

## Residential Tenancies Tribunal

Application

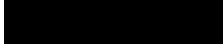
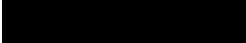


Decision 21-0414-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:49 PM on 06 January 2022 via teleconference.
2. The applicant,  hereinafter referred to as “the tenant”, participated in the hearing. The respondent,  hereinafter referred to as “the landlord” was also in attendance.

### Issues before the Tribunal

3. The tenant is seeking the following:
  - An order for refund of security deposit in the amount of \$750.00.
4. The landlord is seeking the following:
  - An order for a payment of \$113.75 in compensation inconvenience;
  - An order for a payment of \$1,754.12 in compensation for damages; and
  - Authorization to retain the \$812.50 security deposit.

### 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 case are section 14 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

### Issue 1: Compensation for Damages - \$1754.12

### Relevant Submissions

The Landlord's Position

7. The tenant resided in the rental premises from 01 December 2019 through to 24 August 2021. The monthly rent was \$1400.00, exclusive of utilities, and a security deposit in the amount of \$750.00 was collected on 15 November 2019. Both parties provided copies of the written rental agreement (T# 1/L# 1) and indicated that the tenancy was terminated on 24 August 2021 by mutual agreement.
8. The landlord estimated that the rental premises was built in the 1970s and he stated that he has owned the premises since approximately 2006. The landlord testified that he has done some cosmetic renovations, including replacing the kitchen cabinets and flooring in the main floor apartment.
9. The landlord testified that he conducted a move in condition inspection on 27 November 2019 with the tenant and that the report produced from this inspection was signed by the tenant (L#2A and L#2B). No outgoing inspection was conducted with the tenant.
10. The landlord stated that there were significant damages caused to the unit after the during this tenancy and with his application he submitted the following breakdown of the costs to carry out the repairs (L#3):

• Cleaning.....	\$172.50
• Hole in wall in dining room .....	\$75.00
• Repair wall/door stop .....	\$75.00
• Replace heater.....	\$87.63
• Repair kitchen cabinets.....	\$862.50
• Closet door casing .....	\$23.49
• Bathroom wall repair .....	\$218.00
• Plumbing services .....	\$413.42
 Total .....	 <u>\$1927.54</u>

Cleaning

11. The landlord provided proof of e-transfer on 09 September 2021 in the amount of \$345.00 for “services” at the rental premises (L#4). The landlord testified that he was seeking compensation for half of this amount because the tenant “had made efforts to clean in response to feedback provided”. The landlord submitted a series of photos depicting remaining items that needed to be cleaned including dirt in appliances, dirt on floor, water marks on doors, various marks and stickers on walls, and additional damage in the bedrooms (L#5). No invoice was provided.
12. The landlord stated that if there had been stickers left on the wall prior to the tenants taking occupancy, that they would have been noted on the move-in

condition inspection report. The landlord also argued that there could have been no way that significant dirt would have remained for the entire 20 month duration of the tenant's occupancy of the rental premises. The landlord also reiterated how the purpose of the move in condition inspection report is for the landlord and tenant to establish together the state of the rental premises on move in.

#### Hole in Wall

13. The landlord provided a photo of a hole in the wall, in the dining room, over a baseboard heater (L#7) and also submitted a quote for \$75.00 for the costs of fixing the hole (L#6). The landlord referred to the move-in condition inspection report and pointed out that it was noted that there had been some scratches on the heater as well as a small crack on the wall. After the tenancy ended, he discovered that this new hole and he claimed that had been stuffed with paper towel. The landlord testified that this hole has since been repaired and denied causing the hole, and or hiding it from the tenant when she moved in.

#### Repair of Wall/door stop

14. The landlord provided a picture of a doorstop in the porch which was held on by duct tape, as the screws holding it up had been stripped (L#8). He testified that the costs for fixing this was part of the same \$75.00 quote for work provided to fix the hole over the heater (L#6).

#### Living Room Heater replacement

15. The landlord testified that the faceplate for the heater was removed and he had to procure a replacement. The landlord provided a picture of the damaged heater (L# 9) as well as the invoice for the replacement (L#10). The landlord testified that the heater was old, but still had many years left.

#### Kitchen Cabinet Repair

16. The landlord provided a quote in the amount of \$862.50 for the full costs of installing a new fridge gable and wall corner cabinet side panel (L#11). The landlord provided photographic proof of the damaged fridge gable (L#12) and corner cabinet (L#13) and testified that the high cost of this project was because cabinets have to be disassembled and rebuilt with new materials to repair the damage. The landlord testified that the cabinets were approximately 6 years old and were damaged by water exposure. That work has not yet been carried out.

