

## **Residential Tenancies Tribunal**

Application 2024-0041-NL

Seren Cahill  
Adjudicator

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### **Introduction**

1. Hearing was held on 1-April-2024.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as the landlords, attended via teleconference.
3. The respondent, [REDACTED], hereinafter referred to as the tenant, also attended via teleconference.

### **Issues before the Tribunal**

4. Should the landlord's claim for damages be granted?
5. Should the landlord's claim for unpaid rent and utilities succeed?
6. What is the proper disposition of the security deposit?

### **Preliminary Issues**

7. Both parties raised the issue of admissibility of evidence. The landlords pointed out that the tenant submitted her evidence less than three days in advance of the hearing, contrary to this tribunal's evidence guidelines. The tenant said that she was acting in accordance with instructions from our staff and under good faith. The landlord did not seek a postponement. I saw no prejudice to the landlord that could not be cured by a postponement and no reason that allowing the evidence would impair procedural fairness. I decided to allow the submission of the evidence in order to ensure this matter was fully heard and a decision could be made on the merits.
8. The tenant pointed out that the landlords had amended the amount claimed, increasing it by a significant amount. The landlords said that they had another look at their initial submissions in response to issues raised by the tenant and had found that their actual costs were higher than they first estimated. The submissions I had before me did not make it clear which claims were part of the initial application. I asked the tenant if she would be able to point out which claims had been added as we went through the claim

and she agreed that she would. She did not at any point do so. I take this as her waiving her right to object to the admission of this evidence. It should be noted that the tenant did not seek a postponement.

## **Legislation and Policy**

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).

### **Issue 1: Damages**

10. The landlords claim for \$23915.91 in damages, divided amongst 26 items. Each item will be addressed individually below. The onus is on the applicant to establish their claim on a balance of probabilities and to provide sufficient documentary and other evidence necessary to support a ruling. To succeed, the applicant must establish that the damage was caused by the wilful or negligent act of the tenant or a person they allowed on the premises, that it necessitated repair or replacement, and the cost of said repair or replacement. Failing to establish any one of these elements is fatal to the claim. With that being said, if it is alleged that damage occurred on the property while the tenant had possession, the nature of the damage may lead to a natural inference that the tenant was responsible. In this case, the tenant may refute that inference by offering their own evidence to the contrary. In plain language, the landlord generally must prove that the tenant caused any damage, but sometimes proving that the damage occurred during the tenancy is enough to lead me to find that it was probably caused by the tenant. In that case, the tenant still has the opportunity to explain if it wasn't.
11. This case involved a great deal of conflicting testimony. For that reason, I begin by stating my general findings on testimony of the witnesses. These findings were based on the totality of the evidence heard. It should be mentioned at the outset that human memory is very fallible, and it is normal and expected in a case this complex that parties will on occasion remember things incorrectly.
12. The landlords spoke matter-of-factly. Their evidence was consistent, forthright, candid, and straightforward. They were responsive to questions. Their testimony was largely supported by the evidence. I was especially impressed by the recall and candour of the latter of the two landlords listed above.
13. The tenant's testimony was more difficult to evaluate. I take into consideration the fact that she had suffered a major loss shortly before moving out, and this caused her stress and affected her emotional state at that time. Her testimony seemed focused on building a narrative that the landlords had been inattentive to issues in the premises and that they were now lying to seek to recover from her inappropriately. She testified that she admits her faults and mistakes, and did cede certain matters, but would immediately minimize their impact. She also demonstrated a tendency to embellish. More than once she made a broad sweeping claim (e.g., there were no items left in the snow) and used this to support a claim that the landlords were lying, only to later cede an exception (there were some items frozen in the snow) without retracting the claim. Comparing her recall of conversations that she had with the landlords to the text records of those

conversations showed a sharp contrast. Overall, I found her testimony to have limitations.

14. The landlords claim \$1594.24 for damage to the steel front door. Photos and related files related to the door have been labelled LL#1. LL#1-1 shows multiple pictures of a damaged steel frame door. The door has a large crack running through its core as if it was subject to a strong blow. The landlords testified that the door was no longer closing or locking properly. It is obvious looking at the photos that repair would be impossible. A quote and invoice for \$1594.24 were also provided, as well as a video showing the damage. The landlords testified that the previous door was installed in 2003. The landlord also testified that their key cracked off in the door when they regained possession, leading them to believe that the lock had been changed without their notice. I do not agree with the landlord's inference. As far as I am aware, it is equally likely that the lock malfunctioned because of the damage to the door.
15. The tenant's evidence in relation to the door is labelled T#1. She denies that she cracked the door and says she does not know how the door became cracked. She testified that she never noticed the crack. The tenant referred to some older photos of the premises and pointed out some water damage on the lower part of the wall by the door frame. However, this damage is not part of the landlords' claim. The tenant also testified that during the winter the door could be blocked by large snowdrifts and included in T#1 text conversations between herself and the landlord where they both remark upon the copious amount of snow in front of the house. It is undisputed that the landlord provided snow removal services as part of the lease agreement. She submits that the crack to the door may have been caused by some combination of water damage, the weight of snow against the door, and the landlord's snow removal. She alternatively suggests that the landlord broke the door when he changed the lock. She submits that when she moved in the door had multiple dents and chipped paint. She also points out that the door is not solid steel but steel plated.
16. Exterior "steel" doors intended for residential buildings are generally made of wood or foam protected by steel plates and not solid steel. These doors weigh perhaps between 40-100 lbs. A door of the same size made of pure steel would weigh over 1000 lbs, likely more than the hinges or the wall could support. It would also be a poor insulator and a safety hazard in the event of fire. Nevertheless, these steel-plated doors are known to be one of the most durable options for residences.
17. The weight of snow will not normally crack the frame of a steel door. In this province snow is periodically a concern and modern homes are constructed to weather winter storms. Steel doors are strong and able to bear significant amount of pressure. While the weight of snow can endanger residential homes, this almost always occurs when the snow is allowed to accumulate atop the structure and not when it simply leans against it. I conclude that on a balance of probabilities that the accumulation of snow did not contribute significantly to the cracking of the door.
18. The small amount of water damage the tenant points out inside the door is limited to the first few inches above the floor. The crack in the door seems to extend roughly a foot in either direction of the lock, well above the height of the water damage. Water damage is unlikely to crack a door, though water could enter a small crack and expand as it

