

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0537-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:36 AM on 25 January 2022 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent and tenant, [REDACTED] was represented at the hearing by [REDACTED] hereinafter referred to as [REDACTED].

Issues before the Tribunal

4. The landlord is seeking the following:
 - An order for a payment of rent in the amount of \$475.00,
 - An order for a payment of \$2494.54 in compensation for damages, and
 - Authorization to retain the security deposit of \$437.50.

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.

Preliminary Matters

7. This application was previously heard on 06 May 2021 and an order was issued by this Section on 28 June 2021, whereby the tenant was required to pay the landlord \$2007.85 in compensation for damages and rent owing. The tenant

appealed that decision to the Supreme Court of Newfoundland and Labrador, the appeal was allowed, and on 15 September 2021 that Court remitted the matter back to this Tribunal to be reheard.

8. The landlord called the following witnesses:

- [REDACTED] – the tenant's mother
- [REDACTED] – the landlord's boyfriend

Issue 1: Compensation for Damages - \$2494.54

Relevant Submissions

The Landlord's Position

9. The landlord stated that she had entered into 6-month, fixed-term rental agreement with the tenant on 31 May 2019, and a copy of the executed lease was submitted with her application. The agreed rent was set at \$875.00 and it is acknowledged in the lease that the tenant had paid a security deposit of \$437.50.
10. On 02 November 2020 the landlord issued the tenant a termination notice and a copy of that notice was submitted with her application. That notice was issued under section 22 of the *Residential Tenancies Act, 2018* (notice where tenant's obligations not met) and it had an effective termination date of 08 November 2020. The tenant vacated on 07 November 2020.
11. The landlord stated that when the tenancy ended, she found significant damages at the unit and she submitted the following breakdown of the costs to carry out the required repairs:

- Cleaning due to smoke damage..... \$201.50
- Paint unit \$914.45
- Clean windows \$80.60
- Plaster holes in living room, bedroom \$85.29
- Damaged blind, missing window covering \$58.94
- Gas \$55.07
- Damaged toaster \$17.11
- Damaged cutlery \$20.97
- TV remote missing \$17.23
- Door knob replacement \$40.84
- Carpet cleaning \$390.39
- Garbage removal \$40.30
- Linens/mattress pads \$80.43
- Mattress cleaning \$40.30
- Furniture cleaning \$40.30
- Furniture repair..... \$40.30
- Refrigerator door handle \$57.47

• Clean oven.....	\$27.38
• Clean microwave.....	\$10.08
• Scrub kitchen and bathroom floors.....	\$20.15
• Repair bathroom cabinet.....	\$40.30
• Replace light bulbs.....	\$29.05
• Rodent bait.....	\$18.96
• Pillow replacement.....	\$27.46
• Caulking	27.61
• Hair removal and drain cleaner	\$31.63
 Total.....	 <u>\$2494.54</u>

Cleaning due to smoking

12. The landlord stated that, according to the lease, this was supposed to be a non-smoking apartment, but despite this agreement, the tenant smoked in the unit anyhow. Both of the landlord's witnesses, [REDACTED] and [REDACTED], corroborated the landlord's claim that there was a smell of cigarette smoke in the tenant's apartment. The landlord testified that she was required to wash down all the walls in the unit to try to rid it of the smell of cigarettes and she testified that it took her 10 hours to carry out that work.

Repaint Apartment

Plaster holes in living room and bedroom

Clean windows

13. The landlord stated that even though she had cleaned all the walls, she was still unable to get the smell of cigarette smoke out of the apartment and she stated that she was required to repaint the whole unit. She also testified that the tenant had stuck strip lighting to several walls and when those strips were removed, the paint came away from the walls. In support of that claim, the landlord submitted a photograph of one wall showing that damage, and she also pointed to other photographs showing that there was also damage to a wall where the tenant had installed an air-condition in a window. The landlord also complained that the tenant had not been cleaning her windows during this tenancy and she had allowed mould to develop on the window sills. These also had to be plastered, sanded and painted. With her application, the landlord submitted receipts showing that she had spent \$261.92 on paint and paint supplies, and she also stated that it took her about a week to carry out that work. The landlord stated that these walls were painted just before the tenant moved in in 2019.

