

Residential Tenancies Tribunal

Application 2024-0433-NL & 2024-0457-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:47 p.m. on 27-June-2024.
2. The applicants, [REDACTED] (applicant 1) and [REDACTED] (applicant 2), hereinafter referred to as “the landlords” attended by teleconference.
3. The respondent and counter applicant, [REDACTED] (respondent 1), hereinafter referred to as “the tenant” attended by teleconference. The respondent and counter applicant, [REDACTED] (respondent 2), hereinafter referred to as “the tenant” did not attend.
4. The landlords called 2 witnesses into the hearing, [REDACTED] (witness 1) and [REDACTED] (witness 2).

Preliminary Matters

5. The landlords submitted an affidavit with their application stating that they had served the respondents with the notice of hearing electronically by email to: [REDACTED] and [REDACTED] on 13-June-2024 (LL#1). Respondent 1 confirmed that both he and respondent 2 received the documents on that date and followed up with a counter claim against the landlords. The tenants submitted an affidavit with their application stating that they had served applicant 1 with the notice of hearing electronically to: [REDACTED] on 18-June-2024 (TT#1). In accordance with the *Residential Tenancies Act, 2018*, this is not good service as it did not allow enough time and only 1 landlord was served with the document, however the landlords waived service and the hearing proceeded.
6. There was a written term rental agreement that commenced on 2-April-2022. The tenants vacated the premises on 1-May-2024. Rent was \$3250.00 per month, due on the first of each month. A security deposit of \$1450.00 was paid on 17-February-2022 and \$400.00 remains in the landlord’s possession.
7. Both parties agreed prior to the hearing that the landlords would retain \$1050.00 of the security deposit for outstanding rent and the tenants amended their application to decrease *security deposit refunded* from \$450.00 to \$400.00. The landlords omitted *rent paid* from their application.

Issues before the Tribunal

8. The landlords are seeking:
 - Possessions Returned \$531.13
 - Compensation paid for Damages \$3781.09
 - Security deposit applied against monies owed \$400.00
9. The tenants are seeking:
 - Security Deposit refunded \$400.00
 - Possessions returned \$447.75

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
11. Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 14; Security Deposit, Also, relevant and considered in this decision are the following sections of the *Residential Tenancies Policy Manual*, Section 9-3: Claims for damage to rental premises and Section 9-5: Life expectancy of property.

Item # 1: Possessions Returned (to landlords) \$531.13

Relevant Submission

12. Applicant 1 testified that the tenants purchased household items for the unit after they took possession and presented the list and cost of those items to them for reimbursement. The landlords submitted a list of the possessions missing during the final walk-through (LL#2) and are seeking to be reimbursed for the value of the missed / replaced items. See a breakdown of the missing possessions:

Possessions returned Ledger 2024-0433-NL		
Possessions	Value	Total
Black Matt	\$34.50	\$34.50
Cutlery Tray	\$80.50	\$115.00
Cutlery (40 pieces)	\$80.49	\$195.49
Mixing Bowls (8 pieces)	\$21.84	\$217.33
Chopping Boards (2 pieces)	\$40.24	\$257.57
Wooden spoons (6 pieces)	\$11.50	\$269.07
shower Curtain liners (2)	\$25.24	\$294.31
Duvet Cover & 2 pillow shams	\$68.97	\$363.28
King Pillow Cases	\$21.84	\$385.12
Queen Pillows (2)	\$22.98	\$408.10
Window Curtain	\$31.04	\$439.14
Hangers (50)	\$11.50	\$450.64
door lock latch	\$80.49	\$531.13

Landlord's and Tenant's Positions

13. Applicant 1 testified that the above noted items were purchased by the tenants after they took possession of the unit, and the receipts were presented to them for reimbursement as the tenants claimed that the items purchased were necessities that should be included in a fully furnished property. The landlords reimbursed the tenants for the cost of the household items even though the items were not included in the rental agreement and applicant 1 testified that they agreed to pay for the items in good faith under the condition that the items remain in the unit after the tenancy ends. Each item is dealt with separately as follows:

Item # 1: Black Matt (\$34.50) – Applicant 1 testified that there was a black utility matt in the entrance way when the tenants took possession of the unit, and she stated that the matt was missing during the final walk-through. Applicant 1 submitted a quote from *Kent* to show the cost to replace the matt (LL#3). Respondent 1 did not dispute that the matt was missing.