freezes, expanding the crack. Over time this could grow a tiny crack into a large one. However, as mentioned, the core of this door is made of wood. Untreated exposed wood tends to rot when exposed to water over time. The untreated exposed wood visible on the damaged door appears dry and free of any rot or other sign of water damage. I conclude that on a balance of probabilities that the water damage the tenant pointed to did not have any significant impact on the cracking of the door.

19. I find on a balance of probabilities that the tenant or a person she allowed onto the premises damaged the door through a wilful or neglectful act, that the damage necessitated the door's replacement, and that this replacement cost \$1594.24. According to a Study of Life Expectancy of Home Components by the National Association of Home Builders and Bank of America Home Equity (the "Life Expectancy Study"), an exterior steel door ought to last a lifetime, so depreciation is not an issue. This portion of the landlords' claim succeeds.
20. The landlords claim \$2800 for the removal and replacement of carpet in the family room and stairs. The related files are labeled LL#2. The photos and videos included show that the carpet was heavily stained. In places it looked like bleach had been applied directly, bleaching the carpet and burning through it. \$2500 was claimed for purchase and installation of new carpet and \$300 for the removal and disposal of the previous carpet. An invoice was submitted for the new carpet. The landlords removed the old carpet themselves, which they estimated took them 4 person hours plus a trip to the waste disposal facility, which they say took about 40 minutes one way, including time to bag the garbage and load and unload the truck.
21. The tenant's evidence on this portion of the claim is labelled T#2. The tenant submits that the distance between the waste disposal facility and the premises would be 40 minutes driving both ways, half the time the landlords submitted. The tenant also suggested that some of the staining could be due to water damage. She pointed me to a conversation she had with the landlord in November 2020 regarding possible water damage where she and the landlord ended up agreeing that the water damage was not coming from the premises. This conversation has no relevance to this or any part of the landlord's claim. She also showed me a conversation they had several days before she moved out, where the tenant advised the landlord of a small damp patch and possibly a small amount of mold by one wall of her children's bedroom. This does nothing to explain the landlord's evidence. She suggested this damp patch may be from an issue with weather stripping that went undiagnosed for years and may have been the source of multiple problems. Aside from this being purely speculative, it does not explain the various colours of the stains shown in LL#2, which came in at least two distinct shades of red as well as bleached white. It does not explain the holes in the carpet. The tenant did admit that one of the two red stains was likely from a spill of chocolate milk. She said she did not make more of an effort to remove it because the landlord said that he was not really worried about it and that he intended to have the carpet cleaned. She said there were some stains left by her children with markers or crayons. She says she did not see any bleach stains. She also submitted that if the landlord needed to replace the carpet because of mold and moisture leaking through the back wall, that she should not be liable to pay for new carpet when the original carpet was 15 years old.

22. The evidence before me does not suggest the carpet was damaged by mold or moisture from the back wall. The evidence suggests it was damaged in patches, by spills, and possibly also by ill-advised attempts to clean it with bleach. I find on a balance of probabilities that the tenant is responsible for the damage to the carpet, that the damage necessitated the replacement of the carpet, and that the replacement cost \$2800. Depreciation must be considered. This tribunal is compensatory, and therefore only seeks to award the amount of value the applicants lost by the respondents' actions. To award them the full amount for the new carpet would overcompensate them by putting them in a better position than they would be in had the original carpet not been damaged. The total amount they are owed is found by multiplying the value of the replacement by the number of years the original carpet would have been expected to last and dividing it by the total expected life expectancy of carpet. The Life Expectancy Study suggests carpet lasts about nine years. According to the landlords' testimony, the carpet had originally been installed 8-10 years before the tenancy began. The landlords therefore ought to have expected to need to replace the carpet regardless of the tenant's actions, and thus lost no value. This portion of the landlords' claim fails.

23. The landlords claim \$227.99 for the replacement of a damaged kitchen faucet. This consists of \$165.59 for the replacement faucet, \$12.40 for parts to connect the faucet to the water supply, and 1.25 hours labour at \$40/hour. Receipts were provided. The related files are labeled LL#3. They show that the faucet is not securely attached and rested at a slightly forward angle towards the sink, about three degrees off. A small crack in the metal at the front of the base of the faucet is visible. The landlords testified that the faucet could not be tightened. The landlords could not recall when the faucet was installed but testified that the house was built in 2003 and this was the second faucet in that location.

