

Residential Tenancies Tribunal

Application 2022-No.171-NL
2022-No.321-NL

Decision 22-0171-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 26-May-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.
3. The respondents, [REDACTED] and [REDACTED], are represented by [REDACTED], hereinafter referred to as “the tenant” she attended by teleconference.

Preliminary Matters

4. The landlord submitted two affidavits (LL#01 & LL#02) stating that she had served both tenants electronically one on 02-April-2022 and the other on 18-April-2022. The tenant said that she served the landlord with notification of the hearing on 11-May- 2022. Both parties confirmed service.

Issues before the Tribunal

5. The landlord is seeking:
 - Rent \$940.00
 - Possessions returned \$7,000.00

The tenant is seeking:

 - Rent refunded \$7,050.00
 - Compensation for inconvenience \$2,000.00
 - Compensation for damages \$3,149.00
 - Other \$378.00

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.

7. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, as well as, the following Residential Tenancies Policies: Section 4: Repairs, and Section 9: Claims for Compensation.

Issue 1: Rent \$940.00

Landlord's Position

8. The landlord provided a copy of the rental agreement (LL#03). They are in a written monthly agreement. They moved in on 01-November-2020 and moved out on 10-April-2022. The rental period is from the 1st day of the month to the last; \$470.00 rent is due in full on the first day of the month. There was no security deposit paid. The tenants are in a single dwelling house.
9. The landlord said that the tenants moved in after approaching her to rent. She said that at the time the house was not rented and the tenants didn't ask any questions about the house, that they were moving and needed a place to live. She said they only asked questions about the house after paying rent and accepting the rental.
10. The landlord said that the tenant contacted her on 12-January-2022 and told her that there was a sewage smell in the basement. The landlord had her Great-Uncle attend the house; because she wasn't in the area. It was determined that the septic tank was backing up and the tank had collapsed.
11. The landlord said that she contacted her insurance and they told her that the tenant's should contact their insurance for any loss or inconvenience (they are required to have tenant's insurance as per part 11 of the rental agreement (LL#03).) The landlord contacted a contractor and asked him for a quote to repair the issue. She supplied a text thread (LL#08) with the contractor. The initial quote was \$3,000.00 - \$10,000.00 the final cost was \$8,910.00 (LL#08). She also used this contractor for the clean-up after the initial issue with the septic system was resolved.
12. When the landlord was first dealing with the issue around the septic system, she was unsure of how she would pay the cost. She inquired with the Residential Tenancies board and was told that she was responsible to maintain the premises in a state of good condition if it was rented. Her only option, if she couldn't afford the repair, was to give a standard termination notice. She then served the tenants with a termination notice, (LL#04) dated 27-January-2022 with a termination date of 30-April-2022. She later, due to non-payment of rent, gave another termination notice (LL#05) dated 01-March-2022 with a termination date of 12-March-2022.
13. The landlord said that while the issues were ongoing with the repairs the tenant stopped paying rent. The tenant did not pay rent for February 01, 2022 or March 01, 2022. The landlord said that the tenant moved out in April, but was only there for 10 days so she is not seeking rent for that time period.

Tenant's Position

14. The tenant acknowledges that due to the issues with the house, she has not paid rent.

Analysis

15. Non-payment of rent is a violation of the rental agreement (LL#03). I accept the landlord's testimony and evidence that the tenant did not pay rent for the two months totaling \$940.00.
16. Further to this, Section 4 of the Residential Tenancies Policy states that had the tenant submitted an application for repairs to this Board, the tenant would have to ensure rent is not in arrears.
17. The tenant shall pay the landlord the rent owed totaling \$940.00

Decision

18. The landlord's claim for rent succeeds in the amount of \$940.00

Issue 2: Possessions returned \$7,000.00

Landlord's Position

19. The landlord said that there was an oil/wood burning stove in the basement when the tenants moved in. She said that a couple of months before the tenants moved in she had the brick and seal repaired on the stove.
20. The landlord said that the primary source of heat is electric, the oil/wood burning stove was provided for the tenants' use, if they chose to use it.
21. The landlord said that she couldn't estimate the age of the stove.
22. The landlord said that the stove was gone when the tenants moved and that she didn't see it in the shed.
23. The landlord has not replaced the stove yet.
24. The landlord submitted an estimate from S & W Heat Pumps Ltd. The replacement of the stove is valued at \$7,000.00

Tenant's Position

25. The tenant said that she had the fire department check out the stove. She said that they determined it to be over 40 years old and that there was a hole in the back. She said that it was growing mold, so they placed it in the shed and purchased a used one for their use.

Analysis

26. The landlord was unable to determine the age of the oil/wood burning stove, however the tenant said that the fire department determined that the stove was in excess of 40 years old. In accordance with Residential Tenancies policy 9-3, the adjudicator must

consider depreciation when determining the value of damaged property. According to Fireplaceuniverse.com these stoves can last up to 20 years.

