

Residential Tenancies Tribunal

Applications: 2022 No. 0619 NL

Decision 22-0619-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:08 AM on 31 August 2022 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "tenant1", participated in the hearing.
3. The applicant, [REDACTED], hereinafter referred to as "tenant2", participated in the hearing.
4. The respondent, [REDACTED], hereinafter referred to as "the landlord", participated in the hearing.
5. An affidavit of service was provided by the tenants (T#1) confirming that the landlord was served electronically of the claim against him on 03 August 2022. Proof of service was provided (T#2) and tenant1 testified that she knew to serve electronically to that particular email address, because that was the email address used for communication between the parties.
6. The details of the claim were presented as month-to-month rental agreement that started October 2020 and was intended to terminate on the day of the hearing (e.g., 31 August 2022). Monthly rent was set at \$950, including heat and lights, and a security deposit in the amount of \$475.00 was collected. The tenants provided a copy of a signed written agreement with the landlord that was dated 16 August 2020 (T#3).
7. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. The standard of proof, in these proceedings, is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

8. The tenants are seeking the following:
 - Validity of Termination notice determined;
 - An order for rent to be refunded in the amount of \$400.00;
 - An order for compensation for inconvenience in the amount of \$825.00; and
 - An order for payment of Other in the amount of \$5,670.00.

Legislation and Policy

9. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (the *Act*).
10. Also relevant and considered in this case is section 10 of the *Act*.

Preliminary Matters

11. The rental premises is a single family dwelling with a shed located at [REDACTED] [REDACTED]. The landlord testified that he believed the house was built in the 1960s and that he has been operating it as a rental for the last 5 or 6 years.
12. The tenants were issued a section 24 Termination Notice on 19 July 2022 requiring them to vacate the rental premises by 26 July 2022 (T#4). Tenant1 testified that she no longer needed the validity of notice determined because she intended to vacate the rental premises with tenant2 by the end of the hearing day (e.g., 31 August 2022). The landlord testified that he issued this termination notice after the tenant2 attended his own personal residence, as well as the personal residence of his handyman late at night, causing significant distress to other persons at the property. Tenant2 acknowledged attending to each property late at night.
13. The tenants and landlord agreed that the tenants had access to the rental premises at no costs during the month of September 2020 prior to the beginning of their rental agreement. Tenant1 testified that she completed extensive cleaning during this time because she is “OCD clean”.

Issue #1: Rent Refunded (\$400.00)

Tenants' Position

14. Tenant1 testified that they are seeking a refund of rent in the amount of \$400.00 because they were required to live elsewhere from 19 July 2022 through to 31 July 2022 despite paying rent for that month to the landlord. The tenants provided proof of payment for July 2022 rent in the full amount of \$950.00 (T#5).

Tenant1 testified that the decision to reside elsewhere was made after the landlord delivered the termination notice described in paragraph 11. She testified that they were required to live elsewhere because the well at the rental premises was “dry” and “the landlord wasn’t doing anything”.

15. Tenant1 testified that the well at the rental premises had previously “gone dry” on 04 July 2022 and that the landlord promptly responded by bringing a tank of water to the property and attaching it to the rental premises. She also testified that the landlord provided a key to a separate rental unit for the purposes of showering and doing laundry. Tenant1 testified that the well then “went dry” again and that the pump to the house “would not turn off” in the evening of 18 July 2022. She testified that this caused significant distress and that this distress was worsened by the lack of response from the landlord and his handyman after the tenants attempted to contact both. Tenant1 testified that these attempts at making contact were not “late” and that they were made starting at 10:00PM, which should be considered reasonable because the landlord should provide 24 hour service.
16. Tenant1 also testified that this situation on 18 July 2022, which continued to 19 July 2022 when the termination notice was issued, caused her to not proceed with booking a ticket to support her daughter who was giving birth at the time. Tenant1 testified that the deliberate actions of her landlord have prevented her from visiting her granddaughter, and that this causes her great pain.
17. Tenant1 testified that she and tenant2 returned to the rental premises every second day between 19 July and 31 July to see if water had returned to the well, but determined each time that water had not returned.