Item # 2: Cutlery Tray (\$80.50) - Applicant 1 testified that they reimbursed the tenants for the cost of a wooden expandable cutlery tray at the commencement of the tenancy, and she stated that the cutlery tray was missing at the end of the tenancy. Applicant 1 submitted a receipt from *Bed Bath & Beyond* to show the cost of the cutlery tray (LL#4). Respondent 1 did not dispute that the cutlery tray was replaced and stated that he accidentally damaged the wooden tray during installation.

Item # 3: Cutlery (\$80.49) - Applicant 1 testified that they reimbursed the tenants for the cost of a 40-piece Rockford cutlery set at the commencement of the tenancy, and she stated that the cutlery was missing and replaced with a set of less value. Applicant 1 submitted a copy of a receipt from *Costco* to show the cost of the cutlery (LL#5). Respondent 1 did not dispute that the cutlery was replaced and stated that the original set became incomplete over the 2 years. Respondent 1 offered to pay 50% of the cost of the cutlery set.

Item # 4: Mixing Bowls (\$21.84) - Applicant 1 testified that they reimbursed the tenants for the cost of an 8-piece pyrex mixing bowl set at the commencement of the tenancy, and she stated that the bowls were all missing and replaced with 3 bowls of less value. Applicant 1 submitted a copy of a receipt from *Costco* to show the cost of the bowls (LL#6). Respondent 1 did not dispute that the mixing bowls were replaced and offered to pay 50% of the cost of the mixing bowls.

Item # 5: Chopping Boards (\$40.24) – The landlords omitted the chopping boards from their list of possessions.

Item # 6: Wooden spoons (\$11.50) - Applicant 1 testified that they reimbursed the tenants for the cost of a 6-piece wooden spoon set at the commencement of the tenancy, and she stated that the spoons were missing and replaced with spoons of less value. Applicant 1 submitted a copy of a receipt from *Bed Bath & Beyond* to show the cost of the spoons. Respondent 1 did not dispute that the spoons were missing and stated that they replaced the wooden spoons due to wear and tear over the 2-year rental period.

Item # 7: Shower curtain Liners (\$25.24) - Applicant 1 testified that they provided the tenants with 4 shower curtain liners at the commencement of the tenancy, and she stated that there were only 2 liners present during the final walk-through. Respondent 1 did not dispute that the shower curtain liners were missing.

Item # 8: Duvet Cover and shams, pillowcases & 2 queen pillows (\$113.79) –

Applicant 1 testified that they provided the tenants with a 4-piece duvet cover set, king pillowcases and 2 queen size pillows at the commencement of the tenancy, and she stated that the duvet cover was destroyed due to 2 dark permanent stains and the shams, pillowcases and pillows were missing during the final walk-through. Applicant 1 submitted photographs (LL#7) to show the stains on the duvet cover and a receipt from *Costco* to show the cost of the pillows (LL#8). Respondent 1 did not dispute that there could be stains on the duvet cover but stated that he was unaware of any stains. Respondent 1 did not dispute that the shams, pillowcases and pillows were missing.

Item # 9: Window Curtain (\$31.04) – Applicant 1 testified that they provided the tenants with 3 sets of window sheers at the commencement of the tenancy, and she stated that there were only 2 remaining in the unit during the final walk-through. Applicant 1 submitted a copy of a receipt from *Bed Bath & Beyond* to show the cost of the window curtains (LL#9). Respondent 1 disputed that the window curtain was missing and stated that it was left in the unit somewhere.

Item # 10: Hangers (\$11.50) - Applicant 1 testified that they provided the tenants with 50 hangers at the commencement of the tenancy, and she stated that there were approximately 25 hangers left in the unit during the final walk-through and the ones left in the unit were replacements of a lower quality. Applicant 1 submitted a copy of a receipt from *Costco* to show the cost of the hangers (LL#10). Respondent 1 did not dispute that some of the hangers were missing, nor did he dispute replacing them with ones of less quality.

Item # 11: Door lock latch (\$80.49) - Applicant 1 testified that the back door lock is missing the latch and the deadbolt only remains. The landlords submitted a copy of a receipt from *Kent* to show the cost to replace the lock at \$80.49 (LL#11). Respondent 1 did not dispute that the door lock latch was missing.

