

Residential Tenancies Tribunal

Application 2023-0162-NL

Decision 23-0162-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:15 p.m. on 22-January-2023.
2. The applicants, [REDACTED] and [REDACTED], are represented by [REDACTED], hereinafter referred to as "the landlord" she attended by teleconference.
3. The respondents, [REDACTED], [REDACTED] and [REDACTED], hereinafter referred to as "tenant1, tenant2 and tenant3," tenant1 and tenant2 attended by teleconference; tenant3 did not attend.

Preliminary Matters

4. The landlord submitted an affidavit (LL#01) stating that they had served all three tenants with notification of today's hearing electronically to each person's email on 13-March-2023. Tenant1 confirmed that he and tenant2 did receive their notification as stated.
5. Tenant3 was not present or represented at the hearing and I was unable to reach her by telephone at the start of the hearing ([REDACTED]). 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 she has been properly served. The landlord submitted an affidavit (LL#01) with their application stating that they had served the tenant with notice of the hearing, electronically, to her email [REDACTED], on 13-March-2023, and a copy of that message was also submitted with their application. As tenant3 was properly served, and as any further delay in these proceedings would unfairly disadvantage the landlords, I proceeded with the hearing in her absence.
6. The landlord explained that they are seeking compensation for damages totaling \$7,053.90 and they have an agreement with the tenants, made at the conclusion of their tenancy, that the security deposit of \$2,025.00 can be retained for their loss. Tenant1

confirms that they agreed with the landlords retaining the full security deposit in compensation for the damages to the rental.

Issues before the Tribunal

7. The landlords are seeking:
 - Validity of termination notice
 - Compensation for damages \$5,028.90

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
9. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 18: Notice of termination of rental agreement, and Section 34: Requirements for notices.

Issue 1: Validity of termination notice

Landlords' Position

10. The landlord submitted a copy of the written rental agreement (LL#02) held with the three tenants. The agreement shows that in addition to the three adults there are two children also living in the premises. She explained that the tenants moved in on 01-November-2022 and had a year term lease until 01-November-2023. The rent is \$2,700.00 due on the first day of each month and the tenants paid a security deposit of \$2,025.00 on 01-November-2022. She said that the tenants moved out 25-January-2023 and that there were some damages to the house. The tenants agreed that she could retain the security deposit against the damages.
11. The landlord said that tenant2 contacted her on 01-January-2023 and told her that the rental arrangement was not working out and that they were ending their lease. At that time tenant2 said that they were giving her three months' notice. The landlord explained the termination date continued to change and that subsequently they moved out on 25-January-2023. She said that she felt bad for them and accepted their notice.
12. The landlord said she believed when she was told they were giving her 3 months' notice that she would have continued to receive rent until the end of that period and worked towards securing a new renter to offset that cost on the tenants. She is questioning the validity of the termination notice.

Tenants' Position

13. Tenant1 confirmed the details of the rental agreement as stated by the landlord. He also confirms that they were aware of some of the damages claimed and agreed that the landlord should retain the security deposit for the cost of repairs.
14. Tenant2 confirms that she spoke with the landlord and relayed that they were unable to continue to live there. She explained that she and her husband had moved into the house with tenant3 who is her adult daughter. Her daughter's two children also lived at

the house. This living environment caused a great deal of stress on everyone. She served the landlord on 01-January-2023, with notice that she was ending their agreement on 31-January-2023; due to the stressful situation, her husband became unemployed, she included medical documentation to the landlord with the termination notice (LL#03). She said that there was no way that they could afford to rent the house on their own and that the family situation was too stressful to continue.

Analysis

15. As per Section 18(8) of the *Residential Tenancies Act, 2018*, a tenant in a term agreement can give a landlord one months' notice of termination in the event of ill health and reduction resulting in reduction in income. The Act is as follows:

Notice of termination of rental agreement

18. (1) A tenant shall give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises

- (a) not less than 7 days before the end of a rental period where the residential premises is rented from week to week;***
- (b) not less than one month before the end of a rental period where the residential premises is rented from month to month; and***
- (c) not less than 2 months before the end of the term where the residential premises is rented for a fixed term.***

....