Damaged blind, missing window curtains

14. The landlord testified that the custom curtains that he been installed in the living room were missing after she regained possession of the unit and she also complained that the window blinds in the bedroom were damaged by the tenant during this tenancy. With her application the landlord submitted a photograph showing the damaged blinds, and a photograph showing that those curtains were

in place when the tenancy began. The landlord submitted a receipt showing that she was charged \$27.32 for replacement curtains and \$11.47 for new blinds.

Gas

15. The landlord submitted a receipt with her application showing that she had paid \$55.07 for gasoline on 13 November 2020. She stated that this was gas that she had to use to make numerous trips to Walmart and Home Hardware to pick up supplies in the week after the tenant had moved out.

Damaged Toaster

Damaged Cutlery

16. The landlord stated that the tenant had been “hot-knifing” during her tenancy, and she had been using the toaster to heat up knives so she could smoke hashish. In the process, the tenant melted one side of the toaster and she had had also damaged a number of the landlord’s knives that the unit had been furnished with. The landlord submitted a receipt showing that she was charged \$17.11 for a new toaster and she is claiming another \$20.97 for replacement cutlery.

Missing TV Remote

17. The landlord stated that the rental unit was fully furnished and the tenant had been supplied with a TV and a remote control at the beginning of the tenancy. That remote was missing when the landlord regained possession and she submitted a receipt showing that she was charged \$17.23 (\$14.98 + tax) for a replacement.

Door knob replacement

18. The landlord pointed a photograph showing a damaged doorknob on one of the bedroom doors. She stated that this doorknob was working perfectly when the tenancy began, but after the tenant moved out, it would no longer turn and it had to be replaced. She submitted a receipt with her application showing that she was charged \$20.69 for a replacement.

Carpet cleaning

19. The landlord stated that the carpets in the bedrooms, the living room, the hallway and stairs all had to be cleaned after the tenant moved out. She stated that these carpets were very dirty and had obviously not been cleaned in months. She stated that there was a bad odour of cat urine coming from the carpets and she claimed that she had found kitty litter on the carpets in places. In support of her claim, the landlord pointed to her photographs showing the condition of these carpets after the tenant moved out. The landlord testified that she had cleaned these carpets herself, and she pointed to a receipt showing that she had paid \$389.24 for a new carpet cleaner and for cleaning supplies.

Garbage removal

20. The landlord stated that the tenant had left behind bottles in the cupboards, there was a bag behind the stove, and there were cans, boxes and other debris in the storage room. She also stated that she had to spend time removing supplies from the property which she had purchased to carry out the necessary repairs. She is seeking \$40.30 in compensation for 2 hour of her personal labour to carry out that work.

Linens/mattress pads

21. The landlord stated that a duvet cover was missing after the tenant moved out and she also complained that 2 mattress pads were stained and had to be replaced. She pointed to a submitted receipt showing that she was charged \$80.43 for 2 new sets of bedding.

Furniture repair

22. The landlord stated that the tenant had not only put strip lighting on the walls, but it was also stuck to the coffee and end tables, causing damage to those items as well. She also complained that the new sofa that she had supplied the tenant with was stained when she moved out, and she also claimed that the mattress were soiled as the tenant was placing items between the mattress and the box spring. She is seeking compensation for 2 hours of her labour to repair the tables and clean the sofa and the mattresses.

Refrigerator door handle

23. The landlord submitted a photograph of the refrigerator showing that the door handle was missing, and she claimed that that handle was cracked and had to be replaced. The landlord pointed to her invoice from Premium Appliance Repair showing that she was charged \$37.32 for a replacement and she is seeking compensation for 1 hour of her labour to have it installed. The landlord stated that this refrigerator was just 3 years old when the tenant moved in.

Clean oven

Clean microwave

24. The landlord stated that the oven was not cleaned before the tenant vacated and she submitted a photograph of that oven with her application. The landlord is seeking \$27.38 for the costs of purchasing oven cleaner and compensation for 1 hour of her personal labour. The landlord also complained that the microwave was not cleaned and she is seeking \$10.08 in compensation for the 30 minutes it took her to clean that appliance.

