

## Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0150-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 9:13 AM on 24 August 2021 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as “landlord1” and “landlord2”, respectively, participated in the hearing. The respondents, [REDACTED] hereinafter referred to as “the tenants”, did not participate.

### Issues before the Tribunal

3. The landlord is seeking the following:
  - An order for a payment of rent in the amount of \$5650.00,
  - An order for a payment of late fees in the amount of \$75.00,
  - An order for a payment of \$36,058.38 in compensation for damages,
  - An order for a payment of utilities in the amount of \$672.22,
  - An order for a payment of the remaining \$250.00 security deposit, and,
  - Authorization to retain the partial security deposit of \$500.00.

### 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 policy 9-3: Claims for Damage to Rental Premises and rule 29 of the Rules of the Supreme Court, 1986.

## Preliminary Matters

6. The tenants were not present or represented at the hearing and I was unable to reach them by telephone at the commencement of the hearing. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as they have been properly served. The landlords submitted affidavits with their application stating that the tenants were personally served with the application on 25 May 2021. As the tenants were properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in their absence.

## Issue 1: Compensation for Damages - \$36,058.38

### Relevant Submissions

7. Landlord1 stated that they had entered into a verbal rental agreement with the tenants in late 2009. At the beginning of November 2020, the landlords discovered that the tenants had abandoned the unit and they entered and took possession on 02 or 03 November 2020.
8. The rental unit is approximately 27 years old and the landlords purchased the unit in 2009, just before the tenants moved in. There is no report of any incoming or outgoing inspection.
9. Landlord1 stated that the tenants had caused significant damage to the property during their 11 year tenancy and with her application she submitted the following breakdown of the damages and the costs to carry out repairs (CT #1):

- Siding, broken by window ..... \$2500.00
- Shutter, missing and broken ..... \$69.00
- Window screens missing..... \$322.00
- Patio door screen ..... \$115.00
- Clean up property..... \$750.00
- Repair grass..... \$350.00
- Dryer vent ..... \$20.00
- Sewer cleanout covers..... \$34.36
- Repair exterior wall ..... \$250.00
- Fire place propane, hearth ..... \$3450.00
- Repairing holes in walls ..... \$6900.00
- Paint..... \$1150.00
- 69 door facings..... \$355.49
- 3 door boxes ..... \$138.00

- 15 door stops ..... \$115.57
- 483 feet of baseboard ..... \$295.11
- Repair rail in stairwell ..... \$14.00
- Bedroom shutters..... \$172.50
- 3 French doors ..... \$579.26
- Linen closet door..... \$161.00
- 4 colonial doors ..... \$510.40
- Interior door knobs ..... \$99.91
- Labour ..... \$5500.00
- 10 baseboard heaters ..... \$735.42
- 48 outlets and covers ..... \$44.74
- 3 switch plates..... \$11.93
- 10 switch plate covers ..... \$16.62
- 8 thermostats ..... \$145.18
- 2 outdoor lights..... \$94.00
- 2 smoke alarms..... \$36.73
- Replace bathroom light fixture ..... \$40.00
- Labour ..... \$1200.00
- Master bedroom carpet ..... \$480.05
- Corner bedroom carpet ..... \$378.64
- Third bedroom carpet..... \$378.64
- Stair carpet..... \$666.14
- Rec room downstairs ..... \$1766.98
- Den bottom stairs ..... \$429.12
- Living room, hall laminate flooring..... \$1462.80
- Main bathroom tile floor..... \$600.00
- Labour to remove flooring ..... \$800.00
- Repair kitchen floor and cupboards..... \$5000.00
- Damaged subfloor..... \$500.00
- Bathtub surround install ..... \$584.20
- Labour..... \$1200.00
- Repair and refinish vanity..... \$1500.00
- Replace and varnish pine walls in bathroom ..... \$57.06
- Labour ..... \$100.00
- Replace refrigerator ..... \$200.00
- Dishwasher ..... \$500.00
- Repair gyproc on outside stairs..... \$9.53
- Labour..... \$100.00
  
- Total..... \$35,858.38

10. With their application, the landlords also submitted 477 photographs showing the condition of the premises and property after the tenant moved out (Exhibit folders ■ #2, #3) and during the hearing she directed my attention to the appropriate photographs related to each damaged item.

