



Order under Section 89 Residential Tenancies Act, 2006

Citation: Hand Up Inc. v Rogovein, 2026 ONLTB 14441

Date: 2026-02-19

File Number: LTB-L-089217-24

In the matter of: 333 Mercury Street
ROCKLAND ON K4K1P6

Between: Hand Up Inc. Landlord

And

Joseph Rogovein Former Tenants
Bailey Adam

Hand Up Inc. (the 'Landlord') applied for an order requiring Joseph Rogovein and Bailey Adam (the 'Former Tenants') to pay the Landlord's reasonable out-of-pocket costs that the Landlord incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Former Tenants, another occupant of the rental unit or someone the Former Tenants permitted in the residential complex.

This application was heard by videoconference on February 10, 2026. The Landlord's Agent, Daniel Tarasko, and the Former Tenants attended the hearing.

Determinations:

Preliminary Issue:

Application Amendment

1. The Landlord seeks to amend their L10 application to include a claim for unpaid utilities.
2. The Former Tenants submit that they had not been served with the Landlord's amended L10 application. They argue to allow the amendments would be prejudicial to them. The Landlord agrees this was not served on the Former Tenants.
3. When considering the Landlord's request to amend his application, I must consider whether any party would experience prejudice as a result of the amendment. In this matter, the matter had been adjourned on a prior occasion to allow the Landlord an opportunity to ensure the Former Tenants were served with the Landlord's documents.

The adjournment sheet notes that the Landlord was unable to establish that the Former Tenants were served with the application.

4. It seems to me that if the Landlord was given an opportunity to serve their documents, it would then be incumbent upon the Landlord to serve any amendments to their application on the Former Tenants as well.
5. Given this, I find it would be prejudicial to the Former Tenants, who could not have been aware of the Landlord's request, to allow the Landlord to amend his application. The Landlord's request to amend his application was not granted.

Service of Evidence

6. The Former Tenants also raise that the Landlord had not served any evidence upon which they plan to rely at the hearing. However, the Former Tenants agree that they too had not served any of their evidence on the Landlord in advance of the hearing.
7. Given this, the parties agreed that they could rely on the evidence in the portal despite not having been served with the evidence in advance.
8. The hearing proceeded.

Landlord's L10 Application

9. As explained below, the Landlord proved some of the allegations contained in the application on a balance of probabilities. Therefore, the Former Tenants must pay to the Landlord \$2,420.00.
10. I am satisfied that the Landlord served the Former Tenants with the application and Notice of Hearing at least 30 days before the hearing in accordance with Rule 3.3 of the LTB's Rules of Procedure.
11. I am satisfied that the Landlord served the Former Tenants with the application and Notice of Hearing using a method permitted in subsection 191(1.0.1) of the *Residential Tenancies Act, 2006* (the 'Act') and Rule 3.3 of the LTB's Rules of Procedure.
12. These documents were served on e-mail on January 7, 2026, and that the Former Tenants agreed to service of documents via e-mail in writing. The Former Tenants do not dispute that they received a copy of the Landlord's L10 application and Notice of Hearing.
13. The Former Tenants vacated the rental unit on November 1, 2023.
14. By way of background, the rental unit was a single-family home. The tenancy began on or about May 19, 2022, and ended on November 1, 2023. The Landlord purchased the home in early May 2022, and the tenancy began shortly thereafter.
15. The Landlord seeks \$12,814.42 for damage to the rental unit. Specifically, the Landlord seeks damages for the following:
 - Replacing the carpeting
 - Repainting the rental unit

- Damage to the pool
- Garbage Removal

8. Subsection 89(1) of the Act, says:

“A landlord may apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, **where repairing is not reasonable, the replacement of damaged property**, if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex and the tenant is in possession of the rental unit.”

[Emphasis added]

9. This provision means that to succeed on an application like this a landlord must establish:

- There was property damage to the rental unit or residential complex;
- The damage is “undue” meaning that it is not normal wear and tear and it is not insignificant; and
- The damage was a result of wilful or negligent conduct.

