

## Residential Tenancies Tribunal

Application [REDACTED]  
Application [REDACTED]

Decision 21-0447-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:49 PM on 02 February 2022 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as “the tenant”, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “the landlord”, was also in attendance.

### Issues before the Tribunal

3. The tenants is seeking an order for refund of security deposit in the amount of \$1200.00.
4. The landlord is seeking the following:
  - An order for a payment of \$2132.58 in compensation for damages, and
  - Authorization to retain the \$1200.00 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 is policy 9-3: Claims for Damage to Rental Premises.

## Issue 1: Compensation for Damages - \$2132.58

### Relevant Submissions

#### The Landlord's Position

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenant, and MR, on 04 October 2019, and a copy of that executed lease was submitted with the tenant's application (█ #1). █ moved out at expiry of that lease, and the tenant entered into a new 1-year agreement with the landlord on 01 October 2020 (SB #1). The agreed rent was set at \$1650.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$1200.00.
8. The landlord stated that the tenant moved out in September 2021, and the keys were handed over to him on 16 September 2021.
9. The landlord stated that the tenant had caused some damages to the unit during his tenancy and with his application he submitted the following breakdown of the costs to carry out the repairs (█ #2):

• Missing remote for fan.....	\$65.59
• Paint and plastering .....	\$386.87
• Replace floor.....	\$366.13
• Replace bedroom door.....	\$108.10
• Repair fence.....	\$162.73
• Repair stair tread.....	\$29.66
• Replace thermostat.....	\$45.91
• Repair tile in mud room .....	\$19.41
• Replace knob and deadbolt .....	\$74.74
• Replace pocket door .....	\$287.50
• Replace storm door.....	\$1228.20
• Replace floor board.....	\$115.00
• Replace window hardware .....	\$40.25
• Replace exterior door.....	\$402.49
Total.....	<u>\$3332.58</u>

#### Missing remote

10. The landlord stated that the remote control for the ceiling fan was missing after the tenant moved out and he was required to purchase a new one. He pointed to a screen shot of his e-mail showing that he had purchased a replacement on 26 October 2021 at a cost of \$65.69 (█ #3). The landlord stated that that ceiling fan was installed in 2018.

### Paint and plastering

11. The landlord stated that the walls at the unit were not in the same condition when the tenant vacated, as they were when he moved into the unit. He complained that there were numerous holes and screws in the walls, and blotches in places where the tenant had tried to paint. In support of his claim, the landlord pointed to his photographs showing the condition of the walls after the tenant moved out (█ #4), and he compared those photographs to a video which he took, showing the condition of the property on 04 October 2019, just before the tenant moved in (█ #5). The landlord stated that he had spent about 25 hours plastering and painting the walls, and he pointed to his receipts showing that he had spent \$386.87 on paint (█ #6). The landlord stated that the unit was last painted in 2017.

### Replace floors

12. The landlord stated that he had to replace the laminate floors in the kitchen and living room after the tenant moved out, and he submitted a receipt with his application showing that he had paid \$366.13 for these new floors. The landlord complained that in the living room there was a sticky substance on the floors which could no be removed, and he also stated that there were some small holes in that floor. He also claimed that the floor in the kitchen had suffered some water damage near the dishwasher. The landlord pointed to his submitted photographs showing the condition of the floors after the tenant moved out. He stated that these floors were only installed in 2018.

### Replace bedroom door

13. The landlord pointed to a photograph showing a bedroom door and he claimed that the door was destroyed and he had to replace it. He submitted a receipt with his application showing that he purchased a new door at a cost of \$108.10, and he claimed that it took him 6 hours to hang it. That damaged door was just 1 year old when the tenant moved in in 2019.

### Repair fence

14. The landlord stated that during his tenancy, the tenant had placed some wood against the chain-link fence in the backyard, which had caused the fence posts to bend and the chain-link was damaged. The landlord was able to repair this fence himself, and he pointed to his receipts showing that he had purchased the necessary repair materials for \$162.73. The landlord stated that this fence was approximately 15 years old.

### Repair stair tread

15. The landlord submitted a photograph showing that there is crack in a stair tread, and he figured that someone had dropped something on it causing that damage. The landlord submitted a receipt with his application showing that he had

purchased a new tread at a costs of \$29.66. The stair treads were approximately 8 years old.

Replace thermostat

16. The landlord pointed to another photograph showing that a plastic cover for a thermostat was broken, and he claimed that this thermostat was not in that condition when the tenant moved in. He submitted a receipt with his application showing that he purchased a replacement thermostat for \$45.91.