Analysis

14. The landlords are seeking the full cost to replace the items on the inventory list and in most cases, respondent 1 did not dispute the claim. This tribunal has a responsibility to be fair to all parties involved and when a tenant rents a fully furnished unit, the expectation is that some or most of the household items will depreciate over the length of the tenancy. Depreciation will be taken into account where deemed necessary for the purpose of this decision. A *Depreciation Reference Table* from the *National Joint Council (2024)* is used to determine depreciation of household items (www.njc-cnm.gc.ca/directive). Each item is analyzed as follows:

Item # 1: Black Matt (\$34.50) – Applicant 1 submitted a photograph of the matt which shows that it was a utility matt and respondent 1 did not dispute that the matt was missing. In accordance with the *depreciation reference table*, a utility matt has a 3-year life span, which leaves approximately 34% of the matt's life cycle remaining. The matt cost \$34.50 to replace and after applying depreciation, I find that the tenants are responsible for the cost to replace the matt at \$11.73.

Item # 2: Cutlery Tray (\$80.50) - Applicant 1 testified that they reimbursed the tenants for the cost of a wooden expandable cutlery tray at the commencement of the tenancy, and she stated that the cutlery tray was missing. Respondent 1 did not dispute that the cutlery tray was missing and stated that he accidentally damaged the tray during installation. I accept that the tenants are responsible for damaging the cutlery tray and I find that they should have replaced it with the same product or with a product of equal value. Based on

the receipt entered into evidence from *Bed Bath & Beyond*, the cutlery tray cost less than what the landlords are actually seeking and for that reason, I find that the tenants are responsible for the cost to replace the cutlery tray at the purchase price of \$46.00.

Item # 3: Cutlery (\$80.49) - Applicant 1 testified that they reimbursed the tenants for the cost of a 40-piece cutlery set at the commencement of the tenancy, and she stated that the cutlery was missing and replaced with a set of less value. Respondent 1 did not dispute that the cutlery was replaced and offered to pay 50% of the cost of the original set. In accordance with the *depreciation reference table*, good quality cutlery can last up to 20 years, which leaves approximately 90% of the cutlery's life cycle remaining. The cutlery cost \$80.49 to purchase and considering that the tenants incurred the cost to replace the set, I find that it is reasonable that the tenants pay 50% of the original cost of the cutlery as agreed upon during the hearing. I find that the tenants are responsible for the cost to replace the cutlery at \$40.24.

Item # 4: Mixing Bowls (\$21.84) - Applicant 1 testified that they reimbursed the tenants for the cost of an 8-piece pyrex mixing bowl set at the commencement of the tenancy, and she stated that the bowls were missing and replaced with a set of less value. Respondent 1 did not dispute that the mixing bowls were replaced and offered to pay 50% of the cost of the original set. In accordance with the *depreciation reference table*, pyrex bowls can last up to 10 years, which leaves approximately 80% of the bowl's life cycle remaining. The mixing bowls cost \$21.84 to purchase and considering that the tenants incurred the cost to replace the set, I find that it is reasonable that the tenants pay 50% of the cost of the bowls as agreed upon during the hearing. I find that the tenants are responsible for the cost to replace the mixing bowls at \$10.92.

Item # 5: Chopping Boards – The landlord omitted the chopping boards from their list.

Item # 6: Wooden spoons (\$11.50) - Applicant 1 testified that they reimbursed the tenants for the cost of a 6-piece wooden spoon set at the commencement of the tenancy, and she stated that the spoons were missing and replaced with spoons of less value. Respondent 1 did not dispute that the spoons were missing and stated that they replaced the wooden spoons due to wear and tear over the 2-year rental period. The landlord's had omitted this item from their *list of possessions* as presented in their evidence package and as such will not be analyzed for the purpose of this decision.

Item # 7: Shower curtain Liners (\$24.24) - Applicant 1 testified that they provided the tenants with 4 shower curtain liners at the commencement of the tenancy, and she stated that there were only 2 liners present during the final walk-through. Respondent 1 did not dispute that the shower curtain liners were missing. In accordance with the *depreciation referenced table*, shower liners should be replaced at least every year, which means that the shower curtain liners have surpassed their life cycle and as such, I find that the tenants are not responsible for the cost to replace the shower curtain liners.