11. Landlord1 pointed out that there were significant damage caused to the exterior siding at the unit, particularly around one of the windows. The photographs show that there are numerous cracks and holes in the siding and a large piece of siding was missing near a window. Landord1 also claimed that one of the exterior shutters was missing, as well, and she claimed that 7 window screens were missing. She also pointed out that some exterior vent caps were missing or damaged. 2 exterior lights also had to be replaced as one was missing while the other was damaged.
12. She also complained that there was a significant amount of garbage and debris left around the property, in the house, under the deck, and in the adjoining wooded area. This garbage included broken toys, tires, broken pallets, glass, cutlery, as well as nuts and bolts.
13. Landlord1 stated that the unit was painted in 2009 before the tenants moved in, but during their tenancy, and without her permission, the tenants repainted many of the walls in the rooms throughout the unit. She pointed out, though, that the tenants had done a poor job painting, and paint had transferred to almost all the baseboards in the unit, to the thermostats and switch plates and to the ceilings. As a result, the landlord claimed the whole unit needed to be repainted and the switch plates, baseboards and thermostats throughout the unit had to be replaced. She also complained that there were several holes in the walls that needed to be repaired as well.
14. Landlord1 complained that 3 of the French doors at the unit were marked up with marker and were in a filthy condition and had to be replaced. 4 colonial doors also needed replacing as they were beat up and were delaminating. A bi-fold closet door had a hole in it requiring replacement as well.
15. Landlord1 also pointed out that new floors need to be laid in almost all rooms and on the stairs. She stated that the tenants had removed the carpet that had been in the master bedroom and they replaced it with laminate flooring. However, the installation of that laminate was done poorly and the tenants did not put any flooring in the closets. The carpet was also removed in the corner bedroom, and in the 3<sup>rd</sup> bedroom, and the tenants had laid down a different carpet than what had been there when they moved in. The Berber carpet that had been on the stairs was also removed, and the tenants had put down a lower quality carpet on the treads, and the left the risers bare. Landlord1 also stated that half of the carpet was removed in the downstairs area, and the hardwood floors were also taken up. The tenants had purchased 8 boxes of laminate for the area where the hardwood floors had been, but that flooring had not been installed. Landlord1 also complained that the hardwood floors in the living room hallway were scuffed up and worn, and several photographs show that there were cracks in the tiled floors.
16. Landlord1 pointed to her photographs which also show that the kitchen cabinets had suffered water damage and that several cabinet doors were broken. She

also testified that the dishwasher is leaking and needed to be replaced and she stated that there are numerous dents in the door of the refrigerator.

17. With respect to the required repairs listed here, landlord1 stated that she carried out none of that work. She stated that she just did not have the money to carry out the repairs and instead she sold the property in the same state as when the tenants moved out. Landlord1 stated that she put the house up for sale in mid-November 2020 and the sale was closed on 19 February 2021.
18. With respect to the costs the landlords are seeking here, as they did none of the required work, no invoices or bills were submitted with their application. No written estimates or quotes were submitted either. Landlord1 stated that when she was compiling the breakdown, she called various contractors and received verbal quotes from them and she also visited the websites of various hardware stores to obtain the costs for materials.

## **Analysis**

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

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

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

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

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

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

### ***Order of director***

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

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

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

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

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

20. With respect to the damages caused to the property, the landlords' photographic evidence clearly shows that the unit was left in a very poor state after the tenants moved out, and I accept landlord1's claim that this was not the condition it was in when the tenants moved in in 2009. I am also satisfied that almost none of the damage shown in these photographs could be attributed to normal wear and tear and that it was either caused deliberately or through carelessness or negligence on the tenants' part.
21. The problem with this claim, however, is that the landlords have not presented me with enough evidence to establish what sort of an award they are entitled to. First of all, the landlords presented no invoices, bills, receipts, written quotes or estimates, or even screen shots from websites, to substantiate the costs that they have listed here. Secondly, the landlords have not carried out any of this work and will not be carrying out any of this work in the future, and they will therefore not incur any of the costs listed in their breakdown.
22. Landlord1 did state at the hearing that they had only sold the house for \$160,000.00, while the town of ██████████ had assessed it at \$280,000.00, for tax purposes. She intimated that had the tenants not caused the damages shown in the photographs, the sale would have realized a price closer to that assessed value. Although I find it probable that, had the house been repaired prior to the sale, they may have been able to sell it at a higher price, no other evidence was presented to establish how much more they might have gotten. No evidence was presented at the hearing concerning the real estate market in 2020/2021 or whether the sales of houses in ██████████ at that time were being sold near their assessed value. I note, for instance, that even though this property was sold for \$160,000.00 in 2021, for tax purposes, it was assessed by the town, for that same year, as being valued at \$245,000.00. It also must be taken into consideration that the landlords did nothing to mitigate the loss they took on the sale of the house, whatever that may have been. They did not clean the grounds, they did not clean the interior of the house, they did not paint the walls or baseboards, and they did not repair any of the flooring.
23. Another point has to be raised here as well, and that is that this tenancy ran for over 10 years. As indicated in paragraph 20, when assessing damages, depreciation has to be taken into account. So even if the landlords had established the costs they would have incurred had they actually painted the whole unit, as it is expected that a landlord would have to repaint every 3 to 5

