

## Residential Tenancies Tribunal

Application 2024-0836-NL

Pamela Pennell  
Adjudicator

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### Introduction

1. Hearing was called at 1:49 p.m. on 22-October-2024.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord" attended by teleconference. [REDACTED], authorized representative was also present.

### Preliminary Matters

4. The tenant submitted an affidavit with his application stating that he had served the landlord with the notice of hearing electronically by email to; [REDACTED] on 9-October-2024 (TT#1). The landlord confirmed receipt of the document. In accordance with the *Residential Tenancies Act, 2018* this is good service.
5. There is a written term rental agreement that was signed on 19-June-2024, however the tenant moved into the unit in September 2022. Rent is \$1800.00 per month due on the fifth day of each month. A security deposit of \$1000.00 was paid in September 2022 and is in the landlord's possession.

### Issues before the Tribunal

6. The tenant is seeking:
  - An order that repairs be carried out to the driveway.
  - An Order that rent be paid in trust to the *Residential Tenancies Board*.
  - Hearing expenses \$40.00

### Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 10: Obligation of landlord. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*: Section 12-1: Recovery of costs.

## Issue # 1: Repairs to Driveway Rent paid in trust

### Relevant Submission

8. The tenant testified that the driveway to his rental unit needs to be repaired so he can easily access his home and he is seeking an *Order of Director* to have rent paid in trust to the director until repairs are made. The tenant submitted a copy of a *tenants' request for repairs* form to support the claim (TT#2).

### Tenant's Positions

9. The tenant testified that the driveway to his unit needs repair work as he constantly gets his vehicle stuck when the gravel / loose stone gets wet and muddy. The tenant stated that this issue has been on-going since the commencement of the tenancy, and he stated that the landlord has made little effort to rectify the problem. The tenant stated that water is constantly going down one side of the driveway causing the driveway to wash out which creates huge holes in the gravel / loose stone. The tenant stated that he offered to repair the driveway last year and the landlord refused his offer, and in turn, the landlord hired the basement tenant to put some loose stone on the driveway and rake it. The tenant stated that the driveway needs a roller to level out the gravel / loose stone and he testified that the landlord agreed with him that the driveway needs a roller to complete the repairs. The tenant submitted photographs of the driveway to support his claim (TT#3). The tenant testified that he gave the landlord a *Tenant's Request for Repairs* form on 26-July asking her to repair the holes and the loose stone by 8-August and he testified that the work has not been completed and he stated that the landlord responded in writing to his request by saying: "you can move if you wish, it's your choice if not up to your standards". The tenant stated that he just wants to be able to easily access his unit through the driveway.

### Landlord's Position

10. The landlord did not dispute that the driveway needs to be repaired, however she does not agree that rent should be held in trust until the work is completed as it is late in the fall now and the work will most likely not be completed until Spring. The landlord disputed that she has made little effort to rectify the problem and stated that the problem involves water runoff from the neighbor's property, and she testified that she has been working with the neighbor to fix the runoff problem. The landlord stated that a lot of work has been done and there are drainage problems due to the downhill slope. The landlord stated that the neighbor put in pavement which causes the run-off down her driveway. The landlord stated that the work to avoid the run-off has been completed and the additional work needed will cost a lot of money. The landlord stated that the work will get done.

### **Analysis**

11. Section 10(1) of the *Residential Tenancies Act, 2018* states: statutory conditions.

#### ***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:*

1. Obligation of the landlord –

- a) *The landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.*
- b) *Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.*

12. I accept the tenant's testimony that the condition of the driveway is poor and that his vehicle gets stuck when the gravel / loose stone gets wet. I also accept the photographs entered into evidence which show huge holes filled with water and mud in the driveway. I accept that this issue has been on-going since the beginning of the tenancy, and I asked the landlord if she received the *tenant's request for repairs* form on 26-July and she responded that she had. The landlord made reference to the fact that the tenant was aware of the situation when he moved into the unit, however that does not mean that the landlord don't have an obligation to make the premises habitable. In accordance with Section 10(1) as stated above, the landlord shall maintain the residential premises in a good state of repair and fit for habitation regardless of whether or not the tenant entered into a rental agreement knowing the situation.

