

## Residential Tenancies Tribunal

Application 2022 No. 1084NL  
Application 2023 No. 0057NL

Decision 22-1084-00

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:05 AM on 21 February 2023 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 a refund of the \$900.00 security deposit.
4. The landlord is seeking the following:
  - An order for a payment of \$1103.07 in compensation for damages, and
  - An order for a return of missing possessions values at \$58.58.

### 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: Missing Possessions - \$58.58**

### **Relevant Submissions**

#### The Landlord's Position

7. The landlord stated that she had entered into a 1-year, fixed-term lease with the tenant on 28 May 2021. The agreed rent was set at \$1200.00 per month and the tenant had paid a security deposit of \$900.00.
8. In October 2022, the tenant e-mailed the landlord and informed her that he was terminating their rental agreement and he moved out of the unit on 28 November 2022.
9. The landlord stated that when this tenancy began, there was a brown, 3 x 4 mat, on the laundry room floor, and there was also a towel on top of the washing machine, to prevent it from becoming scratched. The landlord stated that both the mat and the towel were missing when she regained possession of the unit in November 2022.
10. The landlord is seeking \$39.99 + tax for a replacement mat, and \$10.97 + tax for the costs of replacing the towel. These items have not been replaced and the landlord submitted no receipts or estimates with her application.

#### The Tenant's Position

11. The tenant stated that during this 1.5 year tenancy, this mat and towel became dirty and stained, and he claimed that there was also a rip in the towel. Because they had been worn out, the tenant disposed of them.
12. With respect to the costs the landlord is seeking here, the tenant claimed that one would be able to purchase a mat and towel for a lesser amount than what the landlord is claiming here.

### **Analysis**

13. There is no dispute that the tenant had disposed of the mat and the towel, and I agree that the landlord should be compensated. However, the landlord presented no evidence at the hearing, no receipts or quotes, by which I could make a determination as to the costs of replacement. As such, this portion of the landlord's claim does not succeed.

### **Decision**

14. The landlord's claim for compensation for missing possessions does not succeed.

## Issue 2: Compensation for Damages - \$1103.07

### Relevant Submissions

#### The Landlord's Position

15. The landlord stated that after the tenant moved out, she discovered that the tenant had caused some damages to the unit, and that it was not adequately cleaned. She submitted the following breakdown of the costs she is seeking to carry out the required repairs and to clean:

• Scratches on hardwood floors.....	\$200.00
• Replace mirror and pictures .....	\$87.39
• Replace toilet paper holders .....	\$74.43
• Blue stains on vanity floor .....	\$100.00
• Replace blind .....	\$59.79
• Remove burnt wood .....	\$20.00
• Repair trenches in ground .....	\$20.00
• Repair gyproc.....	\$87.46
• Marks on pantry door .....	\$20.00
• 20 hours of cleaning.....	\$434.00

Total..... \$1103.07

The landlord stated that there was no report of an incoming or outgoing inspection, but in support of her claim, she did submitted over 70 photographs showing the condition of the property after the tenant moved out.

#### Scratches on hardwood floors

16. The landlord stated that she had found scratches on the pre-finished hardwood floor in living room after the tenant moved out. She stated that these scratches were found by the entryway, by the TV, and by the chair. She stated that these floors were 10 years old, when the tenancy ended. These scratches have not yet been repaired, but the landlord is seeking \$200.00 for the costs of sanding out these scratches, and then re-staining. No estimates or quotes were submitted with her application.

#### Replace mirror and pictures

17. The landlord stated that the finish on the mirror in the master bathroom was coming off, and she figured this happened when the tenant washed it. That mirror has not been replaced or repaired, and no receipt or estimate was submitted with her application.

#### Replace toilet paper holders

18. Like the mirror, the finish on the stand-up toilet papers holder was also coming off, and it was rusty. The landlord figured that this damage was caused by the tenant using a chemical cleaner on these holders. These holders have not been replaced and no receipt or quote was submitted with her application.

Blue stains on vanity floor

19. The landlord stated that after the tenant moved out, she discovered that there was a blue stain on the floor or the vanity. That stain has not yet been removed, but she stated that she will either have to refinish that floor or she will have to replace it. The landlord is seeking \$100.00 for the costs of materials. No receipts or quotes were submitted with her application.

Replace blind

20. The landlord stated that she had installed a new blind in the unit at the beginning of this tenancy, and she stated that there is now a hole at the bottom of that blind, and it appears that this was caused by someone putting their finger through it. The landlord is seeking \$59.79 for the costs of replacing that blind. It has not been replaced and no receipts or estimates were submitted with her application.

Burnt wood

21. During his tenancy, the tenant had a fire pit in the yard, and he left behind some burnt wood, and some extra wood, when he moved out. The landlord claimed that she is not permitted to place this wood in the garbage, and it needs to be taken to the dump. She is seeking \$20.00 in compensation for her labour to remove that wood to the dump.

Repair trenches in ground

22. The landlord stated that the tenant would park his truck close to the garage, and there are now some trenches in the gravel that need to be leveled. The landlord is seeking \$20.00 in compensation.

Repair gyproc

23. In the master bedroom, the landlord stated that there is a scrape on the wall that needs to be plastered, and then the whole wall needs to be repainted. That work has not been carried out, and the landlord submitted no receipts or quotes for the costs of plaster and paint. The landlord stated that the unit was last painted 3 years ago.