24. The tenant testified that the faucet was loose when she moved in, that it became looser over time with regular use, and that the crack on the front was present. She testified that it worked fine so she did not bring it to the landlord's attention.

25. I am not satisfied on a balance of probabilities that the damage to the kitchen faucet was caused by the tenant. This portion of the landlord's claim fails.

26. The landlords claim for \$6279 for the repair of damaged hardwood floors. The related files are labeled LL#5. They shared two quotes for the replacement from two separate flooring companies. One estimated \$6279 and the other estimated \$7500. They admitted they were unsure how to value the claim, or if \$6279 was the correct amount to claim. They explained that they effected a repair themselves which cost them \$399.73 in supplies (receipts were provided) and 40 person hours of labour at \$50/hour for a total of \$2000. They said, however, that this was a quick fix intended to get the apartment to a rentable condition and did not replace the full value lost. The hardwood was originally installed in 2003. The pictures provided show that the hardwood floor is heavily damaged. The finish appears to be completely removed in places, particularly in the area close to a sliding exterior door. Dark patches are visible. Some suggest water damage. The landlords explained that some patches were excessive grime, and shared ample evidence of their process trying to remove this grime, which was apparently unsuccessful. One video file, labelled "23-Hardwood\_grime," shows a useful closeup of this buildup. The landlord taking the video scratches the grime with his fingernails

vigorously, showing that it is stuck to the wood finish. The landlords at one point said the square footage was 910 but at another point estimated 1100. The video evidence shows the entirety of the flooring and is sufficient for me to conclude that 910-1100 is a reasonable estimate.

27. The tenant said the hardwood was “not in the greatest condition” when her tenancy began. She provided four photos showing the hardwood which have been labeled T#4. She correctly points out that the hardwood shows signs of years of wear and tear from normal use. Indeed, there are minor dents and scratches. However, the tenant’s photos show the hardwood to otherwise be in fine condition. There is no exposed untreated wood as in the landlord’s photos from after the tenancy, and the cleanliness is immaculate. The tenant said she had noticed that the floor had a filmy texture and she just assumed that was the nature of the floor. She testified that the floor always had that film from when she moved in. This testimony is inconsistent with the tenant’s own photos. The grime described and shown by the landlord is visible in photos. There is no visible film in the tenant’s photos from early in the tenancy, even though they are more brightly lit and similarly ‘zoomed-in’ as the landlord’s photos. I reject the tenant’s testimony on this matter.
28. I find on a balance of probabilities that the damage to the hardwood was caused by the wilful or neglectful act of the tenant or a person she allowed on the property. The Life Expectancy Study suggests that hardwood floors ought to last a lifetime, so depreciation is not an issue. As said earlier, this tribunal’s damages awards are compensatory, meant to reflect the value the landlords have lost. It is therefore appropriate to use the cost it would have taken to restore the floors to their original condition, notwithstanding the fact that they elected not to do so. \$6279 is therefore the correct amount. This portion of the landlord’s claim succeeds.
29. The landlords claim for \$2640.20 in relation to alleged damages to the walls and ceilings of the premises. The related evidence is labeled LL#4. As stated below, I also considered the pdf labelled LL#17. Damage to various walls was also visible in video files taken around the house in relation to other parts of this claim. This consists of the cost of paint (\$540.20), the cost of labour for plastering (\$1400), and the cost of labour for painting (\$700). The landlords testified that the paint was bought in two portions, one of which cost \$450 and one of which cost \$98.20. The receipt for the latter was provided but the landlords say the receipt for the former was lost. They say they were able to use plaster they had on hand. The photo and video evidence shows many of the walls had been scribbled on with crayon, colored pencil, marker, or pen and needed to be washed clean. In one location a wall looked to have been pierced by a thin object many times in an irregular pattern. The landlords testified that there were four- or five-holes 6+ inches in diameter. There is a fist-sized hole in the rec-room between two windows which looks like it was inexpertly repaired. The landlords estimated that completing the painting and plastering together took about 70 person hours. The landlords testified that the walls had last been painted (approximately and on average) six years before the time of the hearing.
30. The tenant admitted there were two large holes in the wall which she attempted to patch. She testified that “there were certainly no large, massive holes anywhere in the home.” I accept that statement as accurate, but it does not speak to the landlords’ claims. The

tenant submitted several video clips showing her do a final walkthrough of the house, but the areas called into issue by the landlord do not appear or are given only a quick glimpse. The tenant provided photos of the walls when she moved in, and these have been labelled T#4A and T#4B. These photos show that prior to the tenant moving in, the landlord had in several places engaged in spot fixes to the paint job. These spot fixes are imperfect but serviceable touch-ups to the paint. The tenant argued that the landlord had not been engaging in proper maintenance and now wanted her to cover the cost of remodelling the house. Unfortunately, the tenant's photos do not provide any evidence that the holes in the wall or any of the scribbling noted above predate her tenancy. She did testify that "all of the little holes and dents" were there prior to her move in. She did admit that the crayon scribbles were done by her children.