Item # 8: Duvet Cover and shams, pillowcases & 2 king pillows (\$113.79) - Applicant 1 testified that they provided the tenants with a 4-piece duvet cover set, pillowcases and 2 queen size pillows at the commencement of the tenancy, and she stated that the duvet cover was destroyed due to 2 permanent stains and the shams, pillowcases and pillows were missing during the final walk-through. Respondent 1 did not dispute that there could be stains on the duvet cover but stated that he was unaware of any stains. Respondent 1 did not dispute that the shams, pillowcases and pillows were missing. In accordance with the *depreciation referenced table*, duvet covers and shams have a 20-year life span and bedding, and pillows have a 5-year life span. This leaves approximately 90% of the life cycle remaining for the duvet and shams and approximately 60% of the life cycle

remaining for the pillowcases and the pillows. The duvet and shams cost \$68.97 and after applying depreciation, I find that the tenants are responsible to pay \$62.07 towards the cost to replace them. The pillowcases and pillows cost \$50.58 to replace and after applying depreciation, I find that the tenants are responsible to pay \$30.35 to replace them. I find that the tenants are responsible for the cost to replace the duvet, shams, pillowcases and queen pillows in the amount of \$92.42.

Item # 9: Window Curtain (\$31.04) – Applicant 1 testified that they provided the tenants with 3 sets of window sheers at the commencement of the tenancy, and she stated that there were only 2 remaining in the unit during the final walk-through. Respondent 1 disputed that the window curtain was missing and stated that it was left in the unit somewhere. I accept the landlord's testimony that the window sheer was missing as the tenant was not confident as to where the sheer was located. In accordance with the *depreciation referenced table*, curtains have a 5-year life span which leaves approximately 60% of the life cycle remaining. The curtain cost \$31.04 to replace and after applying depreciation, I find that the tenants are responsible to pay \$18.64 towards the cost to replace the curtain.

Item # 10: Hangers (\$11.50) - Applicant 1 testified that they provided the tenants with 50 hangers at the commencement of the tenancy, and she stated that there were approximately 25 hangers left in the unit during the final walk-through and the ones left in the unit were of lower quality. Respondent 1 did not dispute that some of the hangers were missing, nor did he dispute replacing them with ones of less quality. I accept that good quality hangers can last a lifetime and for that reason, I find that the tenants are responsible for the cost to replace the hangers at \$11.50.

Item # 11: Door lock latch (\$80.49) - Applicant 1 testified that the back door lock is missing the latch and the deadbolt only remains. Respondent 1 did not dispute that the door lock latch was missing and as such, I find that the tenants are responsible for the cost to replace the latch at \$80.49.

Decision

15. The tenants shall pay the landlords \$311.94 for the value of missing possessions.

Issue # 2: Compensation for Damages \$3781.09

Relevant Submission

16. Applicant 1 testified that there were damages / losses to the unit, and they submitted a damages ledger to support the claim (LL#12). See copy of damages ledger below:

Item #	Description of Damages	Compensation Claimed
E.g.	3cm x 3cm hole in bathroom wall	\$ 75.00
1	Interior Fridge liner broken - claimed 2 yrs depreciation	\$ 390.00
2	Washer used improperly, required repair	\$ 300.00
3	4 sinks clogged, required dismantling cabinet and pipes	\$ 250.00
4	drywall and paint damage to walls	\$ 700.00
5	broken hinge/back door, caused gap at house/door	\$ 500.00
6	Damage to kitchen cabinets	\$ 1,000.00
7	Extensive cleaning required to get back to pre-tenancy	\$ 455.00
8	Broken garbage bucket - 2 years depreciation	\$ 59.60
9	kettle	\$ 46.00
10	Deck door lock/latch removed	\$ 80.49

Landlord's & Tenant's Position

17. Applicant 1 testified that the above list of items has been identified as damages / losses to the unit caused by negligence on the part of the tenants. The landlord's and tenant's positions on each item are as follows:

Item # 1: Interior refrigerator liner damaged (\$390.00) - Applicant 1 testified that the refrigerator liner in the freezer area was damaged where the drawer slides in and out. Applicant 1 stated that the refrigerator was new at the commencement of the tenancy and originally cost \$864.00 plus tax. The landlords are seeking a prorated amount of \$390.00 after taking depreciation into account. The landlords submitted photographs and a copy of the receipt to support the claim (LL#13). Respondent 1 did not dispute that the refrigerator liner became damaged during the tenancy however he is disputing that they did anything to cause the damage. Respondent 1 stated that he did not remember seeing the damage or doing anything to cause the damage and stated that the drawer in the freezer was functional when they vacated. Respondent 1 testified that the refrigerator was not installed properly and was leaning backwards which could have attributed to the damage.