(8) Notwithstanding that the notice period required under subsection (1) is longer than one month, a tenant and any other tenants in the same residential premises may terminate a rental agreement by giving one month's notice to the landlord under the following circumstances:

- (a) the tenant's income is reduced as a result of ill health and the notice to the landlord is accompanied by evidence of the tenant's reduction in income;***

16. The tenants provided a notice and subsequent documentation of loss of income due to ill health. I therefore determine that the notice (LL#03) provided to the landlord by the tenants is a valid notice.

Decision

17. I find that the notice with a termination date of 31-January-2023 is a valid notice.

Issue 2: Compensation for damages \$5,028.90

Landlords' Position

18. The landlord submitted a damage ledger (LL#04) into evidence for the compensation sought. The total of the damages is \$7,053.90. As per paragraph 6, the landlord and tenants have mutually agreed to apply the security deposit \$2,025.00, against compensation for damages. The damage ledger (LL#04) is as follows:

	Damage	Cost + Hst
i.	Paint to cover areas with marker, pens and stickers	1,286.00
ii.	Repair water damage kitchen ceiling	1,850.00
iii.	Tub trims (chipped)	80.00
iv.	Miscellaneous damages	160.00
v.	Disposal of garbage and personal belongings	100.00
vi.	Replace weather stripping	110.00
vii.	Replace 2 custom blinds	1,200.00
viii.	Cleaning (no hst)	300.00
ix.	Lost rent (no hst)	1,250.00

19. The landlord submitted an invoice from Newfire Construction Inc. for items i. – vi (LL#05)
20. The landlord explained that there was marker on the walls in the recreation room that required a number of coats of paint to cover, the contractor told her that the entire room would require painting for the paint to appear even. She said that in the dining room, master bedroom and children's bedroom there were pen marks and stickers that appeared to come from the children living at the house. The total charged by the contractor was \$1,286.00 + hst = \$1,478.90.
21. The landlord said that she is not an expert in home repairs and deferred to the professional she hired.
22. The landlord explained that there was a large water mark on the ceiling of the kitchen. The contractor pointed this damage out to her and he determined it was from an overflow from the bathroom tub above, and not from a plumbing issue. The cost of the repair was \$1,850.00 + hst = \$2,127.50.
23. The landlord claimed \$80.00 + hst for a total of \$92.00 for the repair of the tub trim due to chips in the trim. She provided pictures of this damage in the contractor's invoice (LL#05).
24. The landlord is seeking miscellaneous damage including a dent in the French door, picture provided (LL#05) which she reports is 12 years old. Also, a bathroom toilet paper holder was not affixed (LL#05) which is 3 – 4 years old. The cost of this repair is \$160.00 + hst = \$184.00. She was unable to determine the cost for each repair, she said the contractor provided cost for the repair of both issues.
25. The landlord is seeking compensation for the contractor to remove the garbage and discard the items at the dump. She explained that tenant3 told her that she had taken anything that she wanted. The landlord understood from this conversation that anything remaining was garbage. She also points out that the areas where tenant1 and tenant2 lived were fully cleared out and cleaned. The contractor provided pictures of the garbage that was removed (LL#05) and the cost of the service is \$100.00 + hst = \$115.00

26. The landlord is seeking the cost of replacing the weather stripping which was damaged by the cat. She said that they discovered that there was a cat living there towards the end of the tenancy and at that time, with only a few weeks left in the agreement, they didn't push the issue with tenant3. She said tenant3 informed her that the cat was a friend and would only be there a couple of weeks. Tenant3 also indicated that she would have the weather stripping replaced, however it was still damaged after they moved. The cost of replacement is included in the contractor's billing, as well as a picture of the damages (LL#12). The cost listed is \$110.00 + hst = \$126.50.
27. The landlord reports that she had custom blinds in the larger windows. The blinds were both damaged. She provided a picture (LL#09) one had blue paint on it, which she believes a child may have accidentally damaged and the other has small pin holes which she believes came from tenant3's cat. She said that the rental agreement (LL#02) shows in part 11 that the tenants were only permitted one small dog. The landlord said that the original blinds were 4 years old and she provided a receipt (LL#08) for the cost of replacement totaling \$1,275.93.
28. The landlord said that after all three tenants had moved she hired a cleaning company to clean the house (LL#10) at a cost of \$301.60. She stated that the areas that required the cleaning were the areas she believes were inhabited by tenant3 and her children.
29. The final compensation that the landlord is seeking is compensation for lost rent. She said that the date of termination kept changing and that the house wasn't ready to be rented without work being done. She said she tried to show it to a potential renter while the tenants were still there, but they were present and then the potential tenant couldn't be released from her lease. She said that they did advertise quickly but had to drop the cost of the rent for the new renter by \$200.00. She said that he moved in March. She is seeking rent up to the middle of February.

