

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0117-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 AM on 27 May 2021 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing. The respondents, [REDACTED] hereinafter referred to as “tenant1” and “tenant2”, respectively, also participated.

Issues before the Tribunal

3. The landlord is seeking the following:
 - An order for a payment of \$201.50 in compensation for inconvenience,
 - An order for a payment of \$11,540.25 in compensation for damages, and
 - Authorization to retain the security deposit of \$600.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this decision is section 10 of the *Residential Tenancies Act, 2018*, policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

6. The landlord called the following witness:
 - [REDACTED] – landlord’s common-law partner

Issue 1: Damages - \$11,540.25

Relevant Submissions

The Landlord's Position

7. With his application, the landlord submitted a copy of a rental agreement (█ #1) showing that he had entered into a 1-year, fixed-term lease with the tenants on 30 August 2018. The agreed rent was set at \$1200.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$600.00.
8. By mutual consent, the tenancy ended on 30 October 2020.
9. The landlord stated that after the tenants moved out he discovered that the tenants had caused significant damages to the property and with his application he submitted the following breakdown of the costs he incurred to carry out those repairs (█ #2):
 - Painting..... \$2282.75
 - Repair gate and fence \$5117.50
 - Repair fireplace..... \$115.00
 - Repair pavement \$4025.00
 - Total.....\$11,540.25

Painting

10. The landlord stated that, during their tenancy, the tenants had painted 2 bedrooms, without his permission. He stated that both of these rooms were a light brown when the tenants moved in, and the tenants had painted one room a dark blue colour, and the other room was painted green. The landlord's witness, █, corroborated the landlord's claim that the tenants had painted those 2 bedrooms during their tenancy.
11. The landlord testified that those rooms were last painted in 2017, about a year before this tenancy began. He has not repainted those rooms yet and he currently has new tenants residing at the property.
12. The landlord is seeking compensation for the costs of returning those walls to their original colour. The landlord testified that he was given a quote of \$2282.75 to carry out all of the required painting, but that quote did not breakout the costs of painting just these 2 bedrooms.
13. The landlord also stated that he was required to repaint a wall in the living room as the tenants had mounted a TV on that wall. He stated that there were 4 holes that needed to be plastered and the wall needed repainting. He acknowledged

that the tenants had made an attempt to repair that wall, but he claimed that the repair job was poorly done.

14. The landlord also complained that the tenants had mounted heavy shelving and racks in the garage during their tenancy and in so doing, they had made numerous holes in the walls in the garage that now need to be repaired.

Repair Gate and Fence

15. The landlord stated that on either side of the detached garage, there was wooden fencing. Sometime during the tenancy, the wooden fencing between the house and the garage went missing, and the fencing on the other side of the garage was moved from the front of the garage to the back of the garage. That testimony was corroborated by [REDACTED].
16. The landlord testified that he had supplied a contractor with a photograph showing the condition of the fence before the tenants moved in, and that contractor provided him with an estimate of \$5117.50 to restore that fence to its original condition.
17. The landlord stated that the fence was 7 years old.

Repair Fireplace

18. The landlord stated that in November 2020 he received a call from his new tenants informing him that the propane fireplace was not working. The landlord claimed that he had called a technician to inspect the fireplace and he was informed by the technician that the wires in the fireplace had been tampered with and some had been removed.
19. The landlord testified that the technician provided him with a quote for \$115.00 to repair that fireplace.

Repair Pavement

20. The landlord also complained that there was a hole in the driveway, about 2 or 3 feet wide, and that chunks of pavement had been laid back in the hole. That claim was corroborated by [REDACTED].
21. The landlord testified that he had received a quote for \$4025.00 to repair that driveway. The landlord did not know when the pavement in the driveway was laid, but it was sometime before he purchased the property 7 years ago.

The Tenants' Position

Painting

22. Tenant1 stated that her children stayed in those 2 bedrooms during their tenancy and she claimed that those rooms needed a fresh coat of paint when she moved in. She acknowledged that she had not sought the landlord's permission to paint those rooms.
23. With respect to the living room wall, tenant2 stated that he had removed his TV from that wall several days before he vacated and he had someone repair the holes and the plastered area was painted with some leftover paint. He claimed that the repair job was done correctly. Tenant2 also stated that there were numerous holes and scratches on the walls throughout the apartment when they first moved into the unit and he questioned why the landlord was just focussing on the area where the TV was located.
24. With respect to the garage, tenant2 testified that he had not mounted any racks or shelves in that garage during their tenancy and he had not screwed anything into the walls. He claimed, though, that there was already some shelves and racks in the garage when he moved in and surmised that they had been put there by the previous tenants.
25. Tenant1 did admit, though, that they are responsible for 1 hole in a wall in the garage which was caused when they had backed their car into it.