27. In addition to the oil/wood stove being past its lifespan, the tenant states that when they bought their own stove, they put the landlord's stove in the shed. It is therefore uncertain that the stove is missing.

Decision

28. The landlord's claim for possessions returned fails.

Issue 3: Rent refunded \$7,050.00

Tenant's Position

29. The tenant said that she had heard in the community that the landlord was aware that there were issues of dampness and mold in the house. The tenant said that a former tenant had filed a complaint with this Board prior to her family moving into the house.
30. The tenant said that the landlord should not have rented the house without completing the repairs. The tenant said that the landlord should refund the entire rent paid by the tenants as the house should never have been rented and they should not have been exposed to the black mold.
31. The tenant said that she contacted the Health/Environment department.

Landlord's Position

32. The landlord agreed that she had a hearing with another tenant (file # 2019-No.101-C). She said that this file was not in relation to the sewer backup or mold.
33. The landlord said that she had no indication from the tenants that they were having any issues with mold and that the first time she knew there were issues with the septic was when the tenant contacted her in January 2022. She said prior to that conversation the tenants seemed to be happy with the rental; they even considered buying the property.
34. The landlord contacted the contractor, and then on 28-January-2022 she gave him the go ahead to change out the septic. On 07-February-2022 he said he was going to pump out the old tank but it collapsed. On 10-February-2022 he replaced the tank.
35. The landlord said she also hired the contractor to clean up the basement and the contractor was slow to do the work, however she contacted him frequently and provided their text messages (LL#08). The landlord pointed out that she contacted him on: 02-March-2022, (he responded by phone 2 or 2 days later), 11-March-2022, 18-March-2022, 25-march-2022, 28-March-2022, 30-March-2022, and 05-April-2022.
36. The landlord said she heard from the Gander Health Department and they informed her that a file had been opened and that they would inform her of the findings. She has not heard from them since.

Analysis

37. Section 10 of the Residential Tenancies Act, 2018, states:
38.

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.

39. The landlord is responsible to keep the rental premises in a state of good repair. The landlord however, can't do these repairs if she is not aware that there is an issue.
40. The tenant's belief that this was an ongoing issue, based on the talk in her community, has been shown to be untrue, as the file opened by the previous tenant was not in relation to this issue.
41. The landlord did contact her insurance, hire a contractor, and follow up with the contractor. The tenants paid for the use and enjoyment of the rental unit and the issue with the septic system does not undo the fact that the tenants lived there for about one and a half years.

Decision

42. The tenants' claim for rent refunded fails.

Issue 4: Compensation for inconvenience \$2,000.00

Tenant's Position

43. The tenant said that they moved from [REDACTED] to live in this house. She said that when they moved there first they asked if they could replace the flooring and paint throughout.
44. The tenant said that they didn't mind doing this work because they wanted to enjoy the look of the place that they stayed.
45. The tenant said that she and her husband travelled for work from April – October each year and lived at the house in the summer. She said their daughter lived there year round.
46. The tenant said that due to the septic issue, they had to pack and move. She said that this was a great inconvenience and is requesting to be reimbursed \$2,000.00.

Landlord's Position

47. The landlord said that when the tenants contacted her, they were desperate to find a place to live. She submitted the text messages (LL#09). The landlord points out that she wasn't interested in renting the place but agreed. She said that the tenants were going to move from [REDACTED] whether they lived in her rental or somewhere else.
48. The landlord said that the house was painted throughout just before the tenants took occupancy, she agreed to them painting the house, but the work was not required. She said that she took \$200.00 off their rent for 10 months to pay back the cost of the flooring and those were the agreed terms.
49. The landlord said that she didn't think she was going to be able to afford the cost of the repair, so she gave a notice of termination to the tenants.

Analysis

50. As per paragraph 8, the rental agreement (LL#03) is a written monthly agreement. In a writing monthly agreement, barring any issues, a landlord is required to give a minimum of 3 months' notice. As per Section 18 (2) of the *Residential Tenancies Act, 2018*, as follows:

Notice of termination of rental agreement

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

(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

51. The landlord is not obligated to continue renting to the tenant after a 3 month notice has been served. The landlord is also not compelled to give a reason for the termination.
52. The tenants' rental agreement is only protected for up to the 3 month period. The landlord is not responsible to continue an agreement for the convenience of the tenant.
53. The landlord is not responsible for the tenants' cost of moving.