#### Closet Door Casing

17. The landlord testified that the closet door casing was missing and needed to be replaced. The landlord submitted proof of cost for the casing (L#14) and photographic proof of the casing missing in a bedroom of the rental premises (L#15). The landlord testified that the necessary repair work has not yet been completed.

### Bathroom Wall Repair

18. The landlord testified that the toilet paper holder had been knocked off and taped up in the bathroom causing damage to the wall. The landlord provided proof of e-transfer for the costs to repair the damage (L#16) and photographic proof of damage to the wall (L#17). The landlord also testified that this damage occurred during the tenancy in May 2021. The landlord testified that the cost of work was so high because the contractor had to paint the entire wall after the plastering was completed. No invoice was submitted with his application.

### Plumbing Services

19. The landlord provided proof of a plumbing invoice in the amount of \$293.42 from July 2021 (L# 18). The landlord testified that this was for work clearing the toilet and that he was called afterwards by the plumbers who informed him that there had been nail clippers and face clothes flushed down the toilet. The landlord did not provide proof of items being flushed.
20. The landlord provided proof of a second plumbing invoice for clearing a tub drain in the amount of \$115.00 from January 2021 (L#19). The landlord testified that there were known issues with the tub, but that a plumber had to be called because there had been items dropped down the drain of the tub. The landlord testified that he informed the tenant that he would cover the costs of the repair work for the tub.

### The Tenant's Position

#### Cleaning

21. The tenant stated that there were stickers and marks on the walls when she moved into the unit. She denied that the damage was caused by her family. She also stated that that she had cleaned the rental premises prior to vacating.
22. The tenant pointed out that the landlord had not submitted any photographs showing the condition of the unit when she first moved in, and she claimed that when they filed out the condition report on move in, not every deficiency was noted at that time.

#### Hole in Wall Over Diner Room Heater

23. The tenant testified that the heating unit never worked properly and that the hole shown in the pictures was the result of repair work by the landlord after she reported that the heater was shaking and not sitting properly on the wall. The tenant testified that her family did not cause the hole in the wall and that if she knew about the hole, she would have reported it.

#### Repair of Wall/door stop

24. The tenant testified that the doorstop started shaking and so to avoid it shaking, the doorstop was taped to the wall.

Living Room Heater replacement

25. The tenant stated that she did not know what heater was being discussed.

Kitchen Cabinet Repair

26. The tenant denied causing any damage to the kitchen and she claimed that was unaware of any specific damage to the kitchen cabinets. She again pointed out that there were no photographs submitted by the landlord showing the condition of these cabinets when she moved in. The tenant also claimed that when she cooked, she would open windows, and she stated that she treated this property as if it were her own.

Closet Door Casing

27. The tenant made had no comments on the door casing and she stated that she did not know what the landlord was talking about.

Bathroom Wall Repair

28. The tenant claimed that there was a loose screw and so the toilet paper holder was not staying on the wall. She claimed that she noticed this issue right away and kept bringing this issue to the attention to the landlord, and she also pointed out that the toilet paper holder was not inspected during the incoming walkthrough.

Plumbing Services

29. The tenant conceded that nail clippers and wash cloths were accidentally flushed down the toilet by her baby, but she had believed the landlord was going to be “taking care of the costs” of the repairs. The tenant submitted copies of a text-exchange with the landlord where she admits to nail cutters and face clothes being dropped by the baby in the flushing toilet (T#2). However, this section of the text message chain does not include any indication that the landlord agreed to cover costs.
30. The tenant also stated that it was her belief that the landlord was going to cover the costs of repairing the drain in the tub as well.

**Analysis**

31. 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.*

32. 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 wilful or negligent act;
  - The value to repair or replace the damaged item(s)
33. 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.
34. 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. Regarding the landlord's various claims for damage, I accept his testimony and evidence regarding the condition of the rental premises at the time of move in. I also accept the consistent questioning from tenant1 along with her testimony that every small little thing may not have been listed on the condition inspection report.
36. Regarding the landlord's specific claim for compensation for cleaning in the amount of \$172.50 (e.g., half of a cleaning bill in the amount of \$345.00), I find that he successfully established the need for cleaning based on the pictures provided of assorted dirt and debris across the entirety of the rental premises.

Due to his failure however, to provide a specific cleaning related invoice related to the rental premises, I am unable to ascertain his entitlement to compensation for any work completed. As such, his claim for compensation does not succeed.