#### Marks on pantry door

24. The landlord also complained that there was a mark on the pantry door. She is seeking \$20.00 for the costs of sanding and refinishing it. No receipts or quotes were submitted with her application.

#### Cleaning

25. The landlord is seeking a payment of \$434.00 in compensation for 20 hours of cleaning she had to carry out at the unit after the tenant moved out. She testified that the ceilings and walls were dusty, and the areas behind the appliances had not been cleaned. She also claimed that the oven had not been adequately cleaned, there were some streaks in the tub, there was something on the top of the cupboards and there was white residue on the floors. The landlord was also required to clean the areas between the windows and the screens, she had to clean the air exchanger vents, and she also stated that the filter for the dishwasher had not been cleaned out, and she claimed that the light fixtures were dusty.

#### The Tenant's Position

##### Scratches on hardwood floors

26. The tenant acknowledged that some of the scratches identified by the landlord were caused during his tenancy, but he claimed that he was careful and he had placed pads on the feet of his furniture. The tenant also claimed that there were already scratches on these floors when he moved in.

##### Replace mirror and pictures

27. The tenant claimed that the finish on this mirror was already peeling when he had moved in, and he acknowledged that more had come off during his tenancy. He argued, though, that this damage was not done deliberately by him.

##### Replace toilet paper holder

28. The tenant claimed that there were already small flakes of rust on these toilet paper holders when he moved into the unit, though he acknowledged that more had accumulated during his tenancy. He claimed that he had not deliberately put rust on these holders. He also testified that he had used normal cleaners on them, whenever he cleaned, and he suggested that the rust was a result of the humidity in the bathroom.

#### Blue stains on vanity floor

29. The tenant acknowledged that that blue stain appeared during his tenancy, and stated it was from a leaking toilet bowl cleaner bottle. After he noticed that stain, for the remainder of the tenancy he had placed paper towels under that cleaner to prevent any further staining.

#### Replace blind

30. The tenant pointed out that this blind had to be custom cut twice, and it still did not quite fit when the landlord had supplied it to him. With respect to the hole the landlord is complaining about, he claimed that it was very small, and it no way affects the functionality of the blind. The tenant stated that the damage was not done deliberately and it must have been caused by his finger nail when was pulling the blind down.

#### Burnt wood

31. The tenant acknowledged that there was wood left behind. He stated that there was a foot of snow on the grounds when he moved out covering that wood. He claimed that if the landlord had contacted him and asked him to remove it, he would have.

#### Repair trenches

32. The tenant acknowledged that he would park his truck by the garage. He stated that the gravel in that area was soft on one occasion when he parked there, and it later froze, leaving the indentations identified by the landlord.

#### Repair gyproc

33. The tenant stated that he was not aware of any damage on the walls in the bedroom.

#### Marks on pantry door

34. The tenant also stated that he was unaware of any damage caused to the pantry door.

#### Cleaning

35. The tenant acknowledged that he had not cleaned the areas behind the appliances and that he had not washed down the walls. But besides those issues, he claimed that the unit was clean when he moved out. He testified that he had swept and mopped all the floors, he had wiped down all the baseboards and trims, he had put the oven in self-cleaning mode before vacating, and it was wiped out with oven cleaner. He stated that he had cleaned out the sink, toilet,

and bathtub in the main bathroom, and he cleaned out the stand-up shower in the en suite bathroom. He testified that he had cleaned the mirrors and the glass in the French doors, he had used glass stovetop cleaner, he had cleaned out all the cupboards, and he had put the washing machine and the dishwasher on a washing cycle. For the few items the tenant had overlooked, he argued that a claim for 20 hours of cleaning was excessive.

## 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 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*

37. On review of the landlord's photographs, I find that many of the items that she had complained about at the hearing are very minor and, if they occurred during this tenancy, can be attributed to just normal wear. This would apply to the scratch on the wall in the bedroom, the scratch on the pantry door, the damage to the blind, and the scratches on the floors. For that reason alone, I would dismiss these claims.
38. I also find that, although the finish on the mirror and toilet paper holders had deteriorated during this tenancy, that damage was done through any deliberate or negligent act on the part of the tenant.
39. I'll also point out that the landlord had not established that all of these items were damaged during this tenancy, as there was no report of an incoming inspection, and the landlord had failed to provide the Board with any estimates for the costs she is claiming here.
40. The tenant acknowledges that he did leave some wood on the grounds, and I find that the landlord is entitled to the \$20.00 she had claimed to have it removed. And with respect to the cleaning, I agree with the landlord that the unit was not perfectly cleaned, and the areas behind the major appliances were dirty and dusty. I find that the landlord is entitled to compensation for 4 hours of her personal labour to complete that cleaning. Policy with this Section is that an applicant may claim up to \$21.70 for each hour of their personal labour, so that claim succeeds in the amount of \$86.80.

## **Decision**

41. The landlord's claim for compensation for damages succeeds in the amount of \$106.80, determined as follows

• Remove burnt wood .....	\$20.00
• 4 hours of cleaning .....	\$86.80
Total .....	<u>\$106.80</u>



### Issue 3: Security Deposit

42. It is not disputed that the tenant had paid a total security deposit of \$900.00 in April 2021. As the landlord's claim has been partly successful, that deposit shall be disposed of as follows:

- a) Refund of Security Deposit ..... \$900.00
- b) LESS: Compensation for Damages ..... (\$106.80)
- c) Total Owing to Tenant..... \$793.20

17 March 2023

Date

  
John R. Cook  
Residential Tenancies Tribunal