31. I accept on a balance of probabilities that the damage done to the walls was caused by the wilful or neglectful act of the tenant or a person she allowed on the premises. I accept the cost of the repairs as accurate but, for policy reasons, this tribunal does require proof of cost of materials where reasonably possible and I therefore do not award the portion of the claim for \$450 for which no receipt was provided. Additionally, the Residential Tenancies Policies and Procedure Guide specifies in section 09-003 that self-labour is to be awarded at a rate of provincial minimum wage +\$8/hour (currently, \$23.60 an hour). That brings the total awardable cost of labour to \$1652 for this portion of the landlords' claim. The Life Expectancy Study suggests interior paint ought to last about 15 years, indicating the walls ought to have lasted another nine years without painting. The total amount awarded, accounting for depreciation, is therefore  $\$1750.20 * (9/15) = \$1050.12$ . This portion of the landlords' claim succeeds in part.
32. The landlords claim \$480.92 for the repair of three interior doors. This claim consists of \$160.92 for materials and \$320 in labour, being 8 person hours at \$40/hour. The related files are labelled LL#6. Two receipts were provided for materials, one at \$116.12 and one at \$44.80. A video file included shows damage done to the main bathroom door. It contains several holes on the inside of the door ranging from approximately four to six inches in diameter, and the trim on both sides of the door frame has been extensively damaged, exposing untreated wood. Another video (labelled "17-Master Bedroom2") shows a different bathroom door has significant cracks along the edge of the doorframe running half its length, so the veneer is partially hanging off the rest of the door. There are also significant cracks alongside either side of the hinges, as if the door was struck or pushed with significant force while the door was closed. A video file labeled "13-Bedroom 2" shows the final door which needed replacement. There is exposed wood on the trim. The doorknob appears to have been wrested somewhat out of alignment. There is a vertical crack in the veneer approximately 16-20 inches which is deep enough to penetrate that full outer layer. The evidence is sufficient to prove on a balance of probabilities that the doors needed to be replaced.
33. The tenant admitted that one of the bathroom doors was damaged by her dog. She testified that the crack in the third door was present before her tenancy began but she had not noticed it as she had a coatrack there.
34. I find that the damage to all three interior doors was caused by a wilful or neglectful act by the tenant or a person she allowed on the premises. All three doors are damaged in significant and similar ways. I accept that the cost of the materials provided is accurate

but must adjust for the self-labour rate stipulated by policy.  $8 * \$23.60 = \$188.80$ . This brings this portion of the claim to a total of \$349.92. The Life Expectancy Study suggests that, aside from French doors, interior doors ought to last a lifetime, so depreciation is not in issue. This portion of the landlord's claim succeeds.

35. The landlords claim \$194.03 in relation to a vanity light in the ensuite bathroom to the master bedroom. The evidence is filed under LL#7. This consists of \$144.03 for parts and \$50 for labour. A receipt was provided. Pictures show that the light fixture has patches of rust. The landlords submitted that this must have been the result of negligence on the tenant's part as the bathroom has an effective exhaust fan as well as an openable window.
36. The tenant testified that the master bathroom light fixture was old and rusty when she moved in. She testified that the landlords had indicated the fan needed to be fixed.
37. I am not satisfied on a balance of probabilities that the damage to the vanity light is the result of the wilful or negligent act of the tenant or a person she allowed on the premises. This portion of the landlord's claim therefore fails.
38. The landlords claim \$172 for heaters in the bathrooms. The evidence is under LL#8. This consists of \$122 for parts and \$50 for labour. A receipt was provided. A video shows one of the heaters has paint scraped off and is rusted in places. Photos of the other heater were provided with the front panel removed to show the state of the inside. It is in a similar condition to the first heater in terms of the exterior, and the interior shot shows that many of the metal fins have become bent out of place, which is known to significantly reduce the efficiency of the unit as the purpose of the fins is to aid convection.
39. The tenant said the heaters were in rough condition when she moved in. She testified that they were "never new" and were "banged up." She said she did not do anything to damage them. She reiterated that many items were subject to quick fixes when she moved in and that those fixes simply wore off.
40. I am not satisfied on a balance of probabilities that the damage to the heaters is the result of the wilful or negligent act of the tenant or a person she allowed on the premises. This portion of the landlord's claim therefore fails.
41. The landlords claim \$2034 for the replacement of a French door stainless steel refrigerator. The evidence is found under LL#9. The fridge has a dozen or so small dents on the exterior. Plastic and acrylic damage has been done to the interior shelving. Two of the six door shelves were cracked completely through and rendered unusable, and two others were damaged and taped. A price point was provided for a new similar refrigerator has a sale price of \$1769.00, discounted from \$2274.00. The landlords testified that the refrigerator was about two years old when the tenant moved in.
42. The tenant's evidence in response was labelled T#9. She said that of the dents on the refrigerator, some were there when she moved in, some were caused by her, and some were caused by improperly placed cabinets. She testified that one of the door shelves had a crack when she moved in, and one other "was broken." She also testified that only

one of the shelves was damaged by her, and no other damage was done by her. She did not offer any explanation for the two remaining damaged shelves. She presented a photo which appears to show three intact door shelves and two with a small crack. She also offered photos from two different angles showing how the previous tenant had left the fridge. Interestingly, I can see no dents in these photos. The tenant maintained that in her photos I was likely seeing whorls from cleaning and insisted that dents could be seen in the photo of the previous tenant's residency. I cannot agree. I have taken the time to compare two photos of the same fridge from almost the same angle side-by-side at some length, and the only conclusion I can arrive at is that the dents were made during the tenant's time living at the premises.