13. I accept the landlord's testimony that she has been working with the neighbor to control the runoff on to her driveway; however, controlling the runoff does not rectify the current problem that exists in the driveway. The driveway needs to be repaired so the holes are filled, and the buildup of water and mud is limited so that the tenant can easily access his unit. The landlord's representative stated that nobody else has complained about the condition of the driveway and she made reference that it was the tenant's responsibility to repair the driveway, and she also stated that the tenant caused the damage to the driveway by spinning his wheels and causing the holes. I find that the fact that other people have not complained about the condition of the driveway has no bearing on the situation, and I also find that the tenant is not responsible for any repair work to the driveway. The landlord stated that the work will most likely get done this coming spring and I asked the tenant if the conditions will get better once frost gets in the ground and if the work could potentially wait until spring and he responded that the conditions will be worse during the winter months due to the huge holes in the driveway and he stated that he cannot go through another winter trying to access his unit under those conditions and he also made reference to damage caused to his vehicle due to the holes in the driveway. The tenant submitted a copy of text messages showing a conversation between himself and the landlord (TT#4) whereby the landlord suggests that the tenant purchase a car more suitable for the conditions of the driveway or just park on the road.

14. Section 47 of the *Residential Tenancies Act, 2018* outlines the following powers of the director:

**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; ...*

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



(k) directing a tenant to pay rent or a specified amount of rent to the director;

15. In accordance with Section 47 of the *Act* as stated above, I find that the tenant has a right to have access to his unit and not have to worry when it rains if he will get stuck in the driveway or if the holes in the driveway will cause undue damage to his vehicle. I find that the tenant is not responsible for causing the damage to the driveway nor is he responsible for repairing the driveway. I also find that the landlord has an obligation to ensure that the premises are fit for habitation even if the driveway was in poor condition when the tenant decided to rent the unit. With that said, I do not wish to impose any unnecessary financial hardship on the landlord; and for that reason, I find that rent shall be paid in trust to the director of *Residential Tenancies* **effective 5-December-2024** if the following repairs to the driveway are not made by that time. The repairs should include levelling off the gravel / loose stone to fill and smooth the holes and to lay a suitable product on the driveway that prevents a vehicle from sinking when the ground is wet.

### Decision

16. The landlord's claim for *repairs made and rent paid in trust to the director until repairs are made* succeeds.
17. Rent paid to the director of *Residential Tenancies* will commence on 5-December-2024 and payments will continue until such time as the driveway repairs are completed as per paragraph 15 above. The landlord shall provide *Residential Tenancies* with an **affidavit** stating that the repairs are complete, as well as stamp dated photographs to show the condition of the driveway.
18. The tenant shall forward all rent payable **effective 5-December-2024** to the *Residential Tenancies Section* in the form of a Canadian Postal Money Order made payable to the *Residential Tenancies Trust Account*. That rent will be held in trust until it is determined that the landlord has complied with the above orders. The tenant shall continue to forward rent to this Section, as it comes due, until he is ordered by this Section to reinstate payments to the landlord or until he vacates the rental unit.

### Issue # 2: Hearing Expenses \$40.00

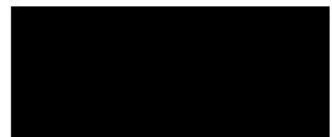
19. The tenant paid an application fee of \$20.00 to *Residential Tenancies* and he also incurred a Commissioner of Oaths fee of \$20.00. The tenant submitted a copy of the receipts to support the claim (TT#4). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual*, filing fees and other costs to prepare for a hearing are allowable costs. As the tenant has been successful in his claim, the landlord is responsible for the hearing expenses.

### Decision

20. The tenant's claim for *hearing expenses* succeeds in the amount of \$40.00 and the tenant shall deduct \$40.00 from the next rental payment.

October 25, 2024

Date



Pamela Pennell, Adjudicator  
Residential Tenancies Office