that he discovered that the dishwasher leaked early in his tenancy and as a result, he claimed that he hardly used it during his tenancy, and he argued that he was not responsible for the clogged hose. He also stated that he never cooked anything with bones in it during his tenancy and suggested that the bones and debris the landlord found in the dishwasher was from before his tenancy began. The tenant also pointed out that the landlord had sold that dishwasher after he moved out and he submitted screenshots from the landlord in which she writes the dishwasher is in good working order except for a drip (Exhibit 10).

Countertop

28. The tenant denied that he had placed anything hot on the countertop. He claimed that the countertop was defective and was "flaking" and in order to prevent any further damage, he put epoxy on the affected area. He pointed to a photograph that was taken just before he moved out showing that area of the countertop (Exhibit 12) and pointed out that the damage shown in the landlord's photograph is worse than what can be seen in his.

Hot water boiler

29. The tenant stated that he was not aware that the hot water boiler was leaking and he argued that he is therefore not responsible for that damage. He also pointed out that there was no tray underneath the boiler, which he claimed was a "code requirement".

Leaky window

30. The tenant claimed that there were already some old water lines around that window when he moved in, and he suspected that the damage to the window trim was already there before he moved in. He claimed that he never opened that window during his tenancy and he never noticed any leaking.

Water damage in laundry room

31. The tenant stated that his washing machine was not leaking during his tenancy. He stated that he sold that washing machine to the landlord at the end of the tenancy and he pointed to an e-mail exchange he had with the landlord after he had moved out in which she requests his washer drain hose as the new one she had bought "leaks like crazy". The tenant suggested that if there is any water damage to those baseboards, that damage was caused by the landlord after he moved out.

Control Panel

32. The tenant stated that the stove was not in good condition when he moved in to the unit, and he stated that one of the burners would not work properly and that one of the control knobs was missing. He acknowledged that he had put that crack in the control panel, but he claimed that this had not affected any of the electronic components of the stove and that it was in the same working condition when he moved out as when he moved in.

Missing pantry shelves

33. The tenant stated that he had thought he had placed those shelves in the basement. In any case, he stated at the hearing that he did not dispute this portion of the landlord's claim and agreed that she is entitled to retain \$30.00 of the security deposit.

Doorknob

34. The tenant acknowledged that the doorknob was missing, but he claimed that he had removed it because it was broken. He stated that that closet door locked one day and could not be opened. He stated that he removed the knob from the door and discovered that the mechanism was broken and that the bolt had been sheered off. He testified that he was not negligent in the use of that door knob and claimed that he had done nothing to cause that damage.

Ceiling Tiles

35. The tenant acknowledged that these tiles suffered that water damage when the dishwasher backed up, and he claimed that this happened early in his tenancy and he did not use the dishwasher afterwards for the remainder of the tenancy. He stated that when this happened, he removed the tiles to let them dry out and he inspected the ceiling and determined that no other damage had been caused. The tenant testified that he did not know why the dishwasher backed up, but he figured that maybe the float inside was broken.

Mildew

36. The tenant stated that he used this bedroom as a spare room and he denied that there was any pile of clothes left in that room. He stated that in the area shown in the landlord's photographs, he had stored 2 dog crates. He pointed out that this room had not been renovated before he had moved in and the landlord submitted no photographs showing the condition of these walls when the tenancy began.

Handrail

37. The tenant acknowledged that his dogs had caused the damage to the handrail, as seen in the photograph, and he agreed that the amount sought by the landlord here could be deducted from his security deposit.

Shed latch

38. The tenant stated that the latch to the shed merely rusted off after one winter. Instead of putting a new latch on the shed, he put one on the gate to the backyard, to deter anyone from entering the yard. He suggested that the landlord remove that latch and put it on the shed.

Keys

39. The tenant acknowledged that he had not returned the keys. He stated that he did not use the keys during his tenancy and would use the electronic keypad, which he complained did not work very well. He claimed that he had contacted the landlord some days after he had moved out and offered to return the keys to her, but the locks had already been changed at that point.

Missing curtain rods and curtains

40. The tenant claimed that some of the photographs submitted by the landlord (Exhibit 27) show the condition of unit when the landlord was trying to sell it, about 4 months before he moved in, and he claimed that they do not show the condition of it when he took occupancy—for instance, the landlord's photographs show that it was fully furnished, but all of that furniture had been removed when he moved in. The one picture that was taken just before he moved in shows that there is a curtain rod in one window, but no curtains. He claimed that that rod was still there when he vacated, and he denied that there were any curtains in any of the windows, just window blinds.

Cleaning

41. The tenant argued that he was not responsible for cleaning some of the items the landlord had claimed, including the air exchanger and the vents. He acknowledged that the photographs of the areas under the refrigerator and dishwasher do show that there was dust and dirt there, but he argued that that could have been the condition of those areas when he moved in and he pointed out that the landlord had not submitted any before-pictures of those areas. Neither were any photographs submitted by the landlord showing the condition of the floors, the carpets, the sinks, toilets or showers, and he claimed that all these items were clean when he moved out. Regarding the affidavits, the tenant stated that he could not comment on them as the landlord had not sent them to him before the hearing. The tenant argued that, based on her photographic evidence, which shows that there are some stickers on a mirror and some dust on top of the refrigerator, a claim for \$500.00 is excessive.

Bathroom fan

42. The tenant stated that the fan was still working when he moved out, but he did claim that, towards the end of the tenancy, he noticed that there was an electrical connectivity issue with the lights and the fan. He also argued that the landlord should have expected that metal speakers in a bathroom would eventually rust.