years anyhow, and as this property was last painted by them in 2009, that claim would not succeed. Likewise with the landlord's claim for flooring. It is expected that landlords would replaced good grade carpets and laminate floors every 10 years, and that they would refinish hardwood floors every 5 years. So, likewise, had the costs of replacing and repairing these floors been established, those claims would also have mostly failed. According to our policy manual, dishwashers have an expected lifespan of 10 years, refrigerators would live for 12, light fixtures are expected to last between 10 and 15 years, thermostats would last 10 years, kitchen cabinets have a lifespan of 20 years and interior doors are also expected to last 20 years. A portion of those claims, then, would have failed, or the award would have been adjusted based on the remaining life span.

24. Having said all that, I do ultimately agree that the landlords had suffered a financial loss when they sold their house because of the damages that the tenants had caused. Given that the landlords had not mitigated their damages, that some of the damaged items had come to the end of their useful life, and that they presented no substantiating evidence concerning the costs of repairs or the market conditions in ██████ in 2020, I cannot issue an award for the full costs that they are seeking here. It is impossible to be exact in this sort of case, but I find that an award for \$5000.00 is fair.

### **Decision**

25. The landlord's claim for compensation for damages succeeds in the amount of \$5000.00.

### **Issue 2: Rent – \$5650.00**

#### **Relevant Submissions**

26. The agreed rent was set at \$1165.00 per month and that rent was due on the 20<sup>th</sup> day of each month. With their application, the landlords submitted a copy of their rent records (████ #4) showing the payments the tenants had made since 20 September 2020.
27. These records show that the tenants paid \$175.00 in rent for the period from 20 September 2020 to 19 October 2020, but no payments have been made since.
28. The landlords are seeking the remaining \$990.00 that is owing for the period beginning 20 September 2020, and they are also seeking a payment of rent for the following 4 rental periods, \$4660.00, up to 19 February 2021, when they sold the house.
29. Landlord1 argued that they are entitled to rent for the periods beginning 20 November 2020, 20 December 2020, and 20 January 2021, even though the

tenants were no longer living there, because the unit was in such a poor condition that it could not be rented.

## Analysis

30. I accept landlord1's claim that the tenants had only paid \$175.00 for the rental period beginning 20 September 2020 and that no payment was made for the period beginning 20 October 2020. As the tenants had use and enjoyment of the premises during those rental periods, I find that the landlords are entitled to an award of \$2155.00 (\$990.00 + \$1165.00).
31. Where a tenancy has come to an end, and a landlord suffers a loss of rental income, either because their tenants had abandoned the property or because they had caused damages to the premises that make it un-rentable, a landlord would be entitled to compensation for that loss of rental income with the caveat that they mitigate that loss of income. Mitigation in these circumstances would mean readying the unit for rent as soon as possible and advertising for new tenants. The landlords did neither.
32. The landlords did nothing to repair the damages at the unit and within days after the tenants moved out, they put the unit up for sale. In William & Rhodes Canadian Law of Landlord and Tenant, when discussing the issue of mitigation of damages, the authors point out that:

In *Canadian Medical Laboratories Ltd. v. Stabile* (1992), 25 R.P.R (2d) 106 (Ont. Gen. Div.), it was held that sale of the property by the landlord does not satisfy the duty to mitigate as it ends the landlord's ability to re-rent the demised premises.
33. As the landlord's did not mitigate their loss of rental income after the tenants moved out, their claim for compensation for lost rent for the rental periods beginning 20 November 2020, 20 December 2020 and 20 January 2021 does not succeed.