Landlord’s Position

18. The landlord testified that the previous tenant at the rental premises had been able to “make do” by using the water “sparingly”. The landlord presented a chronology of events from July 2022 to highlight his efforts, along with the efforts of his handyman and plumber to respond as effectively as possible to tenant1’s concerns for the well at the rental premises.
19. The landlord testified that he promptly delivered a 250 gallon tank of water to the rental premises on 04 July 2022 after tenant1 made her initial complaint. The landlord testified that he also provided tenant1 with keys to a one bedroom apartment close by, in a building occupied by friends of tenant1, whereby tenant1 and tenant2 could have showers, do laundry and otherwise use the apartment as they see fit. The landlord testified that he did not recall ever asking the tenants to return the key to this additional rental unit, and reported that they returned the key without asking.
20. The landlord testified that his handyman connected the rental premises back to the well on 06 July 2022 because water had returned. The landlord testified that he was contacted again on 09 July 2022 that the well “was dry” and so he filled

up the 250 gallon tank again to have it delivered to the rental premises, only to be told when he arrived with the handyman, that the well had water. The landlord testified that he then left the tank of water on a trailer at the rental premises "just in case". The landlord testified that on 11 July 2022, tenant1 then requested that the water tank and trailer be removed from the property and that tenant1 then returned the key to the one bedroom apartment on 12 July 2022.

21. The landlord testified that he then became aware in the morning of 19 July 2022 that the tenant1 had sent multiple messages during the evening of 18 July 2022 regarding a pump that would not turn off at the rental premises. He testified that a review of the security cameras at his own personal property revealed a late night visit from tenant2 who knocked on his door and scared the landlord's wife. The landlord testified that his handyman had also been visited late that same night by tenant2, and that this caused the handyman serious concern because he lives with his disabled daughter. The landlord testified that he nonetheless made contact with his plumber and that his plumber promptly attended the rental premises to investigate tenant1's concerns. The landlord further testified his handyman attended to the rental premises shortly thereafter and confirmed that there was "lots of water" in the well.
22. The landlord testified that he issued the termination notice to the tenants on 19 July 2022 because tenant2 crossed a line when he attended personal property and knocked on doors late at night in response to a pump that would not shut off. The landlord testified that he did not understand what the tenants expected him to do at that time, other than advise that they turn the breaker off for the pump. Regarding testimony from tenant1, that they continued to visit the rental premises between 19 July and 31 July, the landlord testified that he expected water would not have come for them during their "tests" because the pump needed to be primed to produce water.

Analysis

23. The question of a well at a rental premises "going dry" thereby preventing tenants from freely accessing water which is necessary for all aspects of daily life, is worrisome. As per 10(1)(1) of the Act, landlords are statutorily obligated to:

"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."
24. As noted in both the landlord's and tenant's testimony, I am satisfied that the landlord made considerable effort to respond to reports from tenant1 regarding the well at the rental premises. The landlord promptly and repeatedly arranged for an alternative water source while the situation with the well was investigated, and he also provided the tenants with a convenient supplemental means of showering and completing laundry in a nearby rental unit if the available water supply was inadequate for their needs.

25. Consequently, I find the tenant's failed to establish on the balance of probabilities the absolutely necessity that they "had to live elsewhere" and were thereby entitled to a refund of rent in the amount of \$400.00 because:

- Tenant1 testified that she only decided to leave on 19 July 2022 AFTER the termination notice was received; and
- I accept the landlord's testimony that he had done every possible to ensure that tenant1 and tenant2 had appropriate access to water by:
 - regularly checking the well,
 - providing alternative water sources, and
 - providing alternative facilities for cleaning purposes.

Decision

26. The tenant's claim for compensation for refund of rent does not succeed in any amount.

Issue #2 – Compensation for Inconvenience \$825.00

Tenants' Position

27. Tenant1 testified that they are seeking compensation for three days of lost wages for tenant2 because he had to return early from work 08 November 2022, 04 July 2022, and 19 July 2022. Tenant1 testified that tenant2 HAD to come home because she suffers from extreme anxiety, and she was unable to independently deal with or address her concerns with the rental premises on each of those days. Tenant2 testified in support of this claim. Timesheets from the related weeks were submitted as proof that tenant2 did not work on the days reported (T#6).

Landlord's Position

28. The landlord had no specific comment on this claim.

Analysis

29. The *Residential Tenancies Act* is remedial legislation. Its object is to outline the duties and responsibilities of landlords and tenants and to provide a mechanism for solving disputes that might arise without the necessity of having to commence an action in Small Claims Court or other courts. There is no mechanism within this legislation through to which to address the obligation of one spouse to support the other, as was reported by the tenants in paragraph 27.