43. I am satisfied on a balance of probabilities that the refrigerator was damaged by a wilful or negligent act of the tenant or a person she allowed on the premises. The landlords claimed the replacement refrigerator cost them \$2034 and have provided evidence that this is a reasonable price for a similar unit. Depreciation must be considered. The Life Expectancy Study suggests that a regular refrigerator can be expected to last 13 years. The landlord's testified that the refrigerator is 7 years old. The total amount awarded, accounting for depreciation, is therefore  $\$2034 * (6/13) = \$938.77$ . This portion of the landlord's claim succeeds in part.
44. The landlords claim for \$75.06 for the lock to a shed which they allege was broken. The evidence is found under LL#10. The claim consists of \$35.06 for parts and \$40 for labour. A receipt was provided for twice the cost as the landlord had purchased a second lock which will be referenced in paragraph 62 below. The photos show that the lock was broken and hanging off the door far enough that a person could reach though. The nature of the damage is of the same type that one would expect to occur if a person struck down on the doorhandle with a heavy object like a rock in an attempt to gain access.
45. The tenant testified that the door to the shed was never locked during her tenancy. She testified she had no knowledge of how the damage to the shed occurred.
46. I am not satisfied on a balance of probabilities that it must have been the tenant or a person the tenant allowed on the premises who broke the lock. The lock could have been vandalized by a trespasser. This portion of the landlord's claim fails.
47. The landlords claim \$150 for the cost of storing items of the tenants which were left on the premises, both the main house and the shed. The landlord's evidence is filed under LL#11. The landlords alleged that the tenant did not respond to landlord inquiries regarding these belongings. It is not an insignificant amount of material and based on the pictures I visually estimate it would all perhaps fit in 60 cubic feet. The landlords also provided a screenshot of a conversation between one of the landlords and the tenant on Facebook Messenger. On 31-December-2023, the landlord asks the tenant for a forwarding address. On 2-January-2024 the landlord asks if the tenant needs anything from the house or shed. They ask this question again on 3-January-2024 and 4-January-2024. No response is shown. The screenshot shows that the messages were sent and seen but that the tenant is "unavailable on Messenger," which likely means she blocked the landlord from sending her further messages at some point. The landlords say the items are still in their possession.

48. The tenant testified that she had indicated to the landlords that she would be happy to return to the property to collect the last of her belongings, and that they had told her she was not welcome back on the property and cannot return to get her belongings, and that she had a text record of this conversation. She showed me the series of text messages already labelled LL#11. This conversation begins before the tenant moved out and the landlord starts the message with "A note with regard to what is expected with you moving out tomorrow." He does indeed go on to state that all her belongings should be removed before the end of the tenancy. This is in no way equivalent to telling her she cannot retrieve her belongings and there was no evidence she reached out to the landlord to seek return of same. Indeed, the landlord sends her an article on abandoned personal property under s. 16 of the *Act*, which specifically allows for ways the tenant can reclaim personal property left on the premises after termination. Furthermore, as noted above, the landlord goes on to ask the tenant about returning her property on 2-January-2024, 3-January-2024, and 4-January-2024.

49. The tenant denied ownership of the white cabinets as well as several other items and stressed that the shed was used by several other tenants.

50. I accept the tenant's testimony regarding the items she does not own. Nevertheless, she did leave items on the premises, requiring the landlords to store them. I find the landlord's claim for storage fees succeeds in part, and judge \$50 to be an appropriate amount for the items remaining.

51. The landlords claim for \$486.28 in cleaning. The landlord's evidence for this is found under LL#12. A receipt was provided for \$86.28 in cleaning supplies, for which a receipt was provided, and for labour of 16 person hours at \$25/hour. Photos show two truckloads of garbage. Photos and videos presented by the landlord throughout the hearing show significant a level of dirt and grime. Video 23, referenced above, and video 24-Tile Floor Goo are particularly helpful in demonstrating how the dirt is sticky and/or gelatinous. The landlords testified that it took significant scraping and scrubbing to remove.

52. The tenant testified that the property was left clean and provided photos to this effect (T#12). She added that the one bit of dirt left may have been residue left from underneath a rug.

53. The tenant's evidence does show she must have put significant effort into cleaning. Nevertheless, the level of dirt remaining is significant, and justifies the amount of time and material the landlord claims for. With the adjustment for a labour rate of \$23.60/hour, I find this portion of the landlord's claim succeeds in full for \$463.88.

54. The landlords claim for \$57.24 for the cost of compensating for damage to the drawers of vanities in two bathrooms. The landlords' evidence is in the pdf labelled LL#14. They say the drawers were damaged in a way that could not be repaired, and they felt the best solution was to install drawer liners rather then replace the vanities. The claim consists of \$40 for labour and \$17.24 for parts, and a receipt was provided. Pictures shown the wooden drawers have multiple, brightly coloured stains of unknown origin.

