

Residential Tenancies Tribunal

Application 2025-0156-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 1:47 p.m. on 19-March-2025.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference.
3. The respondent, [REDACTED], represented by [REDACTED] and [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.
4. [REDACTED], a witness for the respondent was called into the hearing.

Preliminary Matters

5. The tenant submitted an affidavit with her application stating that she had served the landlord with the notice of hearing personally at the company's place of business on 21-February-2025 (TT#1). The landlord's representative confirmed receipt of the document on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service.
6. There is a written month-to-month rental agreement which commenced on 8-December-2017. Rent is \$275.00 per month, due on the first day of each month. A security deposit was never paid.

Issues before the Tribunal

7. The tenant is seeking:
 - Compensation for Inconvenience \$1237.22
 - Hearing expenses \$20.00

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 is the following section of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions.

10. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual*: Section 12-1 Recovery of fees.

Issue # 1: Compensation for Inconvenience \$1237.22

Relevant Submission

11. The tenant testified that she incurred professional restoration costs in the amount of \$1237.22 after a sewer back-up in her unit on 31-January-2025 and she submitted an inconvenience ledger (TT#2). The tenant also submitted a copy of an invoice from [REDACTED] to support the claim (TT#3).

Tenant's Position

12. The tenant testified that on 31-January-2025 she noticed that there was water on the basement floor which she initially believed to be from the hot water tank. The tenant stated that she contacted the landlord by calling the maintenance line, who sent a plumber to the premises that night to investigate and it was determined that the hot water tank was not leaking but rather there had been a sewer back-up in the basement area. The tenant testified that the plumber didn't do anything other than check the pipes and after he contacted the maintenance line advised her to keep an eye to it.
13. The tenant testified that later that night she became concerned with the sewer smell coming from the basement area and she decided to call the maintenance line once again to address the issue, and maintenance personnel arrived at the premises sometime past midnight to investigate the complaint. The tenant stated that the maintenance worker advised her that everything was fine with the pipes and that he would call his supervisor to have someone drop by the next day to clean up the basement floor, which she stated never happened. The tenant testified that she called the afterhours line the next morning and explained the situation and expressed her concern with the sewer smell in the unit, at which time she was advised that the landlord would not be calling anyone into the unit that day as it was not deemed an emergency.
14. The tenant stated that she had never dealt with a sewer back-up before and everything she read online made reference to how toxic it can be and how it needs to be cleaned up immediately by professionals. The tenant stated that she contacted her insurance company on 1-February as she had tenant insurance and she stated that they sent the restoration company to the unit immediately to professionally clean the basement area, only to learn after the fact that the insurance company would not cover the cost. The tenant stated that she should not be responsible for the professional cleanup of the remnants of the sewer back-up, and she is seeking to be reimbursed in full.

Landlord's Position

15. The landlord did not dispute that there was a sewer back-up in the basement area of the unit, however they did dispute that it was an active back-up, and their claim is that the area did not require the services of a professional restoration company. The landlord's representative testified that they addressed the issue by sending both a professional plumber and a maintenance worker to the premises who advised them that the pipes were clear at that time and confirmed that there had been a minor back-up some time ago and that there was no threat of an existing back-up, no sewer smell in the unit or any health threat to the tenant and/or her family.

16. The landlord's representative called the plumber into the hearing as a witness to support their testimony and also submitted a written affidavit (LL#1) from the maintenance worker to support their claim that the situation was not an emergency and did not require the services of a professional restoration company.
17. The witness testified that when he arrived at the unit on 31-January-2025 there were a couple of pools of light water on the floor in the basement area due to a raised floor and he confirmed that there had been a minor sewer back-up at some point, but it hadn't occurred in the last few days as there was dried paper stuck to the floor, which was indicative of been there for a while. The witness, in his professional opinion, stated that a minor sewer back-up had occurred most likely days or even weeks ago and he testified that there was no sign of waste material nor any sewer smell in the unit.
18. The landlord submitted a sworn affidavit into evidence from the maintenance worker who visited the residence within hours after the plumber had been there to collaborate their testimony and the testimony of plumber.

Analysis

19. Statutory condition 1, set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

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.*
20. I accept the tenant's testimony that she was concerned for her health and the health of her family, however the tenant failed to show that the sewer back-up was an active back-up and that there was at any health risk. I asked the tenant if she took any photographs of the water and waste material on the basement floor, and she responded that she did not.
21. The landlord was able to show that they took every step necessary to address the issue as soon as the tenant reported it and had a professional plumber visit the site followed by a maintenance worker. The landlord's representative called the plumber into the hearing as a witness who supported their claim that there was not an active sewer back-up in the unit on 31-January-2025. The landlords also submitted a sworn affidavit from the maintenance worker who visited the unit during the early hours of 1-February which collaborates the landlord's testimony and reiterates what the plumber witnessed.
22. The landlord submitted photographs of the basement area (LL#2) which were taken after the cleanup. The landlord's representative, who is their field supervisor and has expertise in this area, testified that he deals with those issues on a daily basis and he stated that if the insulation was wet due to a sewer backup, the color would change from pink to red. The photographs show that the insulation was still pink thus was not damaged due to sewage material. I asked the field supervisor why the restoration company would cut the gyproc from the wall if it had not been damaged due to the water and waste material and

he responded that it is protocol to do so whenever there is or has been a risk of a sewer back-up.

23. In accordance with Section 10 of the *Act* as stated above, landlords have a responsibility to ensure that the residential premises is safe and fit for habitation. I accept that the landlord took the proper course of action and followed company protocol when the tenant contacted them with her concerns on 31-January and again later that night. I accept that the tenant was concerned for her health and proceeded to have a professional restoration company clean up the basement area with the expectation that the landlord would reimburse her, which would be warranted if the tenant had showed that there was an active sewer back-up in the unit at that time. I find that the tenant failed to support her claim, and I find that the landlord could show that they did not contravene Section 10 of the *Act*. For those reasons, I find that the landlord is not responsible for the cost of the professional restoration clean up.

Decision

24. The tenant's claim for *compensation for inconvenience* does not succeed.

Issue # 2: Hearing expenses \$20.00

25. The tenant paid an application fee of \$20.00 to *Residential Tenancies* and submitted a copy of the receipt to support the claim (TT#4). In accordance with Section 12-1 of the *Residential Tenancies Policy Manual: Recovery of Fees*, claimable costs may include the filing fee. As the tenant's claim has not been successful, the landlord is not responsible to pay the hearing expenses.

Decision

26. The tenant's claim for hearing expenses does not succeed.

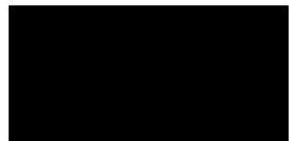
Summary of Decision

27. The tenant's claim for compensation for inconveniences does not succeed.

28. The tenant's claim for hearing expenses does not succeed.

March 24, 2025

Date



Pamela Pennell, Adjudicator
Residential Tenancies Office