Decision

30. The tenants' claim for compensation for inconvenience does not succeed in any amount.

Issue # 3: Compensation for Other (\$5,670.00)

31. Tenant1 testified that are two parts to their claim for compensation for Other:

- Fridge and Stove Rental \$4970.16 (T#7)
- 19 July – 31 July 2022 Accommodation
 - i. Cost of accommodation \$600.00 (T#8)
 - ii. Cost of hydro during stay \$100.00 (T#9)

OTHER #1 Fridge and Stove Rental (\$4,970.16)

Tenants' Position

32. The tenants submitted proof of lease agreement from Easy Home for a 30 inch Black Ceramic Top Range and an 18 cubic food refrigerator (T#7). As per this document:

- The "lease value" of these items was \$3,449.00;
- The "total cost of the lease" was \$4,970.16 and
- There was a "balance" of \$1,889.99 remaining as of 23 July 2022.

33. Tenant1 testified that when she and tenant2 first inspected the rental premises on 16 August 2020, there was a stove and a fridge "covered in duct tape" in the rental premises. She further testified that herself and tenant2 are "clean tenants" and she could not have been expected to use this fridge. Tenant1 also testified that the landlord claimed the excuse of COVID as his reason for not providing them with an alternative fridge or stove.

34. Tenant1 and tenant2 acknowledged that they both signed a written rental agreement on 16 August 2020 that states a "washer and dryer" are the only appliance provided in the rental premises, however, they also disputed this. Tenant1 claimed that the rental agreement was "illegal" but did not explain why.

35. When asked what they planned to do with the fridge and stove at the rental premises upon vacating at the end of day, tenant1 testified that this depended on whether or not the landlord would pay their total costs for the fridge and stove (e.g., \$4,970.16).

Landlord's Position

36. The landlord testified that he maintains a supply of appliances and that he would have been happy to provide the tenants with an alternative fridge or stove because he did not honestly know at the time he signed the August 2020 rental agreement with the tenants, whether or not the stove and fridge left in the rental

premises actually worked. The landlord testified that he was quickly informed by tenant1 that she would be securing her own appliances, which was fine by him. The landlord referred to the date on the Easy Home Lease agreement which was 18 August 2020, two days after he signed the rental agreement and more than a month before the tenants were to take occupancy of the rental premises.

Analysis – Fridge and Stove Rental

37. I do not accept the tenants' claim that they are entitled to compensation for a fridge and stove rental because:
 - They signed a rental agreement that did not include entitlement from the landlord for accessing a fridge or stove;
 - The landlord nonetheless offered to find them a functioning fridge and stove, however, the tenants leased their own fridge and stove two days later despite not taking occupancy of the rental unit for more than another month;
 - They did not provide proof that their appliance solution was the lowest and best cost solution for appliance use in the rental premises. For instance, a quick internet search suggests that both appliances could be purchased new today for significantly less than the total claimed lease cost of \$4,970.16.

Decision

38. The tenants claim for compensation for fridge and stove rental does not succeed in any amount.

OTHER # 2: Accommodation 19 July 2022 – 31 July 2022 (\$700.00)

Tenant's Position

39. The tenants submitted proof of a receipt for \$600.00 for the cost of residing elsewhere from 19 July 2022 through to 31 July 2022 (T#8) along with a receipt for costs in the amount of \$100.00 for "hydro" during that time (T#9). Tenant1 testified that they are seeking compensation for the full amount of \$700.00 because the "well went dry" and they HAD to live elsewhere during that time.

Landlord's Position

40. The landlord testified that he believed the tenants chose to live elsewhere for part of July 2022 and that they were not forced to do so.

Analysis – Accommodation 19 July – 31 July 2022

41. This claim for compensation is related to the tenant's claim for compensation for return of rent in the amount of \$400.00. As discussed previously in this report,

that claim was not successful for reasons discussed in paragraphs 24 and 25. Consequently, I find that the tenants also failed to establish on the balance of probabilities that they were absolutely required to incur this costs, and so their claims for compensation do not succeed.

Decision – Accommodation 19 July – 31 July 2022

42. The tenants claim for compensation for alternative accommodations during July 2022 does not succeed in any amount.

Summary Decision: Other

43. The tenants claim for compensation for Other does not succeed in any amount.

Issue 3: Hearing Expenses

44. The tenants claimed the \$20.00 cost for applying for this hearing.
45. As their overall claim for compensation was not successful, the landlord will not be required to pay this expense.

Summary of Decision

46. The tenants are not entitled to payment because their claims failed.

12 September 2022

Date



Jaclyn Casler
Residential Tenancies Board