Repair Gate and Fence

26. Tenant2 stated that these 2 pieces of fencing blew down during "snowmageddon" in January 2020.
27. With respect to the fencing which was closest to the house, tenant2 stated that he was unable to repair that piece of fencing and he laid it up against the side of the house. He testified that he still required a gated fence, though, as he was concerned that his children would wander out of the yard, so he installed a temporary gate and fence in its place in the spring of 2020.
28. Regarding the other piece of fencing, tenant2 claimed that the 4x4 support posts for that fence were rotten and he was not able to get that fence to stand up straight in the same location. As a compromise, he moved that fence to the back of the garage where it could be supported.
29. Tenant2 stated that he was not responsible for the fence blowing over and he did the best he could to temporarily repair it until such time as the landlord was able to properly fix it himself

Repair Fireplace

30. Tenant1 stated that the last time they used the fireplace was in May 2020, and she claimed that it was working fine at that time. She also testified that the landlord did not inspect that fireplace during the outgoing walkthrough.
31. Tenant1 also denied that they had been tampering with the fireplace or that they had done anything with the wires.

Repair Pavement

32. Tenant1 stated that they have 3 vehicles and that they are well maintained. She stated that they do not leak oil or any other fluids. She also stated that they do not own any other vehicles or machines like an ATV or a lawnmower. Tenant2 stated that he is not a mechanic and he does not work on cars in the driveway, except to seasonally change tires.
33. Tenant2 also stated that he was not aware of any holes in the driveway, but he did state that there were several cracks in it. He also stated that he had noticed, when he had been shovelling snow, that some small pieces of pavement would knock loose. Tenant1 argued that one should expect to see some cracks in a driveway if it is not routinely sealed.

Analysis

34. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. Obligation of the Tenant - The tenant shall keep the residential premises clean, and shall repair damage caused by a willful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

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

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the *Act*, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the *Act* or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order

(a) determining the rights and obligations of a landlord and tenant;

(b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;

(c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;

(d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement

35. With respect to the painting, the tenants acknowledged that they had painted the 2 bedrooms different colours and that they had not received permission from the landlord to do so. I find that the landlord is therefore entitled to the costs he would incur to repaint those 2 rooms. These rooms were last painted by the landlord in 2017 and the landlord has yet to correct the colour in those rooms and he currently has new tenants living in the apartment. As it is expected that a landlord would have to repaint walls in a rental unit every 3 to 5 years, regardless of the change in colour, the landlord would have had to paint these walls soon anyhow. Taking that into consideration, I find that he is entitled to a depreciated award of \$100.00 for each room.
36. Regarding the holes in the living room wall, I accept the tenants' claim that they had repaired that wall before they moved out and I find that the landlord is not entitled to any compensation. Again, that wall would soon have to be repainted anyhow. The tenants' did acknowledge that they had caused there to be a hole in the wall in the garage, and I therefore award the landlord an additional \$100.00 to have that wall repaired. Regarding the other holes from the shelving and racks, I find that not enough evidence was presented at the hearing to establish that any shelves or racks were installed by these tenants during this tenancy.
37. With respect to the fence, I accept the testimony of the tenants that that fence had become damaged and had blown down during a storm in the winter of 2020. As that damage was not caused by the tenants through any deliberate act on their part, I find that they are not responsible for the costs of repairs.
38. I also find that the landlord had not presented enough evidence to establish that the tenants had been tampering with the propane fireplace or that the fireplace was damaged during this tenancy. It was the tenants' contention that it was working while they resided at the unit and it was only discovered to be inoperable after the landlord's new tenants took possession.

39. And with respect to the driveway, I again have to find that the landlord has not established that this damage was caused during this tenancy or that it was caused by any deliberate or negligent act on the part of the tenants. No evidence was presented at the hearing to establish that the tenants were using the driveway in any unusual way which would have caused this damage and it seems more probable to me that it is the result of normal wear and tear.

Decision

40. The landlord's claim for compensation for damages succeeds in the amount of \$300.00.

Issue 2: Compensation for Inconvenience - \$201.50

Relevant Submissions

The Landlord's Position

41. The landlord is seeking compensation in the amount of \$201.50 for the time he spent arranging to have contractors visit his property to assess the damages caused by the tenants. He stated that he spent 10 hours making those arrangements.

The Tenants' Position

42. Tenant2 argued that there was no need for the landlord to be at the rental property when the contractors went there to assess the damages.

Analysis

43. I have determined that the landlord has failed to establish that the tenants are responsible for the costs of repairing the fence, the fireplace and the driveway and I therefore also find that they are not responsible for any costs incurred by the landlord arranging to have contractors visit the property to assess that damage.
44. I have determined that the tenant's are responsible for some painting and plastering, though. I therefore award the landlord compensation for 1 hour of his time to obtain a quote for the painting—\$20.15.

Decision

45. The landlord's claim for compensation for inconvenience succeeds in the amount of \$20.15.

Issue 3: Security Deposit

46. The landlord stated that the tenants had paid a \$600.00 security deposit on 30 August 2018. As the landlord’s claim has been partly successful, that deposit shall be disposed of as follows:

- a) Refund of Security Deposit..... \$600.00
- b) LESS: Compensation for Damages..... (\$300.00)
- c) LESS: Compensation for Inconvenience (\$20.15)
- d) Total Owing to Tenants \$279.85

November 01, 2021

Date