Door sweep

43. The tenant stated that the door sweep and the kick plate were both damaged as a result of a major snowstorm. He pointed out that the landlord submitted no receipts for the costs she is seeking here.

Microwave handle

44. The tenant stated that he did notice that the handle to the microwave was cracked, but he testified that he did not know whether it was cracked during his tenancy or whether it was already in that condition before he moved in. He also pointed out that the landlord has presented no evidence to establish the costs she is seeking here and he claimed that the figure of \$50.00 was “made up”.

Analysis

45. 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

46. With respect to the dishwasher, I find that the landlord has not presented enough evidence to establish that the leak was caused by any deliberate or negligent act on the part of the tenant, and I find that it's just as probable that the leak developed as a result of normal use over a period of 7 years. No receipt was submitted to establish the costs she is seeking here, either. Hence, that claim fails.
47. Regarding the countertop, the landlord's evidence does show that there was a gouge in the countertop and the tenant acknowledges that he had tried to repair it during his tenancy. I agree with the landlord that this damage was likely caused by the tenant laying something hot on the countertop and I therefore find that he is responsible for the costs of replacing that section. As that countertop was installed just a year before the tenant moved in, I find that the landlord is entitled to the \$239.11 she was quoted.
48. No evidence was presented by the landlord to establish that the tenant caused the hot water boiler to leak and I accept his claim that he was unaware of that leak. Hence the landlord's claim for the costs of replacing a section of the flooring does not succeed. I reach the same conclusion about the leaking window. I am unable to discern any damage to the baseboards in the photograph submitted by the landlord, and with no receipt for the replacement baseboards, that claim also fails.
49. Regarding the stove, the tenant did not dispute the landlord's claim that he had cracked that control panel during his tenancy and I accept the landlord's testimony that she had purchased a new stove at a cost of \$805.00. As stoves have an expected lifespan of 12 years, and as this damaged stove was already 10 years old, I find that the landlord is entitled to a depreciated award of \$134.17 ($\$805.00 \times 2/12$)

50. The tenant did not contest the landlord's claim for \$30.00 for the costs of the pantry shelves, so that claim succeeds.
51. With respect to the doorknob, I accept the tenant's testimony that he had done nothing to damage that knob and that it broke as a result of normal use.
52. With respect to the ceiling tiles, I've already determined that the landlord had not presented enough evidence to establish that the tenant was responsible for the leak in the dishwasher. As such, as the damage to the ceiling tiles was caused by the leaking dishwasher, and, additionally, as no receipts were submitted, this claim fails too.
53. Regarding the mildew on the walls in the basement bedroom, no receipt was submitted for the costs of purchasing mildew spray, so that claim fails. The tenant is also right to point out that without any before-pictures, or without a report of an incoming inspection, the landlord has also failed to establish that this issue of the mildew occurred during this tenancy.
54. The tenant acknowledged that his dogs had chewed the handrail and he did not contest this portion of the landlord's claim.
55. There was no receipt or estimate for the costs of replacing the latch to the shed.
56. Regarding the keys, that claim does not succeed either. It is expected that at the end of every tenancy, a landlord would rekey or replace the locks at a rental unit for the safety and security of any new tenants moving into the unit. A landlord may only make a claim for new locks if they were damaged or altered by a tenant during the course of the tenancy.
57. Regarding the curtains and curtain rods, I was not satisfied that the landlord had established that these items were missing. There is no report of an incoming or outgoing inspection which addresses the issue of the curtain rods and curtains, and the tenant denied that he had been supplied with curtains in the first place. Furthermore, the landlord presented no evidence, e.g., receipts or quotes, to substantiate the costs that she is claiming here.
58. With respect to the cleaning, I agree with the tenant that the landlord has failed to establish that he is responsible for the dirt that was found under the refrigerator and dishwasher as there was no evidence submitted showing the condition of those areas when the tenant moved in. I am also in agreement with the tenant that the landlord's evidence does not support her claim that she is entitled to compensation for 3 days of cleaning—for example, she submitted no evidence showing that the windows were dirty or that the cupboards and closets needed to be cleaned out. Furthermore, as the tenant was not provided with the 3 affidavits prior to the hearing, the content of those affidavits will not be considered. Based on her photographs, I find that compensation for 4 hours of cleaning is justified. Policy with this Section is that an applicant may claim \$21.20 per hour for their personal labour, so her claim succeeds in the amount of \$84.80.

59. No evidence was presented by the landlord to establish that the bathroom fan was damaged by the tenant through any deliberate or negligent act, and, in any case, the landlord submitted no evidence, e.g., receipts, showing the costs she had incurred as result. Likewise for the door sweep and the microwave handle.

Decision

60. The landlord’s claim for compensation for damages succeeds in the amount of \$508.00, determined as follows

- Countertop damage \$239.11
- Broken stovetop control panel..... \$134.17
- Missing pantry shelves..... \$30.00
- Chewed handrail by dogs..... \$20.00
- 3 days of cleaning \$84.80

- Total \$508.08

Issue 2: Security Deposit

61. The tenants paid a security deposit of \$650.00 on 03 September 2019, and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord’s claim for damages has partly succeeded, she shall retain that portion of the security deposit and return the remainder to the tenants.

Summary of Decision

62. The tenants are entitled to the following:

- a) Refund of Security Deposit \$650.00
- b) LESS: Compensation for Damages (\$508.08)**
- c) Total Owing to Tenants..... \$141.92

19 July 2022

Date

