

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0324-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:15 PM on 02 November 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as "the landlord", participated in the hearing.
3. The respondent, [REDACTED] hereinafter referred to as "the tenant", was not in attendance.

### Issues before the Tribunal

4. The landlord is seeking the following:
  - An order for a payment of \$6362.50 in compensation for damages,
  - A payment of rent in the amount of \$1600.00, and
  - Authorization to retain the security deposit of \$400.00.

### 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 him by telephone. 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 he has been properly served. With her application, the landlord submitted an affidavit stating that the tenant had been served with the application, by e-mail, on 21 October 2021, and a copy of that e-mail was also submitted with her application. 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 his absence.

8. The landlord amended her application at the hearing and stated that she was also seeking an additional \$345.00 in compensation for a cable box that the tenant had removed from the rental unit.

### **Issue 1: Compensation for Damages - \$6707.50**

#### **Relevant Submissions**

9. The landlord stated that she had entered into a monthly rental agreement with the tenant on 08 July 2019, and a copy of that executed agreement was submitted with her application █ #1). The agreed rent was set at \$800.00 per month and it is acknowledged in that agreement that the tenant had paid a security deposit of \$400.00.
10. The landlord stated that on 20 July 2021 the tenant was arrested and he did not live at the property after that date. The tenant's daughter removed his possessions from the unit and the tenant did return to retrieve his vehicles. On 27 July 2021, after posting a Notice of Abandonment, the landlord entered and took possession of the unit.
11. The landlord stated that after the tenant moved out of the unit, she discovered that the tenant had caused damages to the property and she submitted the following breakdown of the costs to carry out the repairs:

• Flooring .....	\$2650.00
• Floor installation, misc.....	\$110.00
• Miscellaneous shop supplies .....	\$100.00
• New front door.....	\$500.00
• Cleaners.....	\$150.00
• Painters.....	\$1850.00
• Labour.....	\$1002.50
• Cable Box .....	\$345.00
<b>Total.....</b>	<b><u>\$6707.50</u></b>

Flooring, Floor installation

12. The landlord stated that after the tenant moved out, she replaced all of the flooring in the rental unit with laminate floors. She submitted a receipt with her application showing that she had paid \$2648.77 for that new flooring █ #5).
13. These floors needed to be replaced for several reasons. She stated that the floors in the 2 bedrooms were carpeted when the tenant moved in, and she claimed that during this tenancy these carpets became soiled, and she pointed to her photographs █ #3) and stated that they show that in one of the rooms the tenant had spilled wax onto the carpet. The carpets in those bedrooms were approximately 5 years old.
14. When the tenant moved in, there was a cushion flooring in the kitchen, porch and bathroom. The tenant was paid \$300.00 to replace the floor in the kitchen with vinyl flooring, but she complained that the tenant had done a poor job with the installation and there were large gaps between the pieces of vinyl which the tenant had attempted to fill with grout. The original cushion floor was approximately 10 years old.
15. With respect to the flooring in the porch and bathroom, the tenant had informed the landlord that he had replaced those floors with tiled floors, but the landlord complained that when the tenant vacated, he removed that tiled flooring and re-installed the original cushion flooring in those rooms. She stated that that reinstallation was done poorly, that the reducers between the rooms were missing and that the flooring was lifting in places.
16. The landlord also replaced the laminate flooring in the living room as the tenant had spilled paint on that floor.
17. The landlord stated that her boyfriend and his friend installed those floors and it took between 20 and 25 hours.

Miscellaneous shop supplies

18. The landlord pointed to a receipt from █ showing that she had spent \$86.93 on 4 different items. One of these was a new mirror—the landlord complained that the tenant had removed the mirror in the bathroom and had installed his own. But she claimed that this mirror was too heavy and it wouldn't stay on the wall. The landlord also stated that she had to remove the toilet when she was installing the new floors, and she had to purchase a new wax seal for that toilet when it was reinstalled. That receipt also shows that she had purchased a closet flange extension kit and some nails. Another receipt shows that she had purchased some plaster and a knife for \$11.59.

### New Front Door

19. The landlord stated that when she went to the unit on either 25 or 26 July 2021, she discovered that the front door was open, that it could not be locked and that the door was cracked, as well as the door frame. She figured that the tenant had kicked the door in to gain access to his possessions. The landlord had to replace that door and she pointed to a receipt showing that she was charged \$511.13 for a replacement door, a new door knob, and the requires supplies for installation. The landlord stated that this door was 10 years old.

### Cleaning

20. The landlord stated that the unit was in a very poor state when she regained possession 27 July 2021, and she claimed that she removed a significant amount of garbage from the property before the repairs could begin. She also stated that before the flooring could be installed and before the painting could start, she was required to have the unit cleaned, and she pointed to a receipt showing that she was charged \$150.00 to have that work carried out (████#6). The landlord stated that all the walls needed to be washed down, the floors needed to be cleaned and all of the appliances needed to be cleaned out. In support of her claim that cleaning was required, the landlord drew my attention to her photographs which show the condition of the property after the tenancy ended █████ #3).

### Painters

21. The landlord pointed to these same photographs to show the conditions of the walls at the property after the tenant moved out. They show that the tenant had plastered many areas of the unit, but he had not painted over that plaster before the tenancy ended. The landlord also complained that the tenant had been carrying out some painting at the unit during his tenancy, but the paint job was poor and the tenant had allowed paint to transfer to the ceiling, the trim work and even to the air exchanger vents. Because of the poor condition of the walls, the landlord hired a painter to repaint the whole apartment, and she testified that she had paid him \$1850.00, as per the quote that she was provided █████#7). The landlord stated that the walls in one bedroom and in the living room were painted just before the tenant moved in, while the paint on the other walls at the unit had variously been there between 3 and 5 years.