## Decision

34. The landlords' claim for a payment of rent succeeds in the amount of \$2155.00

## Issue 3: Late Fees - \$75.00

### Relevant Submissions

35. The landlords have assessed a late fee of \$75.00.



## Analysis

36. Section 15 of the *Residential Tenancies Act, 2018* states:

### ***Fee for failure to pay rent***

**15. (1)** *Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.*

The minister has prescribed the following:

*Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:*

*(a) \$5.00 for the first day the rent is in arrears, and*

*(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.*

37. As the tenants have been in arrears since 21 September 2020, the landlords are entitled to a payment of the maximum fee of \$75.00 set by the minister.

## Decision

38. The landlord's claim for late fees succeeds in the amount of \$75.00.

## Issue 4: Utilities - \$672.22

### Relevant Submissions

39. During this tenancy, the tenants were responsible for paying for their own electrical utilities. The tenants cancelled their account on 03 November 2020, and the landlords were charged for the electricity consumed at the unit from that date through to 19 February 2021, when the property was sold.

40. With their application, the landlords submitted a utilities ledger (■■■■ #5) as well as their utility bills (■■■■ #6) showing the charges that they had incurred during that period. The total amount comes to \$672.22 and the landlords are seeking an order for a payment of that amount.

## Analysis

41. As with a loss of rental income, a landlord can seek compensation for utility payments where tenants have abandoned the residential premises or where

tenants have caused damages to a unit, making it un-rentable, preventing new tenants from being put in place who could take over the electricity account. But as with a claim for compensation for a loss of rental income, landlords have a duty to mitigate those damages. I determined in section 2, above, that the landlords had not mitigated their damages in that they did not ready the unit for new tenants and they did not advertise the unit for rent. I have also determined that selling the rental property does not satisfy the duty to mitigate.

42. Accordingly, I find that the landlords are not entitled to compensation for the utility charges after they had put the house up for sale. The first electricity bill the landlords had received covered the period from 03 November to 12 November 2020, and they were charged \$38.80. Their claim succeeds in that amount.

### **Decision**

43. The landlords' claim for a payment of utilities succeeds in the amount of \$38.80.

### **Issue 5: Remaining Security Deposit - \$250.00**

#### **Relevant Submissions**

44. Landlord1 stated that the tenants had only paid a security deposit of \$500.00, but she claimed that she was entitled to another \$250.00 as she was permitted to demand a deposit which was equivalent to 75% of the monthly rent.
45. Landlord1 stated that when the tenants had paid her a deposit of \$500.00 she stated: "That's fine, I'll take 500". She testified that during the tenancy she made no other demand that the tenants make any additional payments towards the security deposit.

#### **Analysis**

46. Although a landlord may demand a payment of a security deposit that is equivalent to 75% of the first month's rent, there is no requirement that a landlord has to make such a demand. Landlords may require security deposits which are less than 75% of the first month's rent, and in some cases landlords don't require a payment of a security deposit at all.
47. Based on her testimony, it seems that she had reached an agreement with the tenants that the landlords would accept a security deposit of \$500.00 and no more. As such, the landlords' claim does not succeed.

### **Decision**

48. The landlord's claim for a payment of an additional \$250.00 towards the security deposit does not succeed.

**Issue 6: Security Deposit**

49. As the landlord’s claim for damages, rent and utilities has been successful, they shall retain the \$500.00 security deposit as outlined in this decision and attached order.

**Issue 7: Hearing Expenses**

50. The landlords submitted a hearing expense claim form with their application, as well as a receipt for \$20.00 for the costs of filing this application, a receipt for \$17.07 for costs of sending documents by registered mail and a receipt for \$24.12 for costs of purchasing a flash drive. Landlord1 stated that they are also claiming \$100.00 for the costs of gasoline which was used when they were attending viewings at the rental property.

51. As the landlord’s claim has been successful, the tenants shall pay the landlords’ hearing expenses. However, the costs of purchasing gasoline to attend viewings during the sale of their property is not a hearing expense and is not claimable.

**Summary of Decision**

52. The landlords are entitled to the following:

a) Compensation for Damages .....	\$5000.00
b) Rent Owing .....	\$2155.00
c) Late Fees .....	\$75.00
d) Utilities .....	\$38.80
e) Hearing Expenses .....	\$61.19
f) LESS: Security Deposit.....	(\$500.00)
g) Total Owing to Landlords .....	<u>\$6829.99</u>

12 May 2022

\_\_\_\_\_  
Date