Repair Tile

17. Another photograph submitted by the landlord shows that there is a hole in a tile in the mud room, and the landlord figured that the tenant caused this damage by dropping something on that tile. The landlord repaired this tile with some grout and he submitted a receipt showing that he was charged \$19.41. He also pointed out that it appeared as if the tenant had attempted to repair it with some grout before he vacated.

Replace doorknob and deadbolt

18. The landlord stated that when the tenant moved in in 2019, he had purchased a new exterior door for the master bedroom and it was fitted with a doorknob and matching deadbolt. After the tenant moved out, the landlord discovered that this matching set had been removed and it had been replaced with what he described as "spare parts". He purchased a new locking system for that door after the tenant moved out and he submitted a receipt showing that he was charged \$62.99 + tax.

Replace pocket door

19. The landlord also complained that the tenant had installed a lock on a pocket door, and before he vacated, that lock was removed, leaving a gash, as seen in the submitted photographs. The landlord claimed that this damage cannot be repaired and the door needs to be replaced. He testified that a contractor gave him a verbal quote of \$287.50 to have that door replaced. The landlord stated that this was an "older" door but he did not know the exact age.

Replace storm door

20. The landlord also complained that the main storm door is not longer working and won't close. He claimed that this door had 3 locking mechanisms on it, and he argued that there was no amount of wind which would cause the damage seen in the submitted video. The landlord stated that this door has not been replaced, but he submitted an e-mail quote with his application stated that that he would be charged \$1068 + tax to have it replaced (█ #7). This door was installed in 2013.

### Window hardware

21. One of the photos taken after the tenant moved out shows that the hardware used for opening and closing one of the windows at the unit was broken and had been left on a window sill. He stated that Amazon sells these openers for \$40.25. No estimate or screenshot was submitted with his application. The landlord stated that these windows were installed in 2013.

### Replace exterior door

22. The landlord pointed to his photographs of an exterior door showing that there were several dents and scratches on the outside of it. The landlord stated that this door was only installed in January 2021, and he pointed to a receipt showing that he had paid \$496.21 for it at that time. He is seeking the full costs of replacing that door. It has not been replaced.

## The Tenant's Position

### Missing remote

23. The tenant stated that, to the best of his knowledge, the fan for the remote was left at the rental unit when he vacated.

### Paint and plastering

24. The tenant claimed that there were already screw holes and wall anchors in the walls when he moved in. He acknowledged that he had made some holes in the walls to hang pictures, but he claimed that these holes were small, and no different than the ones that were already there. The tenant claimed that any damage caused to these walls during his tenancy ought to be regarded as normal wear and tear, and he argued that because there were already holes in the walls, the landlord would have needed to repaint anyhow.

### Replace floors

25. The tenant stated that he had not caused any damage to these floors and he denied that there was any water damage in the kitchen. The tenant stated that these floors were already damaged and scratched up when the tenancy began, and he claimed that when he moved in the landlord had told him that this damage was caused by a previous tenant who had a pet dog. He also pointed out that the landlord is in the process of selling his house and he argued that he trying to have him pay for his renovations for that sale.

### Replace bedroom door

26. The tenant claimed that this door was fine when he moved out and he claimed that there was no crack in it. He also argued that the landlord's pictures were

taken several weeks after he moved out, and the damage may have happened during that period. He also claimed that the landlord had conducted a walkthrough with the tenant's mother after the keys were handed over, and at that time, the landlord stated that the unit was in fine condition and no mention was made of this door.

#### Repair fence

27. The tenant claimed that the fence was not damaged by the wood he had laid against it, rather, it was damaged as a result of "snowmagedon". He argued that the pictures submitted by the landlord do indeed show that the fence is damaged in the area where he had leant his wood, but he claimed that the fence had suffered that same damage everywhere, and not only in the places where his wood was leaning on the fence.

#### Repair stair tread

28. The tenant stated that nothing was dropped on that stair tread. Rather, he claimed that this damage happened when he stepped on the edge of the tread. He claimed that he was using the stairs in a normal way.

#### Replace Thermostat

29. The tenant stated that the thermostat was not broken when he vacated and he claimed that the plastic cover identified by the landlord was intact.

#### Repair Tile

30. The tenant claimed that there was no grout in the house during his tenancy and he denied he had made any attempt to repair that tile. He argued that if there was any grout on it from any attempted repair, then this was something which was done before he moved in, or after he moved out.

#### Replace doorknob and deadbolt

31. The tenant acknowledged that there was a new doorknob on the door to the master bedroom when he moved in in 2019. He claimed, though, that [REDACTED] was residing in that room during the first tenancy and he surmised that she had removed that doorknob and deadbolt. After [REDACTED] moved out and this second tenancy started, the tenant then moved into the master bedroom and discovered that doorknob and deadbolt had been removed and replaced. The tenant argued, though, that this issue should have been dealt with by the landlord in 2020, before this new tenancy began.