### Labour

22. The landlord stated that she and her boyfriend had carried out the installation of the flooring, the removal of the garbage and the installation of the front door. She also claimed that the tenant had put silicone on the baseboards, which she was required to scrape off and then repaint. She also stated that after all the flooring was installed and the unit was repainted, she again cleaned the property herself. The landlord is seeking \$1002.50 in compensation for 50 hours of her personal labour.

### Cable Box

23. During his tenancy, the tenant had access to the landlord's Wi-Fi and she had also provided him with a cable box for his TV. She testified that when the tenant vacated, he took the cable box with him and she was charged \$345.00 by her service provider. In support of that claim, the tenant pointed to a copy of her bill for September 2021 showing that she was charged that amount for the loss of the cable box [REDACTED] #8).

### **Analysis**

24. 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*

25. With respect to the flooring, I accept the landlord's claim that the carpets in the bedrooms were soiled and needed to be replaced, and her evidence shows that the tenant had done a poor job installing the flooring in the kitchen. Her photographs also show that the cushion flooring in the porch is in poor condition and I agree with her that it needs to be replaced. Good grade carpet and cushion floors have an expected life span of 10 years, and given that the cushion floors were 10 years old, I find that they had likely come to the end of the useful lifespan and would soon need to be replaced anyhow. With respect to the carpets, the landlord stated that they were 5 years old, and I therefore find that she is entitled to an award of half of the costs for their replacement. With respect to the laminate flooring in the living room, though, I am unable to see any damage to that flooring in the submitted photographs and I am not awarding the landlord the costs of replacing that floor either. I find that a depreciated award of \$750.00 is fair, given the foregoing, for the costs of purchasing and installing the floors for the bedrooms and kitchen.
26. I accept the landlord's claim that she had to replace the mirror and that she needed a new wax seal for the toilet, and she is therefore entitled to \$52.98 for those purchases and I also find that she is entitled to an award of \$11.59 for plaster. No evidence was presented at the hearing concerning any damage to a closet door, however, and that claim therefore fails.
27. With respect to the front door, I also find that that door was damaged and that it needed to be replaced. Exterior doors have an expected lifespan of 15 years, and as this door was already 10 years old, I find that the landlord is entitled to a depreciated award of \$223.84 for the costs of purchasing and installing that door (\$511.13 for the door + \$160.40 for 8 hours of labour x 2/3 depreciation).
28. Regarding the cleaning, the landlord's evidence does show that no cleaning had been carried out at the unit and the landlord is therefore entitled to that \$150.00 she had claimed.
29. I also accept the tenant's claim that the rental unit needed to be repainted. But again, depreciation needs to be taken into account here as it is expected that a landlord would repaint a rental property every 3 to 5 years. Some rooms were painted just before the tenant moved in, meaning the paintjob was just 2 years old, while the majority of the other walls were painted 3 to 5 years ago, according to the landlord's testimony. Taking this into consideration, I find that an award of \$500.00 is fair.
30. I accept the landlord's claim that the cable box was missing and I find that the landlord is therefore entitled to that \$345.00 for the replacement costs.

31. Besides the installation of the flooring and the door, which I dealt with above, I also find that the landlord is entitled to an additional \$501.25 in compensation for 25 hours of her labour to remove the garbage from the property, to carry out additional cleaning and to restore the baseboards.

### **Decision**

32. The landlord is entitled to an award of in compensation for damages, determined as follows:

• Flooring, installation .....	\$750.00
• Miscellaneous shop supplies .....	\$64.57
• New front door.....	\$223.84
• Cleaners.....	\$150.00
• Painters.....	\$500.00
• Cable Box .....	\$345.00
• Labour.....	\$501.25
 Total .....	 <u>\$2534.66</u>

### **Issue 2: Rent - \$1600.00**

#### **Relevant Submissions**

33. The landlord is seeking rent for the months of July and August 2021, at \$800.00 for each month.

34. Regarding the rent for July 2021, the landlord stated that she had received no rent from the tenant for that month, even though he was residing there up to the end of that month. Regarding the rent for August 2021, the landlord stated that because of the damages caused to the unit she was unable to rent it for that month while the repairs were being carried out. In fact, she stated that the repairs were not completed until the end of September 2021 and she only got new tenants for 01 October 2021.

#### **Analysis**

35. I accept the landlord's claim that the tenant had not paid his rent for July 2021 and I therefore find that the landlord is entitled to \$800.00 for that month.

36. I also accept her claim that because the tenant had abandoned the property in late July 2021 and because of the damages that the tenant had caused to the unit, there was no way that she could have put a new tenant into the unit for August 2021. I therefore agree with the landlord that the tenant is responsible for the loss of rental income she suffered and that she is entitled to \$800.00 for that month as well.

## **Decision**

37. The landlord's claim for a payment of rent succeeds in the amount of \$1600.00.

### **Issue 3: Security Deposit**

38. The tenant paid a security deposit of \$400.00 on 08 July 2019 and receipt of that deposit is acknowledged in the submitted rental agreement. As the landlord's claim for damages and rent has been successful, she shall retain that deposit as outlined in this decision and attached order.

### **Issue 4: Hearing Expenses**

39. 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**

40. The landlord is entitled to the following:

- a) Compensation for Damages ..... \$2534.66
- b) Rent ..... \$1600.00
- c) Hearing Expenses ..... \$20.00
- d) **LESS: Security Deposit..... (\$400.00)**
- e) Total Owing to Landlord..... **\$3754.66**

10 June 2022

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Date