Decision

54. The tenants' claim for compensation for inconvenience fails.

Issue 5: Compensation for damages \$3,149.00

Tenant's Position

55. The tenant said that she had belongings stored in a dresser in the basement laundry room. She said that they had been there since she moved in. When they were moving she discovered that these belongings were completely covered with black mold. She included pictures of the items and the evidence number is included in the table below. She provided this breakdown:

Item and Description	Evidence #	Value
Vintage "GUESS" purse	TT#03	\$300.00
Rubber boots	TT#03	50.00
7 current "GUESS" purses (\$100.00 each)	TT#03	700.00
5 "MICHAEL KORS" purses (\$200.00 each)	TT#03	1,000.00
2 "COACH" purses (\$150.00)	TT#03	300.00
1 pair of pajamas	TT#04	15.00
1 men's leather jacket	TT#04	\$600.00
1 Picture frame	TT#04	15.00
2 pairs of pants (\$15.00)	TT#05	30.00
1 tin of Asprin	TT#05	5.00
1 Cat scratching post	TT#05	99.00

56. The only one of these items that was not in the laundry room is the cat scratching post. The post was in the living room and they discovered the mold when they were moving and lifted the post to discover mold underneath.
57. The tenant stated that many of the items were of significant personal value to her. She said that when she found these items they were stuck together with mold. The pictures were taken to show the damages.
58. The tenant did not provide receipts as these items have not been replaced.

Landlord's Position

59. The landlord said that the basement is unfinished. She raised the issue of the sewage backup and that the basement did not get repaired from the leak until just after the

tenants moved. She questions why these items would be left there, considering the condition of the basement from January to April.

Analysis

60. Residential Tenancies Policy 9-004 says “Tenants wishing to file a claim for damage to their personal belongings must be advised that in order to hold a landlord accountable for damage to personal belongings, the applicant must be able to prove that the landlord was negligent.” In order to show negligence the Policy says “Failure to act as a reasonable person would be expected to act resulting in injury to another person’s property.”
61. I don’t find that the tenant proved that there was negligence on behalf of the landlord. The landlord, immediately contacted her insurance and found a contractor to resolve the issue with the septic backup. The landlord acknowledges that she did find that the contractor was slow to do the work, however, in paragraph 35 she has shown that she kept an ongoing conversation with the contractor to ensure he completed the work.
62. The landlord also acknowledged that she didn’t think she could afford to have the repairs done and issued a termination notice to encourage the tenants to move so as to not be living in a place that wasn’t in good condition.
63. The landlord questioned why a tenant would leave valuable belongings in a damp unfinished basement with a septic issue. HGTV claims: “Mold can grow anywhere it can find oxygen, moisture and organic material, and it's particularly happy in damp, humid areas of the home — so it's no surprise that mold in the basement is a common problem for homeowners.”
64. Residential Tenancies policy 9-004 concurs with the landlords concerns, the “Landlord may be held responsible if the tenant can prove that the landlord was aware of the problem and was negligent in carrying out the necessary repairs. It is important to note that a tenant must **take all precautions** to avoid unnecessary damage.” The tenant is applying for reimbursement for many high end purchases, and I agree with the landlord that the tenant should have moved these expensive items in light of the septic backup and wait time incurred for the contractor to complete all repairs.

Further to this, in any damage claim an 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)
65. The tenant has not replaced these items and therefore has not provided this board with receipts or estimates to show the value of the items.
 66. I do not believe that the landlord was negligent in her actions, and even if I did find her negligent, the board has no reliable way to assess the value of the items listed.

Decision

67. The tenant's claims for damages fails.

Issue 6: Other \$378.00

Tenant's Position

68. The tenant submitted receipts (TT#07) for the work completed by her and her husband when they moved into the house.
69. The tenant is seeking repayment for the cost of the repairs that they completed.

Landlord's Position

70. The landlord said that the house was painted prior to the tenants moving in (paragraph 47) and that it didn't need to be painted. She did agree to them doing the work to make them more comfortable in the home.
71. The landlord points out that she agreed to reimburse the tenants for the cost of the flooring, however, upon seeing the tenants evidence TT#07, she states that the tenants receipts show a balance of \$1,380.54 for flooring and she gave them 8 months discounted rent for a total of \$1,600.00.

Analysis

72. The tenant in paragraphs 42 & 43 states that they offered to do the repairs on the house. She said that they didn't mind doing these repairs because it made the house the way they liked it.
73. The tenant and landlord both acknowledge that there was an agreement for repayment of the flooring and not for the remainder of the work.
74. I accept their statements to indicate that the tenants agreed to do this work at their own expense for their own enjoyment.

Decision

75. The tenants claim for Other fails.

Issue 7: Hearing expenses reimbursed \$20.00

76. The landlord submitted the receipt for \$20.00 for the cost of the hearing (LL#10), the tenants also submitted their receipts for \$20.00 for the cost of the hearing and \$15.00 for the cost of their photos (TT#09). The landlords claim is successful and pursuant to policy 12.01, is entitled to reimbursement of that cost from the tenant.


Summary of Decision

77. The tenants shall pay the landlord \$960.00 as follows:

- Rent \$940.00
- Hearing Expenses \$20.00
 - Total \$960.00

May 30, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office