Item # 2: Washer repair (300.00) – Applicant 1 testified that the washer was damaged as a result of the tenants using fabric softener liquid in the *bleach only compartment* and she stated that the washer was not draining properly. The landlords submitted a copy of an invoice in the amount of \$300.00 to support the cost to have the washer taken apart, cleaned, and flushed out (LL#14). The landlords also submitted photographs to support the claim (LL#15). Respondent 1 did not dispute that they used the washer incorrectly by putting fabric softener liquid in the *bleach only compartment* but stated that it only happened one time.

Item # 3: Sinks clogged (\$250.00) – Applicant 1 testified that 4 of the bathroom sinks in the unit were clogged and the damage was within the deeper parts of the usage pipes and trap. Applicant 1 stated that they had to take apart the cabinet to get at the trap and pipe. The landlords are claiming 4 hours of labor at \$60.00 per hour to complete the work and submitted a copy of an invoice to support the claim (LL#16). Respondent 1 disputed that they caused any damage to the drains and stated that there were continuous plumbing problems within the unit, some of which included saw dust bubbling up through the drains and he stated that the shower was totally blocked on the middle floor

preventing them from ever using that shower. Respondent 1 stated that they had to use draino from the first day of the tenancy which usually helped with the situation.

Item # 4: Drywall and paint damage to walls (\$700.00) - Applicant 1 testified that the walls needed repair and fresh paint as there was damage in many areas to the drywall. Applicant 1 called witness 1 into the hearing who testified that the damage was all over the house in many different areas and was a very timely job. Witness 1 testified that the toilet paper holder had been removed from one area of the bathroom to another area leaving damage to the wall. Applicant 1 stated that the amount that they are seeking is for labor costs only and they submitted photographs to support the claim (LL#17). The landlords also submitted a copy of an estimate to show the cost to have the work completed (LL#18) and testified that the \$700.00 is for labor costs only. Respondent 1 did not dispute that there was some damage to the walls however he disputed that it cost \$700.00 for labor to complete the work and emphasized that nail holes should fall under normal wear and tear.

Item # 5: Broken hinge / backdoor (\$500.00) – Applicant 1 testified that the backdoor was damaged and called witness 1 into the hearing to speak to the nature and extent of the damage to the door. Witness 1 stated that the damage was caused as a result of someone wedging the door open which ultimately caused a gap between the door and the door box resulting in a warped hinge. The landlords submitted photographs to support the claim (LL#19). Witness 1 stated that the door box and hinge cannot be repaired and need to be replaced and he stated that he was unable to obtain an estimate for the cost but as a carpenter, he is very familiar with those costs and feels that \$500.00 is reasonable to claim. Respondent 1 disputed that they ever wedged the door open and disputed that they caused any damage to the door box or the hinge.

Item # 6: Kitchen Cabinets (\$1000.00) – Applicant 1 testified that the laminate on the cabinets had initially peeled off due to steam from the toaster located on the countertop underneath the cabinet. Applicant 1 stated that the heat caused damage over time resulting in the cabinets peeling and they dealt with the problem when it first emerged. Applicant 1 stated that they were not informed of any additional peeling to the cabinets until they conducted their final walk-through. Applicant 1 stated that they are seeking \$1000.00 to repair the cabinets and submitted photographs to support the claim (LL#20). Respondent 1 did not dispute that the cabinets had peeled in areas, however he disputed that they did anything to cause the damage. Respondent 1 stated that they cooked in the unit as anyone normally would and he stated that they had initially stopped using the toaster when they first noticed the damage. Respondent 1 stated that other areas started to peel as well with the use of the kettle and the air fryer emphasizing that the cupboards were made of poor-quality materials.

