

Residential Tenancies Tribunal

Application [REDACTED]

Decision 21-0232-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:21 pm on 17 August 2021 via teleconference.
2. The applicants, [REDACTED] hereinafter referred to as "tenant1" and "tenant2", respectively, participated in the hearing.
3. The respondent and landlord, [REDACTED] was represented at the hearing by [REDACTED]

Issues before the Tribunal

4. The tenants are seeking the following:
 - An order that repairs be carried out at the rental unit; and
 - An order that rent be reduced by \$100.00, until those repairs are completed.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
6. Also relevant and considered in this case is section 10 of the *Residential Tenancies Act, 2018* and Policy 9-5: Life Expectancy of Property.

Issue 1: Repairs

Issue 2: \$100.00 Rent Reduction

Relevant Submissions

The Tenants' Position

7. Tenant1 stated that they had entered into a monthly rental agreement with the landlord in April 2016. The current rent is set at \$775.00.
8. The tenants stated that for the past several years they had been complaining to the landlord about various maintenance concerns at their rental unit and on 14 April 2021 they send a formal request for repairs to the landlord █ #3). According to that request, the tenants are seeking the following:

- Replacement of bathtub and surrounding walls
- Removal of carpets in halls and bare floor if necessary
- Repair of window and ledge in bedroom

These repairs were required to be completed by 29 April 2021, but to the date of the hearing, no work has been carried out.

9. Regarding the bathtub, tenant2 stated that there was a crack in the bottom of the tub and that the tub surround was rotting and there are holes in the walls. Tenant1 complained that she suffers from breathing problems and she suspects that mould is after forming in behind the tub surround. Tenant2 testified that the tub was inspected by the landlord's maintenance staff back in 2018 and they acknowledged at that time that the tub and the tub surround needed replacing.
10. Tenant1 also complained that the carpet in the hallway is quite dirty and because of their medical conditions, the tenants are unable to operate a carpet cleaner to clean it. Tenant1 also stated that she had allergies and her preference would be that the carpet be removed so that they only had a bare floor in that hallway. Tenant2 stated that he had hired professional carpet cleaners at various times, but the carpet will not come clean. He also pointed out that the carpet was already in the property when they moved in in 2016 and he stated that it had already been in the unit for some time prior to that.
11. Tenant2 also complained that the window sill in the bedroom is rotted and that it is difficult to open and close the window. He also stated that it is drafty. Tenant1 stated that pieces of wood have fallen off the outside of the window and she complained that there was no screen in that window. Tenant2 stated that these windows were likely in this unit since at least 1960.
12. The tenants are seeking an order from this Tribunal to have these repairs carried out at their unit and they are also seeking an order that their rent be reduced by \$100.00 per month until such time as those repairs are made.

The Landlord's Position

13. Regarding the tub and the tub surround, █ stated that she had not viewed the tub and could not attest to its condition. She also stated that she does not have access to any work orders pertaining to the rental unit. █ stated that the

landlord's maintenance staff did visit the unit a few hours before the hearing, and it was reported to her that the tub and tub surround do indeed need to be replaced. However, she claimed that the landlord has been slow in completing the various maintenance requests they have been receiving because of the COVID-19 lockdown. They hope to have it replaced in the next couple of weeks.

14. █ acknowledged that the carpet was already in the unit when the tenants moved in in 2016, but she did not know when it was initially installed. █ examined the work orders for that unit and reported that there were no orders filed for carpet installation anytime after 2007. █ also stated that after her maintenance department visited the unit, they did report that the carpet was stained. However, she claimed that the carpet has not been replaced because the tenants have not logged a work order with the landlord's maintenance department.
15. █ stated that she had not viewed the tenants' window, but she claimed that many of the windows in the █ complexes administered by the landlord are in a similar condition as to that described by the tenants and she did not contest their testimony on this matter. She also acknowledged that these windows were likely at the unit since the late 1050s.

Analysis

16. 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.

(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.

17. █ did not contest the tenants' claim that their bathtub, tub surround and the bedroom window needed to be replaced. I also accept the tenants' testimony that the hallway carpet is stained and I find that, as that carpet was likely laid

sometime before 2007, it has outlived its useful lifespan and also needs to be replaced.

18. As the landlord had not complied with the tenants' request from April 2021 to have these repairs carried out, I find that the landlord is in violation of their statutory obligation to maintain the rented premises in a good state of repair.
19. 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;

...

(h) directing a landlord to pay to a tenant an amount as compensation for inconvenience as a result of a contravention of this Act or the rental agreement, and authorizing the tenant to offset that amount against future rent;

...

(p) imposing terms and conditions the director considers appropriate, including terms and conditions to ensure compliance with this Act and the rental agreement

20. Based on the foregoing, I make the following orders:

Decision

21. The landlord shall:
 - Replace the bathtub and tub surround
 - Replace the bedroom window and window sill
 - Remove the carpet in the hallway and ensure that the tenants' floor in that area is in good repair.
22. Once the landlord has carried out these repairs, they are to provide the Residential Tenancies Section with an affidavit to that effect along with any receipts or relevant work orders.

23. Commencing September 2021, the tenants' rent will be reduced by \$100.00 per month until they are ordered by this Section to resume paying the originally agreed amount of \$775.00.

Issue 3: Hearing Expenses

24. The tenants paid a fee of \$20.00 to file this application. As the tenants' claim has been successful, the tenants' rent for September 2021 is reduced by a further \$20.00 to cover that hearing expense.

31 August 2021

Date