Scrub kitchen and bathroom floors

25. The landlord is also seeking compensation for 1 hour of her time to clean the bathroom and kitchen floors and she indicated that she had sent in 3 photographs with her application.

Repair bathroom cabinet

26. The landlord stated that the tenant had informed her that she would urinate about 10 times per night and that she would not flush the toilet during that time. When she did flush it, as a result of the accumulation of toilet tissue, it would overflow and this had caused water damage to the adjacent cabinet. The landlord stated that when the tenant moved out, she had to sand the damaged area and then seal it with paint. She is seeking compensation for 4 hours of her personal labour.

Lightbulbs

27. The landlord testified that several light bulbs were burnt out after she regained possession of the unit and she pointed to 2 receipts showing that she had paid \$21.87 to have them replaced.

Rodent bait

28. The landlord stated that during her tenancy, the tenant left food on the floors and she claimed that she had not been disposing of her garbage regularly, and would allow it to accumulate on the patio. That testimony was corroborated by GF, who was residing in the same complex as the tenant. The landlord claimed that because of the tenant's uncleanliness, rodents started to enter the tenant's apartment. She claimed that she had provided the tenant with mouse traps during the tenancy, after she had received complaints from her, but she claimed that the issue persisted after the tenant moved out and she was required to purchase rodent bait. She pointed to one of her submitted receipts showing that she was charged \$18.96 for that purchase.

Pillow replacement

29. The landlord stated that she was required to replace 6 pillows as they were stained and dirty. She pointed to her receipt from Walmart showing that she was charged \$27.46. The landlord was unable to identify any photographs showing these pillows.

Caulking

30. The landlord stated that she was required to purchase caulking, at a cost of \$27.61, in order to repair the damage caused by the mould around the windows as well as caused by the air conditioner the tenant had installed. She also stated that she was required to caulk around the toilet and the bathtub.

Hair removal and drain cleaner

31. The landlord pointed to a receipt showing that she was charged \$11.48 to purchase drain cleaner. She claimed that the kitchen sink, the bathroom sink and the bathtub were not draining as they had not been cleaned.

The Tenant's Position

Cleaning due to smoking

32. █ stated that the tenant never did smoke in the unit and she would only smoke or vape on the shared deck. She testified that she had visited the unit on numerous occasions and she claimed that she never saw the tenant smoking in the unit and she argued that if there was any smell of smoke, it would have drifted in from outside.

Repaint Apartment

Plaster holes in living room and bedroom

Clean windows

33. █ reiterated her earlier claim that the tenant had not been smoking in the unit during her tenancy and it did not need to be repainted for that reason. She acknowledged that the tenant had placed some LED strip lights on the walls and she agreed with the landlord that it appears as if some paint had peeled away when they were removed. She also acknowledged that her photographs show that there was damage to the area around the window where the air-conditioner had been. However, █ claimed that these damages were localized and the whole apartment did not need to be repainted.

Damaged blind, missing window curtains

34. █ stated that the tenant had removed the curtains from the living room window and that when she did, she accidentally ripped them. As a result, they were disposed of. █ also acknowledged that the tenant had damaged the blinds when she was attempting to open the skylight.

Gas

35. █ made no comments on the landlord's claim for the costs of purchasing gasoline.

Damaged Toaster
Damaged Cutlery

36. █ acknowledged that the tenant had been using the toaster to “hot-knife” and she did not dispute the landlord’s claim for the costs she is seeking here.

Missing TV remote

37. █ claimed that the tenant had her own TV when she moved in and that she never did use the one provided to her by the landlord. She claimed that it sat, unused, in one of the rooms at the rental unit and she also claimed that there was no remote control for that TV when the tenant moved in.

Doorknob replacement

38. █ stated that the tenant did not know what had happened to the doorknob.

Carpet cleaning

39. █ stated that the tenant had thoroughly cleaned and shampooed the carpets before she vacated and she surmised that the landlord’s photographs were taken by her before the tenancy ended. █ submitted her own photographs, which she stated were taken by the tenant on 05 November 2020 showing that the carpets were clean and that they weren’t stained or dirty.