Item # 7: Cleaning (\$455.00) – Applicant 1 testified that the unit needed to be cleaned and stated that it took 13 hours at \$35.00 per hour to complete the work. Witness 2 testified that the unit needed a deep clean and it took her 13 hours to complete the work. The landlords submitted photographs of the unit to support the claim (LL#21) and a copy of an invoice from witness 2 to support the claim (LL#22). Respondent 1 disputed that the unit needed to be cleaned.

Item # 8: Garbage bucket (\$59.60) – Applicant 1 testified that the garbage container which was supplied to the tenants at the commencement of the tenancy was damaged and needed to be replaced. The landlords are seeking a prorated amount of \$59.60 after taking depreciation into account. The landlords submitted photographs to show the damage to the bottom area of the garbage container and a copy of the original receipt to

support the claim (LL#23). Respondent 1 disputed that they damaged the garbage container and stated that it was functional when they vacated the unit.

Item # 9: Kettle (\$46.00) – Applicant 1 testified that the electric kettle was damaged, and it appeared to have run dry causing a burned film on the bottom of the kettle. Applicant 1 submitted a photograph of the interior of the kettle and proof of the cost to replace it to support the claim (LL#24). Respondent 1 disputed that they ever ran the electric kettle dry and stated that such an incident would burn out the element. Respondent 1 stated that the discoloration to the interior of the kettle is a result of normal wear and tear.

Item # 10: Deck door lock / latch (\$80.49) – This item was previously dealt with in paragraph 14 above.

Analysis

18. In accordance with *Residential Tenancies policy 9-3*, the applicant is required to show:

- *That the damage exists;*
- *That the respondents are responsible for the damage, through a willful or negligent act;*
- *The value to repair or replace the damaged item(s)*

Item # 1: Interior refrigerator liner damaged (\$390.00) - Applicant 1 testified that the refrigerator liner in the freezer area was damaged where the drawer slides in and out. Respondent 1 did not dispute that the refrigerator liner could be damaged but stated that he did not notice the damage and could not remember causing the damage to the liner. Respondent 1 stated that the refrigerator was not installed properly and was leaning backwards which could have attributed to the damage. Applicant 1 testified that the refrigerator was delivered and professionally installed, and she stated that the refrigerator cost \$864.28 when purchased in 2021. The landlords took depreciation into account and are only seeking a prorated amount of \$390.00 for the damage to the liner. I asked applicant 1 the age of the refrigerator and if the liner could be repaired and she responded that the refrigerator was new at the beginning of the tenancy, and she stated that the liner cannot be fixed as the damage is located on the full plastic liner on the entire side of the refrigerator. I asked the landlord if it is possible that the installation of the refrigerator could have caused the damage and she responded no. Applicant 1 stated that the refrigerator was shipped and installed by professionals and checked over before the tenancy began. The landlords were able to show that the damage exists and as the refrigerator was new at the beginning of the tenancy and professionally installed, I find that the respondents were responsible for the damage. In accordance with Section 9-5 of the *Residential Tenancies Policy: Depreciation and Life Expectancy of Property*, a refrigerator has a 13-year life span and as such, I find that the refrigerator should have approximately 85% of its life cycle remaining. I find that \$390.00 as sought by the landlords is more than reasonable to claim for a refrigerator with 85% of its life cycle remaining. I find that the respondents are responsible for the damage to the refrigerator in the amount of \$390.00.

Item # 2: Washer repair (300.00) – Applicant 1 testified that the washer was damaged as a result of the tenants using fabric softener liquid in the *bleach only compartment* and he stated that the washer was not draining properly. Respondent 1 did not dispute that they used the washer incorrectly by putting fabric softener liquid in the *bleach only*

compartment but stated that it only happened one time. Based on the photographs entered into evidence showing a buildup of blue colored fabric softener around the *bleach only compartment* and based on the testimony of witness 1 who completed the necessary work on the washer, I accept that fabric softener liquid was put into the incorrect compartment of the washer on more than 1 occasion causing the damage and as such, I find that the tenants are responsible for the cost to repair the washer as per the invoice on file in the amount of \$300.00.