37. Regarding the landlord's claim for compensation in the amount of \$75.00 to repair two holes in the rental premises, over a heater and behind a doorstop, he successfully established that that damage existed, that it did not exist prior to occupancy, and that the costs to repair damage would be \$75.00 as indicated by a contractor quote provided. As such, I find that the landlord's claim for compensation succeeds in the full amount of \$75.00.
38. Regarding the landlord's claim for compensation in the amount of \$87.63 for replacing the living room heater, he successfully established that that damage existed, that it did not exist prior to occupancy, and that the costs to repair the damage would be \$87.63 as indicated by a sales receipt provided. As the tenant did not dispute this portion of the landlord's claim, this claim succeeds.
39. Regarding the landlord's claim for compensation in the amount of \$862.50 for kitchen cabinet repair, he successfully established that that damage existed, that it did not exist prior to occupancy, and that the costs to repair the damage would be \$862.50, as shown in a sales quote provided. As these cabinets were 6 years old, and as kitchen cabinets have an expected lifespan of 20 years, I find that the landlord is entitled to a depreciated award of \$603.75 ( $\$862.50 \times .7$ ).
40. With respect to the missing closet door casing, I also find that this claim succeeds. That door casing was not noted to be missing on the incoming inspection report and the tenant did not dispute this portion of the landlord's claim. The submitted screenshot from Kent shows that a replacement door casing would cost \$23.49, and his claim therefore succeeds in that amount.
41. Regarding the landlord's claim for bathroom wall repair, I find that, although he had established that some damage was caused to this wall during this tenancy, he did not submit an invoice or quote for the costs that he is seeking here. Hence, that claim does not succeed.
42. Regarding the landlord's claim for compensation for the costs of plumbing services for a clogged toilet, the tenant acknowledged that damaged was caused by clippers and cloths being flushed down a toilet. As such, I find that his claim for compensation for plumbing succeeds in the full amount claimed of \$293.42.
43. With respect to the costs he is seeking for the costs of clearing the plumbing in the tub, landlord acknowledged that he informed the tenant that he would cover these costs. As such, that claim does not succeed.

## **Decision**

44. The landlord's claim for compensation for damages succeeds in the amount of \$1,048.79 determined as follows:

- Hole in wall in dining room ..... \$75.00
  - Replace heater..... \$87.63
  - Repair kitchen cabinets ..... \$603.75
  - Closet door casing ..... \$23.49
  - Plumbing services ..... \$293.42
- Total ..... \$1083.29

**Issue 2: Compensation for Inconvenience - \$113.75**

**Relevant Submissions**

The Landlord’s Position

45. This portion of the landlord’s claim concerns the personal labour he had exerted to carry out the repairs detailed in the previous section, as well as an hour he spent repairing the 2 stair noses. Claiming \$20.50 per hour, the landlord is seeking compensation for 5.5 hours of his time, determined as follows:

- Heater replacement..... \$10.25
  - Cabinet door repair ..... \$20.50
  - Stair nose repair x 2 ..... \$20.50
  - Remove garbage/debris ..... \$20.50
  - Install new blinds..... \$10.50
  - Repair closet door ..... \$10.50
  - Repair closet door casing..... \$20.50
- Total ..... \$112.75

The Tenant’s Position

46. The tenant acknowledged that it would have taken the landlord 5.5 hours to carry out the work detailed by the landlord here. She also acknowledged that she was responsible for the damage caused to the stair noses. However, she claimed that the blinds were already damaged when she move into the unit and she also claimed that the cabinet the landlord had removed was already there when she moved into the unit. She also denied that she had caused any damage to the baseboard heater or the kitchen cabinets.

**Analysis**

47. The majority of the items identified within the landlord’s claim for compensation for inconvenience were related to his claim for damage. As shown previously in this report, I found that the landlord successfully established that the tenant had caused assorted damages throughout the rental unit, and I therefore also



conclude that he is entitled to compensation for 5.5 hours of his labour in carrying out these repairs.

48. **Decision**

49. The landlord's claim for compensation for inconvenience succeeds in the amount of \$112.75.

**Issue 3: Security Deposit**

**Relevant Submissions**

50. The landlord stated that the tenant had paid a security deposit of \$750.00 on 15 November 2019, and receipt of that deposit is acknowledged in the submitted rental agreement. The landlord testified that when he collected that deposit, he placed it in an interest bearing account, where it accrued \$62.50 in interest, bringing the total deposit to \$812.50.

51. As the landlord's claim for compensation for damages and inconvenience has been successful, he is entitled to retain that deposit and apply it against those awards.

52. The landlord stated at the hearing that although he believes that the tenant had caused almost \$2000.00 in damages to his unit, as a result of this application, he is only seeking to retain the security deposit and the accrued interest, and he is not seeking any order from this Board for an amount over and above the security deposit.

**Summary of Decision**

53. The landlord is authorized to retain the \$812.50 security deposit as compensation for damages and inconvenience.

26 August 2022

\_\_\_\_\_  
Date

