

Residential Tenancies Tribunal

Application 2022 No. 482 [REDACTED]
Application 2022 No. 596 [REDACTED]

Decision 22-0482-00

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:16 AM on 20 July 2022 via teleconference.
2. The applicant, [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 tenant is seeking an order for refund of security deposit in the amount of \$650.00.
4. The landlord is seeking an order for a payment of \$1220.00 in compensation for damages.

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 policies 9-3: Claims for Damage to Rental Premises and 9-5: Life Expectancy of Property.

Issue 1: Compensation for Damages - \$1220.00

Relevant Submissions

The Landlord's Position

7. The landlord stated that she had entered into a rental agreement with the tenant, commencing 03 April 2022. The agreed rent was set at \$1300.00 and it was due on the 3rd day of each month. The landlord also stated that the tenant had paid a security deposit of \$650.00.
8. During this tenancy, the tenant's parents were residing at the rented premises.
9. On 09 May 2022, the tenant informed the landlord that she was terminating their agreement and her parents moved out of the unit on 02 June 2022.
10. The landlord stated that the tenant's parents had caused damage to the refrigerator and the countertop during this tenancy, and she was also required to carry out some cleaning after they vacated. She is seeking the following compensation:
 - Second hand fridge \$250.00
 - Countertop and installation \$850.00
 - Cleaning \$120.00

Total..... \$1220.00

Second hand fridge

11. The landlord stated that the side of the refrigerator had melted during this tenancy, and she claimed this damage was caused by leaving on the burner on the stove for an extended period. The landlord stated that the refrigerator now needs to be replaced and she testified that she had received a verbal quote of \$250.00 for a second-hand replacement. She claimed that this stove was approximately 8 years old when the tenancy ended.

Countertop

12. The landlord stated that after the tenant moved out she found that there was water on the countertop in the kitchen, which the tenant had not bothered to wipe down before she vacated, and she claimed that this caused bubbles to form in the countertop and she claimed that the countertop was "lifting". Photographs were submitted with her application showing this damage (█ #1). The landlord stated that she had received a verbal quote of \$850.00 for the costs of purchasing a new countertop and having it installed. The landlord stated that she did not know the age of that countertop.

Cleaning

13. The landlord stated that the tenant was supposed to have moved out of the unit on 31 May 2022 and she had a cleaner lined up to clean the apartment on that day. She stated that because the tenant did not have all of her possessions removed by that date, she had to cancel her cleaner, who she nevertheless paid \$120.00 for coming to the property. The landlord stated that she returned to the unit on 02 June 2022 and she cleaned the unit herself. The landlord is not seeking compensation for her labour to clean the unit, but rather she is seeking \$120.00 as compensation for the payment she had made to her cleaner. No receipt was submitted with her application.

The Tenant's Position

Second hand fridge

14. The tenant stated that the stove was used in a normal way during this tenancy and she denied that she had left the burners on when she was not cooking. The tenant acknowledged that the side of the refrigerator was warped from the heat of the stove, but she argued that this damage was the result of the landlord having the refrigerator placed immediately adjacent to the stove.

Countertop

15. The tenant stated that the area identified by the landlord in her photographs was where the supplied dishrack was located, and she acknowledged that after the dishes were washed, some water would be on the countertop. She argued, though, that these countertops were used in a normal way during this tenancy. With respect to the landlord's photographs, she stated that she sees no damage in these photographs and she pointed out that the landlord presented no evidence to establish that it would cost \$850.00 to have these countertops replaced.

Cleaning

16. The tenant acknowledged that there was some miscommunication between her and the landlord regarding the time that she would be moving out of the unit—she did not give the landlord an exact time that she would be completely moved out, and the landlord did not provide her with a time that her cleaner would be visiting the unit. With respect to the costs the landlord is seeking here, the tenant stated that she did not believe the landlord had paid her cleaner \$120.00, and she pointed out that no receipt was submitted with her application.

Analysis

17. 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*

18. With respect to the refrigerator, I agree with the tenant that this damage is likely caused by the fact that the stove is placed immediately next to it. And regarding the countertop, I also agree with the tenant that no damage is visible in the landlord's submitted photographs. In any case, no evidence (e.g., receipts or written quotes) was submitted with her application to corroborate the costs she is seeking here. As such, those claims do not succeed.
19. I reached the same conclusion with respect to the costs of hiring a cleaner. No receipt was submitted by the landlord showing that she had incurred \$120.00 to hire, and then cancel, a cleaner, and no evidence was presented to establish that

the tenant had agreed to have the unit readied for her at any specific time. For those reasons, that claim also fails.

Decision

20. The landlord's claim for compensation for damages does not succeed.

Issue 2: Security Deposit

21. With her application, the tenant submitted an e-mail she had received from the landlord, on 26 January 2022, acknowledging receipt of a \$650.00 security deposit on 26 January 2022 (████#1). As the landlord's claim for compensation for damages has not succeeded, the landlord shall refund the full amount of that deposit to the tenant.

Decision

22. The tenant's claim for a refund of the security deposit succeeds in the amount of \$650.00.

02 November 2022

Date

John R. Cook
Residential Tenancies Tribunal