Garbage removal

40. █ stated that she had personally emptied and wiped out the cupboards before the tenant moved out and she testified that nothing was left behind. She also claimed that there was no garbage left at the unit when the tenant moved out as █ had taken it all with her and placed it in her car. █ admitted that she had not looked under the bed before the tenant vacated and conceded that some garbage could possibly have been left there.

Linens

41. █ stated that the tenant was not aware of any linens that were missing at the rental unit. She stated that the landlord had informed the tenant that a duvet cover was missing and the tenant therefore left behind one of her own as a replacement when she moved out. █ stated that she was not aware of any stains on the mattress pads, but she pointed out that that was what mattress pads were for—to protect mattresses from stains. She also suggested that those stains may have already been on those pads when the tenant moved in.

Furniture repair

42. █ stated that she did not believe that the tenant had caused any damage to any furniture at the apartment. She also complained that she was unable to identify

any of the photographs singled out by the landlord at the hearing, and she further complained that the some of the photographs that the landlord had submitted were taken before tenancy had ended, during an inspection, and before the tenant had cleaned the apartment.

Refrigerator door handle

43. █ claimed that the kitchen was very narrow and that when the refrigerator door opened, the handle would knock off the counter. She claimed that after awhile, the handle became loose and one day it merely fell off. She stated that the tenant had not caused this damage deliberately and that she had not used the refrigerator in an abusive way, and instead argued that this damage occurred as a result of normal use.

Clean oven

Clean microwave

44. █ acknowledged that the tenant had not cleaned the oven and she did not dispute the costs the landlord had claimed here. Regarding the microwave, █ stated that she had cleaned the outside of it, and it would have only taken the landlord 5 minutes to clean the inside.

Scrub kitchen and bathroom floors

45. █ stated that the kitchen and bathrooms floors were mopped by her before the tenant moved out.

Repair bathroom cabinet

46. █ acknowledged that there was some water damage caused to the bathroom cabinet, but she claimed that this was because the toilet was leaking, and not because of anything that the tenant had been doing.

Lightbulbs

47. █ stated that she did not realize that any lightbulbs had burnt out and she also questioned whether replaced burnt out bulbs is the responsibility of tenants.

Rodent bait

48. █ acknowledged that there might have been a couple of occasions when the tenant had not put her garbage out for the weekly collection, but she argued that this had not caused the issue with the rodents. Rather, █ pointed out that the rental unit is an old home, it is located in the downtown area, and it is not too far from a wharf, and she argued that these were the main reasons why rodents were found in the unit.

Pillow replacement

49. █ stated that she had no notice any damage to the pillows and made no comment on this portion of the landlord's claim.

Caulking

50. █ acknowledged that the tenant had an air conditioner in one of the windows and she conceded that some damage may have been caused to that area but she testified that she had not noticed that there was any mould on the windows. Regarding the bathroom, █ reiterated her claim that the toilet was leaking during this tenancy and that this was not caused by the tenant. She argued that if any caulking was required in the bathroom, the tenant is not liable.

Hair removal and drain cleaner

51. █ claimed that the tenant would periodically clean the apartment, and she argued that even if the sinks weren't cleaned, she didn't see how this was related to any issues of clogging.

Analysis

52. 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

53. With respect to the issue of smoking, I accept the landlord's corroborated testimony that the unit smelled of cigarette smoke, and even though that claim was denied by [REDACTED] she did acknowledge that the tenant had been "hot-knifing" in the apartment. Accordingly, I find that the landlord is entitled to compensation for the 10 hours of labour she had spent cleaning to try to rid the unit of that smell—\$201.50. It was also not disputed that the landlord was required to clean the microwave and oven and I also allow her the \$37.46 she claimed here.
54. Regarding the painting, it was not disputed that the tenant's air-conditioner had caused damage to the wall around the window that it was installed in, and I accept the landlord's evidence showing that there were other areas where the paint had peeled away because of the strip lighting. Given that there was also a smell of smoke in the apartment, I find that the landlord is entitled to compensation for the costs of purchasing paint and painting supplies, \$261.92, as well as compensation for 20 hours of her personal labour—\$403.00.
55. [REDACTED] acknowledged that the tenant had been "hot-knifing" and I accept the landlord's claim that the toaster and some of her cutlery was damaged. Her claim for the costs of replacing those items therefore succeeds: \$38.08. [REDACTED] also conceded that the tenant had damaged some window blinds and also agree that she is entitled to the \$58.94 claimed here. I also accept the evidence submitted by the landlord showing that a door knob was damaged and that the handle to the refrigerator was broken.
56. The evidence submitted by the landlord also shows that some pieces of furniture were dirty and that mattresses were soiled. I find that the landlord is entitled to \$40.30 for her time spent cleaning these items and I agree with her that she is also entitled to costs of purchasing linens and mattress pads—\$80.43. Insufficient evidence was presented, though, to establish that the landlord was required to replace 6 pillows. I do find it probable, though, that some lightbulbs had to be replaced.