Carpeting

10. The Landlord’s evidence was that the Former Tenants damaged the carpeting beyond ordinary wear and tear. His evidence was that the carpeting had been in good condition at the beginning of the tenancy. However, after regaining possession, the carpeting had to be replaced in the upper floor of the rental unit. The Landlord submitted into evidence photos of each of the thresholds (beneath the doorway) of each of the three bedrooms taken on November 3, 2023. Two of the thresholds had an approximately 24” x 8” piece of carpeting which had been cut away and replaced with a fresh piece of carpeting (Doc-6422949, 6422966, 6422979). However, the replacement was rudimentary and had obvious seams. I agree with the Landlord that the replaced patches do not appear to have been done by a professional. The third threshold has a worn away area which appears to be about 7” across by 4” wide (Doc-6423007).
11. The Landlord states that he believes the Former Tenants had a pet who contributed to the damage. Submitted into evidence is what appears to be a urine stain, consistent with a pet (Doc-6423041). He says this because he had attempted to have the carpeting cleaned, but the odour of what the Landlord believes was pet urine was overpowering. The Landlord submitted a photo of the carpet installer who used “Kilz”, an odour sealant, on the subfloor around the perimeter of the area of the upper floor (Doc-6423070).
12. The Landlord submitted an invoice totalling \$5,085.00 for the cost of replacing the carpeting (Doc-6423190).

13. The Former Tenants submit that the carpeting was not in pristine condition at the time the tenancy began. They point to two photos of the rental property which were on the MLS listing which shows the interior of the rental unit. The first shows the bathroom. Although it is difficult to see, it does appear as though some of the carpeting was coming up from underneath the transition strip which bridges the tile floor from the bathroom with the carpeting from the bedroom (Doc-7272071). The second photo is of the master bedroom. In this photo, the carpeting is clean and presentable. However, there is evidence of the carpet "buckling" in the master bedroom, although not in the area of the threshold.
14. The Landlord's evidence was that the carpeting was new when he purchased the building in 2022. The Landlord believes the house to be about 6 years old. However, he later admitted he did not know when the house was built. The Former Tenants' refute this statement saying that the carpeting was original to the building, and that the building was built in 2012 (Doc-7342083).
15. Based on the evidence before me, I am unable to conclude how old the carpeting was. The best evidence before me are the photos submitted by both parties showing the carpeting before and after the tenancy. As stated earlier, the carpeting is clean and presentable but is showing signs of aging as demonstrated by the buckling which typically happens as the carpet ages. Of note is that the threshold into the master bedroom appears to be in very good condition in the earlier photo.
16. The Landlord also submitted a pre-inspection report ('report') which the Landlord's agent completed at the time the tenancy commenced (Doc-7336740). The report, dated May 19, 2022, was completed during the walk through. The report includes the following legend:
17. The report notes the carpeting to be in G1 condition. However, the report is not signed and the Former Tenants state they were never given a copy of this report when the tenancy commenced. Regardless, the Landlord states that there are several notations about condition issues that the Former Tenants raised during that inspection, and that the carpeting was not one of them.
18. The Former Tenants deny having damaged the carpeting. They state they had a dog for a short time, but that this dog was aggressive towards their children. When this was discovered, they immediately re-homed the dog.
19. When I consider the condition of the carpeting before the tenancy began, and the Landlord's photographs and testimony, I am satisfied, on a balance of probabilities, that the Former Tenants willfully or negligently damaged the carpeting in the rental unit. There is obvious evidence of the thresholds being damaged. I also find the damage is consistent with the Former Tenants' evidence. If the Former Tenants were concerned about the dog's behaviour, it makes sense that the animal would have been locked in a room. This is consistent with the Landlord's evidence about pet urine odour which required remediation. In my view, this could not be remediated by repair and would require

replacement. There is also the attempted repair to the thresholds. If the Former Tenants deny they damaged the carpeting, then these repairs, which they did not deny they attempted, would have been unnecessary.