55. The tenant claims there was no damage to the drawers except for a spill of pink nail polish.
56. The bright pink stains from the nail polish are present in multiple drawers and are sufficient to justify the landlord's claim. With the adjusted labour rate, this portion of the landlords' claim succeeds for \$40.84.
57. The landlords claim \$194.99 for the replacement of the dining room light fixture. The landlords' evidence is in the pdf labelled LL#15. The written explanation of the claim consists of \$114.99 for parts, for which a receipt was provided, and \$40 in labour for two person hours at \$20/hour. This adds up to \$154.99. I presume this was a typographical error and the landlords had meant to claim a rate of \$40/hour for their labour as they did in other parts of the damages claim that involved specialized skills like working with electricity. The landlords submitted that the tenant had at some point temporarily replaced the light fixture and then reinstalled it, but it had been reinstalled with some missing pieces. These missing pieces included screws and a missing ground wire. The photos provided show gaps where screws should be, and the light fixture is hanging slightly at an angle as it is improperly fastened. A missing ground wire is a safety concern. The landlords submit they needed to replace the fixture entirely. The landlords testified that this fixture had first been installed when the house was constructed in 2003.
58. The tenant testified that she never touched the light fixture, nor did she ever have anyone else touch the light fixture.
59. The landlord testified that he recalled, on one specific occasion, he had attended the property for an unrelated issue and had noticed that the light fixture had been switched with one that was not his. He maintained that the fixture was not installed the way he had installed it.
60. The landlord's testimony and the tenant's testimony are directly contradictory. I find the landlord's testimony more convincing. He provided an appropriate level of detail and appeared to be a generally reliable and credible witness. I find on a balance of probabilities that the tenant or a person she allowed on the property switched the light fixture and improperly re-installed the original, causing the damage alleged. Adjusting for the rate of labour, this portion of the landlords' claim succeeds for \$162.19.
61. The landlords claim for \$75.06 for the replacement of the lock of the steel door claimed for in paragraph 13, above. The landlord's evidence is in the pdf labeled LL#16. The landlords' written submissions and submissions in reference to the steel door speculated that the lock may have been replaced by the tenant, though as stated above, I see no evidence of that. When we came to submissions on the lock, the landlord suggested that the lock may have been damaged, not replaced, by whatever caused the damage to the door. The landlord submitted that it would be expected that the lock would be damaged, considering that the crack on the door is on both sides of the lockset. I agree with this conclusion. The issue of the tenant's liability for the lock is tied to the issue of her liability for the door.

62. The tenant testified that the landlord's key broke off in the doorknob on the way out, not the way in. She testified that she did not change the lock nor damage it. She suggested the landlord had caused the damage.

63. The landlord clarified that the door had not been locked when he entered, so the key stuck the first time he inserted it, which was when he attempted to lock the door after leaving the premises.

64. I have already found that the tenant is responsible for the damage to the door, and that the damage to the door is the immediate cause of the malfunctioning lock. I therefore conclude that the tenant is responsible for replacing the lock. This portion of the landlords' claim succeeds in the full amount of \$75.06.

65. The landlords claimed for \$135 for stains on the ceilings of the secondary and tertiary bedrooms. Evidence for this was submitted in the pdf labelled LL#17. Here it seems the landlord has accidentally claimed for the same item twice. Photos of these stains were included in LL#4 and both the labour and materials costs have already been addressed in this decision as far as I am able to tell. This portion of the landlords' claim fails.

66. The landlord claims for \$42.07 for the replacement of the front doorbell. The landlord's evidence for this was labelled LL#18. The claim consists of \$32.07 for parts, for which a receipt was provided, and \$10 for labour at a rate of \$20/hour for one half hour. It was damaged as part of the damaged to the entryway highlighted previously.

67. The tenant testified that the doorbell did not work when she moved in. She says the landlords were aware of this and it was not an issue for her, as she preferred not to have a doorbell anyway.

68. The landlord offered reply evidence that he had not known the doorbell was broken if indeed it was, and that he could not see himself renting the premises if he knew it was broken. I accept his testimony on this point, but I also find that this is something a reasonably diligent person could easily forget to check. A broken doorbell, by nature, would generally appear normal unless specifically tested. Of course, the tenant did not testify that he overlooked the doorbell, she testified that he was aware of it but chose to not to fix it. Nevertheless, the possibility remains that this was a misunderstanding.

69. I do not find on a balance of probabilities that the tenant or a person she allowed on the premises caused the damage to the doorbell. This portion of the landlords' claim fails.

70. The landlord claims \$163.73 for damage to the floor of the master bedroom. The landlord's evidence for this is labelled LL#19. The claim consists of \$122.73 for materials, for which a receipt was provided, and \$40 for labour for two hours at a rate of \$20/hour. Videos and pictures show that there are scrapes in the floor which have removed some of the finish and exposed unprotected wood.

71. The tenant's evidence responding to this portion of the claim is labelled T#19. Her testimony is that the scratches on the floor predated her tenancy, and the photographs she provided offer some support for this. In at least one bedroom the finish has been scraped from the area where the bedposts might lie and there is exposed untreated wood visible.