#### Replace pocket door

32. The tenant claimed that this pocket door was quite old and he testified that it was already damaged when he moved in. He claimed that the locking mechanism

never worked and that it appeared that it may been off of its tracks, making it difficult to operate. With respect to the gash identified by the landlord, the tenant claimed that this was caused through normal use, and the door got jammed against the wall causing the damage. He acknowledged that a lock was put on the door afterwards, but he denied that the lock had caused this damage.

#### Replace storm door

33. The tenant claimed that the actuator for the storm door had already been ripped off the door when he moved in, and he claimed that it would not properly close on its own during this tenancy. He denied that he was negligent in his use of the door or that he had caused any deliberate damage to it. Instead, he claimed that the door became further damaged during “snowmageddon” as a result of a lot of heavy snow pushing against the door. He stated that because of that storm, the glass pane in that door came out, and he attempted to repair it as best he could.

#### Window hardware

34. The tenant claimed that the hardware for most of the windows in the unit were already broken when he moved in, including the one identified by the landlord. He claimed that when using that hardware, it would slide back and forth, and in the case of this particular window, the hardware would come out of its socket. He also complained that he was unable to close some of the windows using the supplied hardware, and he would have to go outside to push the windows shut.

#### Replace exterior door

35. The tenant acknowledged that the landlord had installed this new door at the unit on 2021. He stated that the previous door was very drafty and it had been causing his electricity bills to significantly increase. But the tenant claimed that he never did use this door, and he pointed out that all of the damage is on the outside. He testified that there are 6 separate entrances to the rental property, and he claimed that he typically would enter the unit through the garage. He also claimed that he was not living at the unit after February 2021, and he only continued to pay his rent as he was in a fixed-term lease. The tenant also testified that he was wholly unaware of this damage, and the first time he had seen these dents was when the landlord sent him the application package.

### **Analysis**

36. 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*

37. With respect to the remote control for the fan, I accept the landlord's claim that that remote was missing when the tenancy ended, and I find it probable that the tenant took it with him when he vacated. As such, that portion of the landlord's claim succeeds. The landlord's submitted video, showing the condition of the unit when the tenant moved, also shows that the thermostat's cover is still in place, and I also find that the tenant is responsible for the costs of replacement. The tenant also acknowledged that the locks had been removed from the door to the master bedroom during the first year of his tenancy, and I find that he is also responsible for those costs.



38. With respect to the painting, although some damage is visible in the landlord's photographs, some of this can be chalked up to normal wear and tear, while some of the other holes were probably there when the tenant moved in. In any case, as a landlord is expected to repaint the walls at rental property every 3 to 5 years anyhow, and as these walls were last painted in 2017, they are probably in need of a fresh coat of paint anyways.
39. I do note that there was no written report of any incoming or outgoing inspection, and although the landlord's video is somewhat helpful in that it provides a general overview of the unit, it is unhelpful with many of the claims made here. For example, the video does not show the condition of the pocket door, the tiles in the mud room, and although the floors are visible, the video does not allow me to determine whether they are already scratched, as the tenant claims. He also claimed that the pocket door was already in poor condition. Without such evidence, I find that the landlord had failed to establish that the tenant is responsible for that damage. I reach the same conclusion about the damaged bedroom door, the hardware for the windows, and the new exterior door.
40. The tenant acknowledged that some of the claimed damage did occur during this tenancy, but I was not persuaded that the tenant had caused it deliberately or through any negligent act. I find it probable, for instance, that the fence and the storm door were damaged during "snowmageddon". I also accept the tenant's claim that the stair tread became damaged when he stepped on its edge—that has to be considered normal use.

**Decision**

41. The landlord's claim succeeds as follows:

- Missing remote for fan..... \$65.59
  - Replace thermostat..... \$45.91
  - Replace knob and deadbolt ..... \$74.74
- Total..... \$186.24

**Issue 2: Security Deposit**

42. The tenant paid a security deposit of \$1200.00 on 04 October 2019 and receipt of that deposit is acknowledged in the submitted leases. As the landlord’s claim for compensation for damages has partially succeeded, he shall retain that portion of the security deposit and return the remainder to the tenant, as follows:

- a) Refund of Security Deposit ..... \$1200.00
- b) LESS: Compensation for Damages ..... (\$186.24)
- c) Total Owing to Tenants..... \$1013.76

15 November 2022

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Date