57. With respect to the costs of cleaning the carpet, though, I find that that claim does not succeed. The photographs submitted by the tenant contradict those submitted by the landlord, and I agree with [REDACTED] that not all of the photographs submitted by the landlord show the condition of the property on the day the tenancy ended, and may have been taken at an earlier inspection. The landlord claimed that her photographs were date-stamped, but they were submitted as .pdfs, and the document properties for these submissions show that they were created on 29 April 2021, the day they were e-mailed to this Section. I reach the same conclusion with respect to the landlord's claim for the costs of removing garbage and the cleaning of the floor in the bathroom and kitchen. There was also insufficient evidence presented to show that the sinks and the tub were clogged.
58. Regarding the costs of rodent bait, I find that insufficient evidence was presented at the hearing to establish that the rodent issue was caused by the tenant. I was also not persuaded that the tenant was responsible for the costs of repairing the bathroom cabinet, as no corroborating evidence was presented by the landlord to establish that the toilet had been overflowing, as opposed to leaking, as [REDACTED] claimed. There was also no evidence presented at the hearing, e.g., an incoming inspection report, to establish that the tenant had been provided with a remote control for the TV at the beginning of the tenancy. With respect to the claim for gasoline, that claim does not succeed and I find that the costs of traveling to a rental property is a cost incurred in the normal course of doing business for a landlord.

Decision

59. The landlord's claim for compensation for damages succeeds in the amount of \$1241.81, determined as follows:

• Cleaning due to smoke damage.....	\$201.50
• Clean oven/microwave	\$37.46
• Plastering and painting.....	\$664.92
• Replace toaster and cutlery	\$38.08
• Replace window coverings.....	\$58.94
• Door knob and refrigerator handle	\$98.31
• Furniture/mattress cleaning.....	\$40.30
• Linens/mattress pads	\$80.43
• Lightbulbs.....	\$21.87
Total.....	<u>\$1241.81</u>

Issue 2: Rent - \$475.00

Relevant Submissions

The Landlord's Position

60. With her application the landlord submitted a copy of her rent records showing the payments she had received from the tenant since she had moved into the unit. According to these records, the tenant often paid her monthly rent in 1 or 2 installments, and in many cases, the total monthly rent was not paid.
61. The landlord stated that the balance owing accumulated each month, and she calculates that the tenant now owes her \$475.00 for the period ending 30 November 2020.

The Tenant's Position

62. █ acknowledged that the tenant was having issues paying her rent during this tenancy and she stated that she "wouldn't be surprised" if the tenant owed the landlord \$475.00 in rent.

Analysis

63. █ did not contest the landlord's testimony and did not dispute her rent records. As such, the landlord's claim succeeds.

Decision

64. The landlord's claim for a payment of rent succeeds in the amount of \$475.00.

Issue 3: Security Deposit

65. The landlord submitted a copy of a receipt with her application showing that the tenant had paid a security deposit of \$437.50 on 27 May 2019. As the landlord's claim for rent and damages has succeeded, she shall retain that deposit as outlined in this decision and attached order.

Issue 4: Hearing Expenses

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

Summary of Decision

67. The landlord is entitled to the following:

- a) Compensation for Damages \$1241.81
- b) Rent Owing \$475.00
- c) Hearing Expenses \$20.00
- d) LESS: Security Deposit..... (\$437.50)
- e) Total Owing to Landlord..... \$1299.31

29 September 2022

Date



John R. Cook
Residential Tenancies Tribunal