20. The Former Tenants submit the stains were not caused by them. Rather they suggest that it was fading due to an area which was lighter due to being in direct sunlight. However, given my findings above, I do not find it necessary to make findings about the stains on the carpeting.
21. The Former Tenants put to the Landlord, by way of cross-examination, that the repair to the carpeting had not been conducted until January 2025, yet the tenancy terminated in November 2023. The Landlord's testimony was that it took him time to save the money needed to repair the carpeting.
22. I accept the Landlord's evidence. Section 89 of the Act states that the landlord may apply for an order requiring the former tenant to "...pay reasonable costs the Landlord has incurred or **will incur**..." Given the wording in the Act, I am not persuaded that because the Landlord incurred the costs in 2025, that this prohibits the Landlord from making a claim for the costs for the carpeting provided the claim was filed within 12 months as required under s.89(1.1)(b) of the Act.
23. I agree with the Former Tenants that the carpeting already showed obvious signs of aging prior to the tenancy commencing. However, I am satisfied, that the carpeting appearance was markedly worse following the termination of the tenancy, and this was not consistent with ordinary wear and tear.
24. The Landlord is not entitled to be unjustly enriched by receiving the benefits of brand-new carpeting when the existing carpeting was no longer brand new. Given the condition of the carpeting before the tenancy began and the clear signs of damage following the tenancy, I am of the view the Landlord is entitled to 40% of the cost of replacing the carpeting.
25. The Former Tenants owe the Landlord \$2,034.00 (\$5,085.00x.4).

Painting

26. The Landlord seeks the cost to repaint the rental unit. No invoice was submitted; however, the Landlord oral testimony was that this would cost \$3,500.00. The Landlord submitted three photos. One shows a brown smudged area in a bedroom (Doc-64231644); another shows a hallway which was patched up with drywall compound, but the compound is visible which is why the home required repainting (Doc-6423153); the third is a larger patch measuring approximately 16" in diameter (Doc-6423148). The Landlord testified the brown smudged area could not be cleaned and had to be repainted.
27. The Former Tenants state that they did not have the paint that was on the walls, so they patched up some small holes from hanging photos. They also state that the walls had damage before the tenancy began, for example, a hole where the television had been installed by the previous tenant that was not repaired.

28. The Landlord again points to the move-in inspection report which states the walls were in G1 condition. The report does not make any notations that the Former Tenants expressed concern about a large hole in the wall from where the television was hung, yet the report mentions other minor issues including a scuff mark on the bedroom door.
29. However, even if there was a large hole from the prior tenant's television which needed repair, this again did not prevent the Former Tenants from filing an application with the Board if the Landlord failed to repair the area. Regardless, this does not absolve the Former Tenants from their obligations not to damage the rental unit.
30. When reviewing the evidence, I find that the photograph (Doc-6423148) of the large hole which was patched is not consistent with normal wear and tear and is not consistent with the Former Tenants' evidence that they patched small holes from hanging photos. I am also satisfied, based on the Landlord's evidence, that the brown smudge could not be cleaned and had to be repainted. No evidence was adduced to suggest how large these particular walls were, and no invoice was submitted. Therefore, I find the Landlord is entitled to a nominal amount of \$200.00 for the repainting of the two walls.
31. However, I am of the view the remaining photos do not depict evidence of wilful or negligent damage. Rather, I find these small holes which were patched are consistent with ordinary wear and tear. It is very common for tenants to decorate and cause small holes in the process. Additionally, it is common for small nicks and dents to happen, and these often need to be repaired before a new tenancy begins. These Former Tenants took the time to fill the holes, but I do not find that the evidence supports wilful or negligent damage to any other areas aside from the two mentioned above.
32. The Former Tenants shall pay to the Landlord \$200.00.

Pool

33. The Landlord also seeks compensation for the cost of repairing the pool. The Landlord states that the lease includes that the Former Tenants were to maintain the pool. It is an above-ground, oval shaped pool. His oral testimony was that he was quoted \$5,000.00 for repair the pool. He did not have any photos of the damage, but states that there are posts every few feet and these were snapped.
34. He alleges that the Former Tenants likely did not close the pool up for the winter, but that he was not entirely certain how the damage was caused. He described how the pool must be maintained for winter stating that the pool should be covered with a pool cover.
35. For the following reasons, I am not satisfied, on a balance of probabilities, that the Landlord met his onus of proof.
36. The Former Tenants state that the pool had already been damaged prior to the tenancy commencing. They submitted into evidence a photo, again from the MLS listing, which shows a piece of the liner which appears to have come away from the top edge of the pool (Doc-7272042).