72. I am not satisfied on a balance of probabilities that this damage was caused by the tenant or a person she permitted on the premises. This portion of the landlord's claim therefore fails.

73. The landlord claims for \$42.19 for damage to the blinds in the master bedroom. The landlord's evidence for this is labelled LL#20. The landlords testified that the blind was moldy and needed to be disposed of. The photos show the fabric blinds had indeed been contaminated with mold. They say that a comparable custom fabric blind would cost about \$100. They instead seek \$32.19 for a window film, for which a receipt was provided, and \$10 for labour for one half hour at a rate of \$10/hour. The landlords say the blind had been replaced about two years before the tenancy began.

74. The tenant testified that the window blinds were all very old and dirty when she moved in.

75. Window blinds have a life expectancy of, on average, about seven and a half years. This is approximately the amount of time that has passed since these blinds were installed. Therefore, depreciation renders the amount recoverable to be zero. On that basis, this portion of the landlord's claim fails.

76. The landlords claim \$3508.04 for damaged countertops. The landlord's evidence for this is labelled LL#21. The claim consists of \$3348.04 for replacing the countertop with the cheapest comparable laminate countertop, for which a quote was provided, and \$160 labour for 4 hours at a rate of \$40/hour for the need to uninstall and reinstall sinks, fixtures, and plumbing. The landlords testify that the kitchen countertop surface was bubbled, broken, and chipped in multiple areas. They also testified that the master bedroom's ensuite bathroom counter suffered damage from what appeared to be both fingernail polish and fingernail polish remover. The landlords testified that these countertops were installed around 2016.

77. The tenant's evidence regarding this portion of the claim was labelled T#21. These are photos from when the tenant first viewed the premises. She says some damage to the countertops can be made out in these photos. The photos are distant and difficult to make out but some minor damage is visible. The tenant's videos of the kitchen cabinets also allow glimpses of the kitchen cabinet and shows it to be in reasonably good condition.

78. After scrutinizing the evidence of both parties, I am satisfied on a balance of probabilities that the tenant or a person she allowed on the premises damaged the bathroom countertop to a degree which justifies its replacement. I am not satisfied that the damage added to the kitchen countertop during the tenant's residence is beyond that which would constitute normal wear and tear, and therefore award compensation only for the bathroom countertop. The quote provided was for both countertops together. The kitchen countertop is somewhat larger. I therefore estimate the bathroom countertop to constitute about 40% of the quoted cost. The life expectancy of tile countertops is about 15 years (see section 9-5 of the Residential Tenancies Division Policies and Procedures Guide). With the adjustment for self-labour, the landlord's claim for the damaged countertops therefore succeeds in part for the amount of  $\$3442.44 * 0.4 * (7/15) = \$642.58$ .

79. The landlords claim \$970.67 for damage to a sliding glass patio door. The landlord's evidence for this is labelled LL#22. The claim is \$970.67, for which a quote was provided. The landlords testified that the lock was broken off the door and the airproof seal was broken, causing condensation inside the door. The photos show this. The landlords testified that the door was installed in 2003.

80. The tenant's evidence regarding this portion of the claim has been labelled T#22. She says these photos show that the patio lock was missing when she moved in. I could not make out the patio lock in the photo as it was in shadow. In considering the evidence during the hearing, I changed the settings on the photo. I made no alterations to any specific portion of the photo but minimized the overall contrast (-100) and maximized the brightness and exposure (+100). I informed the parties of this so they could do the same on their own devices and respond as need be. This allowed me to see clearly that the tenant was speaking the truth. She did admit, however, that this photo was taken a month or two after she moved in. The tenant also testified that the airtight seal of the door had been broken before she moved in, though the photos do not reflect this.

81. I am not satisfied on a balance of probabilities that the damage to the patio door was caused by the tenant or a person she allowed on the premises, and this portion of the landlord's claim therefore fails.

82. The landlords claim \$286.99 for the replacement of the toilet in the main bathroom. The landlords' evidence for this is labelled LL#24. This claim consists of \$206.99 for the new toilet, for which a receipt was provided, and \$80 for labour consisting of two hours at a rate of \$40/hour. The landlords testified that the toilet was loose and did not flush properly. They say they attempted to repair it, but the results were unsatisfactory. The toilet was originally installed in 2003.

83. The tenant testified at length in relation to an issue regarding a time when the landlord thought the toilet was malfunctioning due to water in the downstairs apartment but then later realized there was a different cause. This is irrelevant. The tenant testified that she never had an issue with the toilet. She did agree that she had a friend replace some of the parts of the toilet.

84. I find on a balance of probabilities that the tenant or a person she allowed on the premises did by a wilful or negligent act damage the toilet and that this damage warranted replacement. The life expectancy study suggests a toilet is a lifetime investment, so depreciation is not in issue. Adjusting for the rate of self-labour, this portion of the landlord's claim succeeds in the amount of \$254.19.

85. The landlords claim for \$461.25 for the disposal of garbage left in the shed and backyard. The landlords' evidence is labelled LL#25. They say they will need to rent a dumpster when the snow melts to dispose of all of it. The claim consists of 201.25 for renting the dumpster and a \$100 disposal fee, and a quote for both of these was provided, as well as \$160 of labour consisting of four hours at a rate of \$20/hour. I presume the landlords accidentally used the rate of \$40/hour for this calculation. The pictures provided have some overlap with the pictures provided in LL#11. Nevertheless, there are a number of additional large items including a pair of wooden cabinets.