Tenants' Position

30. Tenant1 said that they were aware there was marker on the recreation room walls and that although they didn't see the markings on the other room walls he doesn't dispute this. He did inform this tribunal that he does take issue with the entire rooms being painted. He said that as a former painter, the walls requiring a touch up should be all that would require paint. He also said that the painter should have used a sealer to cover marker marks; not multiple coats of paint.
31. Both tenant1 and tenant2 absolutely take issue with the water damage to the kitchen ceiling. Tenant1 said that there were no damages reported in the bathroom and had the tub overflowed and the water was permitted to seep through the floor and into the ceiling below, there should be damage to the bathroom area. He explained that when he questioned this, he said he was told that this is why the baseboard was replaced. He points out that there is no charge for the replacement of baseboard in the bathroom. Further to this tenant2 indicated in their evidence (TT#01) there is a picture of herself and her grandchild baking the month before and that the kitchen ceiling is clearly visible and there is no damage present. Additionally, tenant1 states that they had rental insurance and that they would have placed a claim in the event of a leak.

32. Tenant1 said that he and tenant2 didn't use the bathroom with damages to the trim, he explained this bathroom was usually used by tenant3, they did not notice this damage, however, he does not dispute the damages to the trim around the bathtub.
33. Tenant1 said that the toilet paper hanger was loose when they moved in. He explained the screws just required tightening. He said he would have done this, but he did not own the small screwdriver required. He also explained that the dent in the French door must have happened after he and tenant2 moved out. He said tenant3 came in after they had left and moved her and her children's belongings.
34. Tenant1 has no dispute to the removal of garbage, the damage to the weather stripping or the damages to the blinds. He confirms that tenant3 had a cat living at the house and that they didn't know that the cat wasn't permitted.
35. Tenant1 doesn't dispute that the house required cleaning. He indicated that he and his wife had always rented and they had never left a house in poor condition for a landlord. He said that they are embarrassed by this issue, but their daughter was very clear with them that they were not to touch her things, so they had to leave her to take care of her own belongings.
36. Tenant2 said that she had explained to the landlord the reasons for moving and the landlord was understanding. She said that she received a text from the landlord (TT#01) saying in mid-January that they had a new renter. She disputes that the landlord wasn't able to rent the house because of them, she said that that renter wasn't able to move in because she was bound by another agreement, not because of damages.

Analysis

37. 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.

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

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)

38. In relation to the damages to the walls, the landlord has proven that the damage exists and tenant1 confirms this damage. There is no dispute here. Depreciation must be considered in accordance with Residential Tenancies Policy 9-005. In accordance with

this policy, paint in a residential home should last 5 years, the landlord stated that the home was painted throughout 4 years ago, therefore lasting for 80% of its lifespan. The landlord shall be compensated for the loss of 20% of the lifespan as follows: $20\% \times \$1,478.90 = \295.78 . I find that the tenants shall compensate the landlord for the cost of damages to the paint totaling \$295.78.

