

## Residential Tenancies Tribunal

Applications [REDACTED]

Decision 21-0428-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 1:07 PM on 25 January 2022 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as "tenant1" and "tenant2", respectively, participated in the hearing.
3. The respondent, [REDACTED] hereinafter referred to as "the landlord", also participated. [REDACTED] was also in attendance.

### Issues before the Tribunal

4. The tenants are seeking an order for refund of the \$1650.00 security deposit.
5. The landlord is seeking the following:
  - An order for a payment of \$740.00 in compensation for damages, and
  - Authorization to retain the \$1787.00 security deposit.

### Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this case are section 14 of the *Residential Tenancies Act, 2018*.

## Preliminary Matters

8. Tenant1 stated that she was not seeking to have the whole security deposit returned to her, and that she was willing to allow the landlord to retain \$200.00 or \$300.00 for cleaning.
9. The landlord corrected his application at the hearing and stated that he was seeking an order for a payment of \$1787.00 in compensation for costs he had actually incurred in repairing damages caused by the tenants. The request for an order for the other \$740.00 was for compensation for damages that have not yet been repaired.

**Issue 1: Compensation for Actual Costs Incurred - \$1787.00**

**Issue 2: Compensation for Estimated Costs - \$740.00**

## Relevant Submissions

### The Landlord's Position

10. The landlord stated that the tenants resided in the rental premises from 27 June 2020 through to 31 July 2021 and with his application he submitted a copy of the executed rental agreement (L#2). The monthly rent was set at \$2,200.00 and it is acknowledged in the lease that a security deposit in the amount of \$1,650.00 was collected on 02 June 2020.
11. After the tenants moved out, the landlord stated that he discovered a significant amount of damage at the unit, and with his application he submitted the following breakdown of the costs he incurred to carry out repairs:

- Cleaning ..... \$780.00
- Steam cleaning ..... \$263.00
- Repair bedroom walls and baseboard ..... \$404.00
- Plumbing ..... \$120.00
- Kitchen stool reupholstered ..... \$220.00
- Total ..... \$1787.00

12. The landlord also submitted a breakdown for the estimated costs of repairing these items:

- Coffee table staining ..... \$200.00
- Stained carpet ..... \$100.00
- Stained/damaged footstool ..... \$80.00
- Stained staircase ..... \$300.00
- Replace glass ..... \$60.00
- Total ..... \$740.00

### Cleaning

13. The landlord stated that after the tenants moved out, he was required to spend 18 hours cleaning. He stated that he had to mop all the floors twice, he had to vacuum the floors twice, he claimed that the bathrooms were extremely dirty, and the windows and blinds had to be cleaned. He also testified that the refrigerator, oven and microwave had to be cleaned, and he stated that the tenants had left behind garbage and recycling in the garage. In support of his claim, the landlord pointed to his photographs showing the garbage that was left behind in the garage and other photographs show that there is grease in the vent for the oven, that the underside of a shelf in the refrigerator was dirty, and the oven racks had not been cleaned.

### Steam cleaning

14. Regarding the state of the carpets throughout the rental premises, the landlord claimed that the rooms occupied by the tenants' children had never previously been occupied and that the house was "only a few years old" when he bought it in 2008. The landlord testified that the carpets in the bedrooms were in good shape before the tenants took occupancy of the rental unit but they needed to be professionally cleaned after they moved out. No receipt was submitted for the costs that he is seeking here.

### Repair bedroom wall and baseboard

15. The landlord pointed out that, according to their rental agreement, "no holes" were to be put "in the walls for hanging art". However, he stated that he discovered a significant number of nails in the walls in one bedroom and he was required to carry out some plastering and painting to repair that damage.
16. He also stated that the tenants had pasted a map to one of the walls in the bedroom, and although he was assured that could easily be removed, it was stuck to the wall and was difficult to removed
17. The landlord stated that he had purchased \$175.87 in supplies and spent 11 hours of his personal labour, at the rate of \$20.75, repairing that damage.

### Plumbing

18. The landlord stated that the bathroom sinks were "slow to drain" and that they were clogged with hair. He testified that a plumber was brought in for a cost of \$120.00 after he was unable to clear the problem himself with Drano. No receipt was submitted at the hearing.

### Kitchen stools reupholstered

19. The landlord stated that the barstools in the kitchen had suffered some wear and tear and he referred to the pictures he submitted with his application (see page 47-48 on L#1). █ testified that the stools have since been reupholstered and he paid \$220.00 to have that work completed. No receipt was submitted with his application.

### Coffee table staining

20. █ referred to a photograph that had been submitted (see page 49 on L#1) and testified that this photo shows clear evidence of multiple white circular stains on the top of the table as a result of drinking glasses being placed on the table without coasters, despite there being coasters in the premises. █ stated that he had refinished the top of the coffee table himself, and that it took him 4 hours to complete. He testified that he was not required to purchase any additional materials because he had materials on hand.