86. The tenant testified that she left no items in the backyard and disposed of all her garbage on 31-December-2023. She questioned the accuracy of the landlords' representations and suggested their photos had been from before she moved out. She testified that the landlord could not be waiting for the snow to melt because there was nothing left in or under the snow, and that this was an example of the landlords lying. She testified that there were no children's toys left on the property, except for some children's toys/garbage that were frozen in the snow by the stairs.

87. I find the tenant's evidence self-contradictory. I find on a balance of probabilities that the tenant failed to leave the exterior/shed in a clean condition and that the landlords are therefore entitled to compensation. I find the amount of time asked for the disposal of these items to be reasonable. Adjusting for the self-labour rate, this portion of the landlords' claim succeeds for 395.65.

88. The landlords claim \$20 for the disposal of a small wooden gate they say they tenants installed on the back patio. The landlords' evidence for this is labelled LL#31. This \$20 represents the cost of one hour of labour to dispose of the item.

89. The tenant testified that the landlord had not asked her to remove the gate. She added that the landlord had consented to the installation of the gate. The landlord testified that he did not recall doing so but may have.

90. The tenant has a duty to return the property to the condition it was in when it was rented, notwithstanding whether the landlord consented to any temporary modifications. This portion of the landlords' claim succeeds for \$23.60.

91. Lastly, the landlords claim for four days of work for which one of them had to take time off in order to complete repairs on the apartment in a timely manner. The landlord's evidence is labelled LL#29. This claim is for \$869.96 representing 4 days for 6.5 hours each at \$33.46 an hour.

92. While I appreciate that this was a real loss suffered by the landlord, it is also part of the normal cost of doing business. Further, this tribunal has already compensated the landlord for his time and labour. To also award him the opportunity cost he suffered by not attending his regular work would effectively constitute double recovery, which is impermissible. This portion of the landlords' claim fails.

93. In summary, the following portions of the landlords' claim for damages succeed:

- \$1594.24 for the steel door
- \$6279.00 for the hardwood
- \$1050.12 for the walls
- \$349.72 for the interior doors
- \$938.77 for the refrigerator
- \$50.00 for storage
- \$463.88 for cleaning of the interior
- \$40.84 for the drawers
- \$162.19 for the dining room light fixture
- \$75.06 for the main door lock
- \$642.58 for the bathroom countertop

- \$254.19 for the toilet
- \$395.65 for cleaning of the exterior
- \$23.60 for the removal of the gate

94. The total damages award is therefore \$12,319.84.

### **Issue 2: Unpaid Rent and Utilities**

95. The landlords claim the monthly rent of \$1700 and the \$397.51 utilities bill for the month of January. The utility bill is labeled LL#26 and the landlords' evidence related to the claim for rent is labelled LL#28. They say they were not able to re-rent the property to a new tenant due to the tenant's failure to comply with the conditions of the rental agreement as shown by the damages referred to in the previous section.

96. The amount of damages proven on a balance of probabilities in the previous section is sufficient to justify the landlord's claim for unpaid rent and utilities. The claim succeeds in the full amounts of \$1700 and \$397.51.

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

97. As the landlords are owed moneys, they are entitled to apply the security deposit against the amount owed. The security deposit in this case was \$200.

### **Decision**

98. The landlords' claim for damages succeeds in part for \$12,319.84.

99. The landlords' claim for unpaid rent succeeds in full for \$1700.00.

100. The landlords' claim for unpaid utilities succeeds in full for \$397.51.

101. As the landlords are owed moneys, they may apply the \$200 security deposit against the amount owed.

102. As the landlords have been successful, they are entitled to have their reasonable hearing expenses covered. These consist of the \$20.00 hearing fee (receipt provided in LL#32), \$26.88 in the cost of registered mail (receipts were provided in LL#13), the \$200 cost of hiring a Commissioner of Oaths to certify five separate affidavits of service (no receipt provided), and \$217.49 for the loss of work to attend the hearing.

103. The tenant suggested the costs were unreasonable as five affidavits of service were not necessary. The landlords submitted that the difficulty they had in serving the tenant, partially due to her refusal to provide a forwarding address. I agree with the landlords, but for policy reasons this tribunal does not award costs in the absence of receipts.

104. The loss of work time is considered part of the cost of doing business and is compensable only in exceptional circumstances. I do not find the present case meets that standard. The tenant shall pay the landlords' costs in the amount of \$46.88.

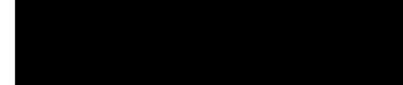
## Summary of Decision

105. The tenant shall pay to the landlords \$14,264.23 as follows:

|                                       |             |
|---------------------------------------|-------------|
| Damages.....                          | \$12319.84  |
| Unpaid rent.....                      | \$1700.00   |
| Utilities.....                        | \$397.51    |
| Hearing Expenses.....                 | \$46.88     |
| Less Security Deposit.....-(\$200.00) |             |
| Total.....                            | \$14,264.23 |

19-June-2024

Date



Seren Cahill  
Residential Tenancies Office