39. The landlord's claim for damages to the kitchen ceiling due to an overflow raises some interesting points. The tenants completely deny responsibility for this damage. Tenant1 points out that if the damages were cause by an overflow there should be some subsequent damage to the bathroom above, as he stated, according to the claim, there is no damage listed in the application for water damages to the bathroom flooring. Additionally, had there been damages to the flooring above the kitchen, the contractor should have included this evidence in his comprehensive breakdown of repairs. Finally, in my experience, when a leak is caused due to puddling of water it creates a circular stain on the ceiling below, however when a leak is caused by an issue with the pipes the stain is usually linear, the pictures provided show a linear stain. It is incumbent on the applicant to prove that the respondent is responsible for the damages; the landlord has not proven the tenants responsibility for this issue. I therefore find that the compensation for the cost of repairs to the kitchen ceiling fails.
40. There is no dispute against the landlord's claim for compensation for damages to the trim around the Jacuzzi as this trim should last the lifetime of the home, the landlord is awarded full compensation of \$92.00 for this damage.
41. The landlord was unable to determine the breakdown of the miscellaneous damages. I will assess the loss based on compensation for the door totaling \$100.00 + hst and the toilet paper holder totaling 60.00 + hst. The landlord has proven that the door required repair and the tenants did not dispute this work. In accordance with Residential Tenancies Policy 9-005 a door should last 20 years and the landlord testified that the door is 12 years old. The door still has 8/20 or 40% of its lifetime remaining the landlord shall therefore be compensated $40\% \times \$115.00 = \46.00 for this expense. The tenants' dispute that they damaged the toilet paper holder and based on tenant1's testimony and the picture of the holder, I agree that the screws required tightening. This is a small upkeep that is the burden of the landlord and not of the tenant; the landlord's claim for this damage fails.
42. The landlord was charged \$126.50 for the replacement of weather stripping destroyed by the cat. The landlord has shown that the weather stripping is destroyed, and tenant3 had agreed to replace the stripping. The landlord's claim for weather stripping succeeds.
43. The landlord has shown that the blinds are damaged and that the cost was \$1,275.93. There is no dispute of the damage. The landlord stated that the blinds are 4 years old, in accordance with Residential Tenancies Policy 9-005 a blinds should last 10 years, this would indicated that the blinds should have 6 years life expectancy remaining, therefore $60\% \times \$1,275.93 = \765.56 . The tenants shall reimburse the landlord \$765.56 for the cost of blinds.
44. In accordance with Section 10 of the Residential Tenancies Act, 2018, the tenant is to keep the premises clean and repair damages. The house was not cleared of personal belongings and not fully cleaned when the landlord received the property back. The

responsibility of this work is that of the tenant and the landlord shall receive full compensation for disposing of the garbage \$115.00 and the cost of a cleaner \$300.00.

45. The landlord is seeking compensation for half of February's rent. As shown in paragraph 11 the landlord testified that when the tenants informed her of their intent to end the rental agreement, she accepted the notice as she felt bad for their situation. Additionally in paragraph 16, the notice with a termination date of 31-January -2023 is a valid notice and the landlord confirms that the tenants moved on 25-January2023. The payment of rent is for the use and enjoyment of the renter. The renters did not live in the house in February and had given a valid notice for the termination of their rental agreement. The landlord's claim for rent fails.
46. Tenant1 and tenant2 both were forthcoming about the damages that occurred in the home during the time of their rental. Their daughter, tenant3 did not attend or offer defense to the claims against them. When individuals enter a rental agreement together, as in this case, the parties are both collectively and individually responsible for the rights and responsibilities determined in the rental agreement. Therefore all three tenants are responsible for the burden of the cost of compensation as awarded in this decision.

Decision

47. The landlord's compensation for damages \$1,740.84 is as follows:

•	Paint	\$295.78
•	Trim	92.00
•	French door	46.00
•	Weather stripping	126.50
•	Blinds	765.56
•	Garbage	115.00
•	Cleaner	<u>300.00</u>
•	Total	<u><u>\$1,740.84</u></u>
48. In paragraph 6 both parties testified that they have an agreement the security deposit of \$2,025.00 will be retained by the landlords in compensation for damages. The landlord was seeking \$5,028.90 in excess of the deposit for a total of \$7,053.90. As per Section 14 of the Residential Tenancies Act, 2018, the two parties may agree on the distribution of the deposit. As the deposit of \$2,025.00 exceeds the balance of the compensation owed \$1,740.84, the landlords will not receive further compensation for damages and their claim for an additional \$5,028.90 fails.

Issue 4: Hearing expenses reimbursed \$20.00

49. The landlord submitted the receipt for \$20.00 for the cost of the application fee (LL#11) and \$8.55 (LL#10) for the cost of Canada Post. Pursuant to policy 12.01, as the award is less than the security deposit they are not entitled to reimbursement of those costs from the tenants.

Summary of Decision

50. The landlord has received compensation exceeding the cost of damages from the tenants; no further compensation is owed.

April 12, 2023

Date

— [REDACTED]
Jacqueline Williams, Adjudicator
Residential Tenancies Office