### Stained carpets

21. The landlord testified that he identified a nominal value of \$100.00 for damage because the bedroom carpets could not be restored, even after the steam cleaning.

### Footstools

22. The landlord referred to two damaged footstools that had be disposed of because they were beyond cleaning or repair (see page 52 on L#1). █ testified that he tried cleaning the footstools, but that they "just didn't come clean" and so they "had to be thrown away". He also spoke to how he believed the dirt and damage to be "beyond regular use". █ testified that the \$80.00 identified, was not a specific replacement cost, but rather a "nominal value" and that the footstools have not been replaced.

### Stained staircase

23. The landlord testified that he does not yet have a quote to repair the stained and damaged stair treads. He referred to his submitted photograph, showing dark, black-like staining in the centre of the wooden stair treads (see page 51 on L#1). █ claimed that the staining was reflective of how the house was kept during the tenants' occupancy and he suspected the damaged was caused by outdoor shoes being worn inside.

### Replace Glass

24. The landlord pointed to his photograph of the kitchen cabinet and he pointed out that there are 2 chips in one of the glass shelves. He stated that he had received

a verbal quote that it would cost \$60.00 to replace that shelf. It has not yet been replaced.

### The Tenants' Position

#### Cleaning

25. Regarding the requirement for cleaning, tenant1 testified that she left "nothing out of the ordinary" when she vacated. She also pointed out that the landlord submitted no photographs showing that the oven was dirty and needed cleaning. Tenant1 also testified that she had her previous rental premises professionally cleaned prior to departure and that this cleaning, for a much larger premises, only cost her \$276.00 (T#2).

#### Steam cleaning

26. The tenant testified that she was not provided with a copy of the steam cleaning receipt and referred to photos she submitted of the rental premises and stated that there is no dark stain evident in this photos (T#1).
27. She also stated that the carpets were old with substantial "wear and tear" prior to occupancy and she suspected that they were the original carpets, meaning that they were about 15 years old.

#### Repair bedroom wall and baseboard

28. Tenant1 pointed out that, in her photographs, which show the condition of the property before she moved in, there are already nails holes in these walls.
29. She acknowledged that she had put a map on the wall during this tenancy, but she stated that according to the instructions that came with it, it was supposed to be easily removed. She stated that she requested that the landlord provide with an invoice for the costs of removing that map, and she would have forwarded it on to the manufacturer for compensation, but she claimed that the landlord did not comply and no invoice was received.

#### Plumbing

30. Tenant2 pointed out that the landlord presented no receipts to establish that he had hired anyone to unclog the sinks, and he also claimed that he was unaware of any issues with these sinks when he vacated.

#### Kitchen stools reupholstered

31. Tenant1 referred to the move-in inspection report, where it was noted that the stools (counter chairs) had "some wear, especially on corners". Tenant1 also spoke of how only two chairs were provided for them to use as a family of four in the rental premises and that the chairs provided were "Walmart chairs".

### Coffee table staining

32. Tenant1 acknowledged that she had caused there to be some circular marks on the coffee table as a result of placing water glasses on it. She claimed that she had not been provided with any coasters when she moved in and she had to purchase her own. The tenant also argued that these marks are not "damage", but she be regarded as normal wear and tear.

### Stained carpets

33. Tenant1 testified that any evidence of damage was "just wear and tear" on the carpets and that the carpets looked like they should after a family of four lived on carpets that are 15 years old.

### Footstools

34. Tenant2 asked if tenants are responsible for full replacement costs, or a portion of costs when an item at a rental premises ages out during their occupancy of the premises.

### Stained staircase

35. Tenant2 testified that his family did not wear outdoor shoes inside and that it was hard to comment on the photo provided because the photo quality was not clear. Tenant1 testified that there was no before-photo of the stairs provided by the landlord and she suggested that the staining was the result of natural feet oils as people went up and down stairs. Tenant1 argued that there was no damage visible in the landlord's photograph.

### Glass shelf

36. Tenant1 testified that she was not sure if the chips were "wear or damage" and that she had "no comment" on this request for compensation. She did acknowledge that her family caused the chips.

## **Analysis**

37. 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***

38. Based on the evidence submitted by the landlord, I was not persuaded that it would take 18 hours to clean that rental unit. No evidence was submitted showing that the floors, windows or blinds were dirty, and the tenant also pointed out that there was no photographic evidence showing the inside of the oven. There was also no evidence showing that the bathrooms needed cleaning. I agree with the landlord that there is garbage inside the garage, but that garbage appears to be neatly sorted and bagged, and all that would be required would be to bring it to the curb on the scheduled collection day. Nevertheless, tenant1 did acknowledge that some cleaning would be required and her evidence shows that she could have hired a professional cleaner at a cost of \$276.00. I find that the landlord's claim therefore succeeds in that amount.