37. The Landlord states he does not know how the damage was caused. Section 89 of the Act states that the Landlord is entitled to the reasonable costs of repairing damage, or where it cannot be repairing, the cost of replacing the item where the damage is wilfully or negligently caused by the Former Tenants. However, the Landlord states he does not know how the Former Tenants caused the damage.
38. Of note was the photograph submitted by the Former Tenants. It is the Realtor's photograph taken before the Landlord purchased the rental unit. The posts from the pool are intact in this photo. But the photograph was taken in the middle of winter. The pool has no pool cover on top. What this suggests is that the owner of the home prior to the Landlord had not maintained the pool adequately.
39. Given that the Landlord cannot state how the Former Tenants wilfully or negligently damaged the pool, the photographic evidence showing that the pool was not covered at some point during the winter when it would be, in my view, important to have it covered to protect it, and given the photo shows evidence of cursory damage, I am not satisfied that the Landlord has met his onus of proof on a balance of probabilities. No order shall issue for the pool.

Garbage

40. The Landlord claims that the Former Tenants left furniture behind which had to be removed from the rental unit at a cost of \$355.00 for disposal (Doc-6423169)
41. Removing garbage from a rental unit is only compensable when there is damage to the rental unit which cannot be attended to until the garbage is cleaned up first. In this case, the furniture was not impeding the carpet repairs or other work that had to be done in the rental unit.
42. This claim is made pursuant to s.89(1) of the Act, rather than s.88(1). Essentially what that means is that simply removing garbage is not wilful or negligent damage to the rental unit, whereas the clean up may have been compensable if the claim was made under substantial interference with the Landlord's lawful rights. As it stands, the claim was made for damage and removing garbage is not damage. No order shall issue.
43. The Former Tenants also state that the Landlord had refused to care for the building stating he had "abandoned it." In support of this claim, the Former Tenants submitted a text message exchange between the parties on May 27, 2024 (Doc-7272057). However, in reviewing the message exchange, I do not find that there is any evidence to support that the Landlord had abandoned the rental unit. The message which appears to be from the male Former Tenant states that he had heard from an old neighbour that the rental unit was unkept. The Landlord does not agree with this statement. Therefore, I am unable to find that simply because a neighbour reported to the Former Tenants that the exterior of the property was unkept suggests that the rental unit was abandoned.
44. The Former Tenants also submit that the Landlord never attended the rental unit. The Landlord does not dispute this, but states that he hired agents to show the property and conduct the repairs following the termination of the tenancy.
45. I am not persuaded that because the Landlord did not personally attend the property this means that the Landlord cannot make a claim for damage arising from the actions of the

Former Tenants. Many Landlords live out of province, some even out of country. It is reasonable that a landlord relies on others to act as agent in their stead. I am also not of the view that because agents provided the evidence, for example photos of the carpeting, that this absolves the Former Tenants' responsibilities under the Act.

46. The total the Former Tenants owe the Landlord is \$2,234.00.

47. There is no last months' rent deposit.

48. This order contains all of the reasons within it. No further reasons shall issue.

It is ordered that:

49. The Former Tenants shall pay to the Landlord \$2,234.00, which represents the reasonable costs the Landlord incurred as a result of the damage.

50. The Former Tenants shall pay to the Landlord \$186.00 for the cost of filing the application.

51. The total amount the Former Tenants owes the Landlord is \$2,420.00*. See Schedule 1 for the calculation of the amount owing.

52. If the Former Tenants do not pay the Landlord the full amount owing on or before March 2, 2026, the Former Tenants will start to owe interest. This will be simple interest calculated from March 3, 2026 at 4.00% annually on the balance outstanding.

February 19, 2026

Date Issued

Jane Dean

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

* Refer to the attached Summary of Calculations.

Schedule 1
SUMMARY OF CALCULATIONS

Amount the Former Tenant must pay the Landlord:

Damage Costs	\$2,234.00
Application Filing Fee	\$186.00
Total amount owing to the Landlord	\$2,420.00