

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0466-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:04 AM on 13 January 2022 via teleconference.
2. The applicant, [REDACTED] hereinafter referred to as “the landlord”, participated in the hearing. The respondent, [REDACTED] hereinafter referred to as “tenant1” and “tenant2”, respectively, were also in attendance.

Issues before the Tribunal

3. The landlord is seeking an order for a payment of \$7046.70 in compensation for damages.

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.

Preliminary Matters

6. This is the second application filed with this Tribunal concerning this tenancy. As a result of an application filed by the tenants in March 2021 ([REDACTED]) the landlord was ordered to return the full amount of the security deposit to the tenants.

Issue 1: Compensation for Damages - \$7046.70

Relevant Submissions

The Landlord's Position

7. The landlord stated that he had entered into a 1-year, fixed-term rental agreement with the tenants, commencing 01 June 2020, and a copy of the executed lease was submitted with his application. The agreed rent was set at \$1750.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$875.00.
8. On 26 February 2021, the tenants sent a termination notice to the landlord, with an effective termination date of 31 March 2021. The tenants vacated on 16 March 2021.
9. The landlord stated that the tenants had caused some damages to the property during their tenancy, and he submitted the following breakdown of the costs to carry out the required repairs:

• Replace pool pump	\$573.85
• Painting and plastering.....	\$1986.85
• Rent for April and May 2021	\$3500.00
• Electricity bill	\$986.00
 Total	 <u>\$7046.70</u>

Pool Pump

10. The landlord stated that he had installed an exterior pool at the rental unit in 2018. After the tenants moved out, the landlord stated that he discovered that they had left the pool pump outside, during the winter, and it had frozen and cracked. With his application, the landlord submitted an e-mail quote he had received for a replacement pump, showing that it would cost \$499.00 plus HST. That pump has not been replaced and the house has since been sold.

Painting and Plastering

11. The landlord stated that the rental unit was last painted about 7 years ago. He complained that after he had regained possession of the unit, he discovered damage on the ceilings in the living room, the kitchen and the family room. The landlord stated that this damage was the result of a leak, and it appears that the tenants had tried to repair that damage but they had used a different shade of white paint.
12. The landlord also complained that there were numerous holes in the walls and in the doorframe in the basement bedroom and he pointed to the photographs he had submitted with his application as corroboration. He also stated that in the

foyer and staircase there were also holes in a doorframe and there were hooks in the walls.

13. The landlord stated that he could not recall if he had this damage repaired or if he had merely reduced the price of the house when he sold it. With his application, the landlord submitted a quote from a contractor stating that it would cost \$1727.70 plus tax to have those damaged walls repaired.

Rent

14. The landlord stated that this lease was not set to expire until 01 June 2021, yet the tenant's terminated their agreement at the end of March 2021. The landlord pointed out that there were 2 months remaining in the lease and he is seeking an order for a payment of rent in the amount of \$3500.00 in lieu of a proper termination notice. The landlord stated that he had put the house up for sale on 20 March 2021 and it was sold the following month.

Utilities

15. For the same reasons that the landlord is seeking rent for April and May 2021, he is also seeking the costs of the electrical utilities for those 2 months. No bills were submitted with his application, but he claimed that the tenants owe \$986.00 for those 2 months.

The Tenant's Position

Pool Pump

16. Tenant2 stated that the pool was not included in the lease agreement, but they were informed when the tenancy began that they could use the pool at their own cost. She stated that they had purchased a cover for the pool, a liner and a ladder, but she stated that the pump was not working when they moved in and it was not used by them during their tenancy. Tenant2 also claimed that she had called the landlord several times during the tenancy about the pump.

Painting and Plastering

17. With respect to the ceiling, tenant2 stated that the damage to the ceiling in those rooms was caused by a leaking bathtub. She stated that they had done nothing to cause that leak, and despite calling the landlord on 3 different occasions about that matter, no action was taken. Tenant2 also denied that they had tried to repair that damage or that they had tried to repaint the damaged area.
18. Regarding the basement bedroom, tenant2 stated that some of the holes the landlord had identified in his photographs are from a headboard that was already mounted on the wall when they had moved in. She did admit, though, that some of the other holes in the walls in that room were the result of removing some shelves that they had installed. In the stairway and foyer, though, tenant2 stated

all the hooks in the walls, as seen in the photographs, were already there when they had moved in, and any other damage to these walls was minor and ought to be chalked up to normal wear and tear.

Rent and Utilities

19. Tenant2 stated that she is a homecare worker, but as she is immuno-compromised, she had to quit her job because of concerns about COVID-19, and as a result her income was reduced and she could no longer afford the rent. She testified that she therefore terminated the rental agreement under the “special circumstances” provisions set out in section 18 of the *Residential Tenancies Act, 2018*, and a copy of her notice was included in the application she had filed against the landlord [REDACTED]. She argued that the rental agreement was properly terminated, as of 31 March 2021, and the landlord is not entitled to any additional rent or any payment for the utilities after that date.

Analysis

20. 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

21. Regarding the pool pump, I find that the landlord had not presented enough credible evidence to establish that it was damaged during this tenancy. There was no report of an incoming inspection which would help establish the condition of that pump when the tenancy began, and tenant2 stated that it was already broken when she moved into the unit.
22. With respect to the plastering and painting, I also find that the landlord's claim does not succeed. Again, as there was no report of an incoming inspection, I find that he has failed to establish that the bulk of this damage was caused during this tenancy. Tenant2, e.g., stated that the hooks and holes in the stairwell, were already there when she moved in. With respect to the ceiling, it is not disputed that that water damage was caused by a leaking bathtub, but the landlord failed to establish that that leak was caused by any deliberate or negligent act on the part of the tenants. And in any case, it is expected that a landlord would need to repaint the walls at a rental unit every 3 to 5 years as a result of normal wear and tear through successive tenancies. As this unit was last painted 7 years ago, the paintjob had outlived its expected lifespan and the costs of painting the unit were costs the landlord would have incurred any how.
23. Regarding the rent and the utilities, I was also not persuaded by the landlord's argument here, and for 3 reasons.
24. First, concerning the utilities, no bills were presented with the landlord's application showing that he was charged \$986.00 for those 2 months.
25. Secondly, the tenants are right to point out that where a tenant suffers a loss of income as a result of ill health, she is permitted to break a lease, on just 1-month's notice. The notice submitted by the tenants, in their application, is in the form prescribed by the minister and it meets the timeframe requirements. I'm also satisfied that, given the COVID-19 pandemic, a person who is immunocompromised could be considered to be in "ill health" which could lead to her losing her job.
26. And finally, if the landlord were correct that the tenants had not given a proper notice of termination, they would be considered to have abandoned the residential premises. In that case, the landlord would be entitled to compensation for any damages he suffered as a result of the abandonment, including any loss of rental income, so long as he take all reasonable steps to

mitigate those damages, which typically means seeking new renters as soon as possible. But the landlord did not mitigate his damages here and he suffered no loss of rent. Rather he put the unit up for sale and that deal was closed within a month.

27. For these reasons, the landlord's claim does not succeed.

Decision

28. The landlord's claim for compensation for damages does not succeed.

12 July 2022

Date