39. Regarding the landlord's claim for compensation for steam cleaning of carpets, I accept the evidence and testimony provided from landlord1 that there were some dark stains left in the bedroom carpets after the tenants vacated the rental premises. I also accept the testimony from tenant1 including her comments in the move in condition inspection report, that the state of the bedroom carpets on

move in was "good consistent with age". Regarding any entitlement to compensation for costs incurred by the landlord, I was unable to verify his claims because he did not submit any written documentation from the third party vendor utilized for carpet cleaning. As such, his claim for compensation does not succeed.

40. Regarding the landlord's claim for the costs of repairing damage to the bedroom wall and baseboard, I accept his claim that some damage was caused as a result of the decal map that the tenant had installed, and that there was some minor damage to a baseboard. Regarding the nails in the walls, accept tenant1's claim that this damage was already in place when she had moved in. No receipts were submitted for the costs of materials, but I find that compensation for 5 hours of the landlord's personal labour is fair. Policy with this Section is that a landlord may claim up to \$21.20 per hour for their personal labour, so this claim succeeds in the amount of \$106.00.
41. Regarding the landlord's claim for compensation in the amount of \$120.00 for plumbing, he did not provide a receipt or other documents for services received and so I was unable to verify costs incurred. As such, his claim for compensation does not succeed.
42. With respect to the kitchen stools, I accept tenant1's claim that these stools had already suffered significant wear by the time that they had moved in, and I am of the view that any additional damage caused to those stools during this tenancy should be chalked up to normal wear and tear. Furthermore, no evidence was submitted showing that it cost \$220.00 to have these kitchen stools reupholstered.
43. Regarding the coffee table, tenant1 acknowledges that this damage was caused during her tenancy, and I am of the view that these water marks are not the result of normal wear and tear, but were rather the result of the tenants' negligence—they should have foreseen that this damage could occur and ought to have taken steps to prevent it. I therefore find that the landlord is entitled to compensation for the 4 hours he has claimed—\$84.80.
44. There is no dispute that the carpets at the rental unit were about 15 years old. As high quality carpets have an expected serviceable life of 10 years, I find that these carpets have come to the end of their useful life and would soon need to be replaced anyhow. As such, this claim does not succeed.
45. Regarding the footstools, although I find that the landlord has established that they were damaged, he failed to establish that this damage was the direct result of the tenant's actions, and he also provided no proof of the condition of the footstools when the tenancy began. Furthermore, no evidence was presented that showing the replacement costs of these footstools. Consequently, his claim for compensation does not succeed in any amount.

46. Regarding landlord1's claim for compensation for kitchen stool re-upholstery, he did not provide a receipt for costs incurred. Additionally, tenant1 disputed this claim for compensation by testifying that the chairs damaged were of lower quality and that she had noted "some wear, especially on the corners" on this stools during her move in condition inspection report. As such, landlord1's claim for compensation does not succeed as he failed to establish that damage was the direct result of the tenant and he also failed to provide third party documentation relating to costs incurred.
47. Regarding landlord1's claim for compensation for a tarnished staircase, I am unable to consider entitlement for compensation because landlord1 did not provide a dollar figure for repairing the stairs. Additionally, as noted by tenant1, the landlord also did not provide any documentation of the stairs immediately prior to the rental premises being occupied by the tenant and her family.
48. With respect to the chipped glass shelf, no evidence was presented by the landlord to establish that it would cost \$60.00 to have that shelf replaced. As such, that claim does not succeed.

### **Decision**

49. The landlord's claim for compensation for damages succeeds in the amount of \$466.80, determined as follows:

• Cleaning .....	\$276.00
• Repair bedroom walls and baseboard .....	\$106.00
• Coffee table staining .....	\$84.80
• Total .....	<b><u>\$466.80</u></b>

### **Issue 3: Hearing Expenses**

50. Policy with this Section is that the party that receives an award shall have their hearing expenses awarded also. The tenants submitted a receipt with their application showing that they had paid \$30.52 to serve the landlord with the application by registered mail. As the landlord is ordered to refund to the tenants a portion of the security deposit, he shall also pay their hearing expenses.

### **Summary of Decision**

51. The tenants are entitled to a payment of \$1213.72, determined as follows:

- a) Refund of Security Deposit .....\$1650.00
- b) Hearing Expenses..... \$30.52
- c) LESS: Compensation for Damages ..... (\$466.80)
- d) Total Owing to Tenants .....\$1213.72

13 September 2022

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Date