Item # 3: Sinks clogged (\$250.00) – Applicant 1 testified that 4 of the bathroom sinks in the unit were clogged and the damage was within the deeper parts of the usage pipes and the trap which she stated she was told was caused by thick residue. Respondent 1 disputed that they caused any damage to the sinks and stated that there were continuous plumbing problems within the unit, some of which included saw dust bubbling up through the drains and he stated that the shower was totally blocked on the middle floor preventing them from ever using that shower. I asked respondent 1 if he ever made the landlords aware of the ongoing plumbing problems and he stated that he did not and that they used draino which usually helped to unclog the sinks. I asked applicant 1 if there were any plumbing problems with the unit prior to the tenancy and she responded no. I accept the landlord's testimony that there were not any plumbing problems with the unit prior to the tenancy and given that they had to hire someone to unclog the sinks validates that there was a problem at the end of the tenancy. The question is whether or not the plumbing problems existed at the commencement of the tenancy. Based on the tenant's testimony, I find that the fact that they never made the landlords aware of the problems, especially given that they could never use one of the showers, creates doubt. In weighing the evidence, I find that the landlords were able to show that the damage exists, testified that the problem was nonexistent at the commencement of the tenancy, and they could show the cost to repair the damage. In accordance with Section 9-3 as stated above, I find that the landlord's case was stronger than the tenants and for that reason, I find that the tenants are responsible for the labor costs to unclog the sinks in the amount of \$250.00.

Item # 4: Drywall and paint damage to walls (\$700.00) - Applicant 1 testified that the walls needed repair and fresh paint as there was damage in some areas to the drywall. Respondent 1 did not dispute that there was some damage to the walls, however he disputed that it cost \$700.00 to complete the work. I asked the landlord when the last time the unit was painted, and he responded that the unit was freshly painted in 2021 prior to the tenancy. In accordance with Section 9-5 of the *Residential Tenancies Policy: Depreciation and Life Expectancy of Property*, interior paint has a 15-year life span leaving approximately 87% of its life cycle remaining. Based on the photographs entered into evidence, I accept that the walls needed repair work and fresh paint and for that reason, I find that the tenants are responsible for 87% of the cost to complete the work. I find that the tenants are responsible for the cost to plaster and paint in the amount of \$609.00.

Item # 5: Broken hinge / backdoor (\$500.00) – Applicant 1 testified that the backdoor was damaged causing a gap between the door and the door box which resulted in a warped hinge. Respondent 1 disputed that they caused any damage to the door box or the hinge and questioned whether or not it would be a normal practice to wedge the door open. I asked witness 1 if it was possible that the door blew open in the wind causing the damage and he responded no because there is a railing there that would prevent the door from wrapping around. Witness 1 testified that he has extensive experience in repairs and the cost of building supplies and stated that the broken hinge was caused by man as opposed to natural causes and he stated that the door box and hinge has to be replaced. I accept the testimony of witness 1 and I accept that the cost of \$500.00 is a

reasonable amount to charge for the replacement of the door box and the hinge and as such, I find that the tenants are responsible for the cost to replace the door box and hinge at \$500.00.

Item # 6: Kitchen Cabinets (\$1000.00) – Applicant 1 testified that the laminate on the cabinets had peeled due to heat /steam from the kitchen appliances located on the countertop underneath the cabinet. Applicant 1 stated that the heat caused damage over time resulting in the laminate peeling. Respondent 1 did not dispute that the laminate peeled however, he disputed that they caused the cabinets to peel and stated that they cooked as anyone normally would and had initially stopped using the toaster when they first noticed the damage. Respondent 1 stated that other areas started to peel as well with the use of the kettle and the air fryer emphasizing that the cupboards were made of poor-quality materials. I accept that a tenant should be able to use their toaster, kettle and air fryer in their kitchen area and if the laminate on the cabinets peeled due to usage of those small appliances, then I find it difficult to say that the tenant was negligent in causing the damage. I find that the landlords were unable to show that the damage to the cupboards was caused by a willful or negligent act on behalf of the tenants and for that reason, I find that the tenants are not responsible for the cost to repair the cupboards.

Item # 7: Cleaning (\$455.00) – Applicant 1 testified that the unit needed to be cleaned and stated that it took 13 hours at \$35.00 per hour to complete the work. Respondent 1 disputed that the unit needed to be cleaned. Based on the photographs entered into evidence, I accept that the unit was not completely cleaned, however the landlords were unable to show that it needed 13 hours of cleaning as per their claim. Based on the photographs, I will allow 3 hours of cleaning at \$35.00 per hour as charged by the cleaner and as such, I find that the tenants are responsible for cleaning in the amount of \$105.00.

Item # 8: Garbage bucket (\$59.60) – Applicant 1 testified that the garbage container was damaged and needed to be replaced. Applicant 1 stated that the bottom limb was cracked off the foot pedal. Respondent 1 disputed that they damaged the garbage container and stated that the garbage container was working fine when they left the unit. I asked the landlord the age of the garbage container and she stated that it was 2 years old. Based on the photograph entered into evidence, I accept that there was minor damage to the bottom pedal of the container which has not affected the functionality of the container in any way and given that it is has been used daily for 2 years, wear and tear must be factored in. I find that the tenants are not responsible for the cost to replace the garbage container.

Item # 9: Kettle (\$46.00) – Applicant 1 testified that the electric kettle was damaged, and it appeared to him that it ran dry causing a burned film to exist on the bottom of the kettle. Respondent 1 disputed that they ever ran the electric kettle dry and stated that such an incident would burn out the element. Respondent 1 stated that the discoloration of the kettle is a result of normal wear and tear. Based on the photograph entered into evidence, I accept the tenant's testimony that he did not run the kettle dry and that the stain is a result of normal wear and tear and for that reason, I find that the tenants are not responsible for the cost to replace the kettle.

Item # 10: Deck door lock / latch (\$80.49) – This item was previously analyzed in paragraph 14 above.

Decision

19. The landlord's claim for compensation for damages succeeds in the amount of \$2154.00.

Issue # 3: Possessions Returned (to tenants) \$447.75

Relevant Submission

20. Respondent 1 testified that they bought personal possessions into the unit during the tenancy and wish to either have them returned or to be reimbursed for the value to replace them. The tenant's submitted an inventory list to support their claim (TT#2). See copy of list of possessions below:

Item #	Description of Damages	Compensation Claimed
E.g.	3cm x 3cm hole in bathroom wall	\$ 75.00
1	Blinds for front bedroom - left in place	\$ 264.50
2	Mirror in back bedroom - left in place	\$ 70.00
3	Mirror/Key rack in hall - left in place	\$ 50.00
4	Shoe rack in hall - left in place	\$ 63.25

Tenant's and Landlord's Position

21. Respondent 1 testified that the above noted items were left in the unit, and they would like to retrieve their belongings or be reimbursed for the value of each item. The landlords did not dispute that the above listed items were still in the unit and agreed to make arrangements for the items to be returned to the tenants.

Decision

22. The tenant's claim for possessions returned succeeds.
23. The landlords shall arrange a time for the tenants to pick up the 4 personal belongings as listed above.

Issue # 4: Refund of security deposit \$400.00

Security deposit to be applied against monies owed \$400.00

Analysis

24. Section 14 of the *Residential Tenancies Act, 2018* deals with security deposits, and the relevant subsections state:

Security deposit

14. (8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.
- (9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.
- (10) Where a landlord believes he or she has a claim for all or part of the security deposit,

- (a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or
- (b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.
- (11) Where a tenant makes an application under paragraph (10)(b), the landlord has 10 days from the date the landlord is served with a copy of the tenant's application to make an application to the director under paragraph (10)(b).
- (12) A landlord who does not make an application in accordance with subsection (11) shall return the security deposit to the tenant.

25. As the landlord's claim for losses has been successful as per paragraphs 15 and 19, I find that the landlord's claim to have \$400.00 of the security deposit applied against monies owed succeeds. Pursuant to the *Residential Tenancies Act, 2018* the landlord must pay interest on a security deposit to a tenant for the entire period that the landlord has had the security deposit. The interest is calculated as simple interest and is not compounded. The annual interest for 2022 -2023 was 0% and is currently 1% for 2024.

Decision

26. The tenant's claim to have \$400.00 of the security deposit refunded does not succeed.
27. The landlord's claim to have \$400.00 of the security deposit plus interest applied against monies owed succeeds.

Summary of Decision

28. The landlords shall return the following possessions to the tenants at a time that is convenient for both parties:

Blinds
Mirror
Key rack
Shoe rack

29. The tenants shall pay the landlords \$2058.81 as follows:

Compensation for possessions	\$311.94
Compensation for damages.....	2154.00
Less security deposit & interest	407.13
Total	<u>\$2058.81</u>

August 2, 2024
Date



Pamela Pennell, Adjudicator
Residential Tenancies Office