

Residential Tenancies Tribunal

Application 2022 No. 0721 NL

Decision 22-0721-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:05 AM on 03 October 2022 via teleconference.
2. The applicant [REDACTED], hereinafter referred to as “the tenant” participated in the hearing.
3. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2” respectively, also participated in the hearing.
4. The tenant provided two separate affidavits of service, confirming that she served the landlords by email (T#1) and she also provided proof of service (T#2).
5. The details of the claim were presented as a month-to-month rental agreement that started back in November 2019. Monthly rent has been \$925.00 throughout and a security deposit in the amount of \$500.00 was collected. A copy of the original written rental agreement was provided (T#3).
6. 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. In these proceedings the standard of proof 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

7. The tenant is seeking refund of rent in the amount of \$4,800.00.

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 (the Act)*.
9. Also relevant and considered in this case is sections 10 and 16 of the *Act*.

Preliminary Matters

10. The rental premises is a condo unit owned by the landlords. The building, estimated to have been built in 1977, is located at [REDACTED], and the unit ([REDACTED]) is a two bedroom, top floor unit. I gave leave to the landlords, with the approval of the tenant, for them to submit evidence related to the exact size of the unit and age of the condo building after the hearing was completed. According to the specifications provided, the useable interior space is 800 square feet and the smaller bedroom is 103 square feet (L#0).
11. The tenant is requesting refund of rent based on the rate of \$300.00 a month since April 2021 when she first experienced water leaking through the ceiling in the smaller bedroom of her rental premises. She amended her claim for refund of rent and increased it by \$900.00 to include refund of rent for August, September and October 2022 for a total of \$5,700.00.
12. Both parties agreed that there has been a damaged section of the ceiling in the smaller bedroom of the rental unit since April 2021 and that this damage has been narrow but at least 1 metre in length until the state of the ceiling worsened in September 2022.
13. Landlord2 raised a concern about access to evidence provided by the tenant regarding documented ceiling damage in the smaller bedroom of the rental unit. She specifically testified that she was not provided with a photo taken in August 2022 of the ceiling (T#4), which the tenant testified was provided by email and landlord1 testified that he was contacted by the tenant in August 2022 regarding the ceiling. Additionally, I confirmed that everyone was in possession of a video of the ceiling in the rental premises from September 2021 (T#5) as well as photos of the ceiling from September 2022 (T#6). Because the photo submitted by the tenant from August 2022 depicted similar ceiling damage as the video from September 2021, I was confident that all necessary evidence had been shared.

Issue 1: Refund of Rent \$5,700.00

Tenant's Position

14. The tenant testified that she has experienced a number of leaks through the ceiling in her smaller bedroom and that prior to these leaks occurring she had been using this room as her main bedroom to minimize the negative feedback

from her downstairs neighbour who sleeps underneath the tenant's larger bedroom. The tenant is seeking refund of rent from 12 April 2021 onwards, since the leak first occurred causing her to move her bed back to the larger bedroom, subjecting her again to the negative feedback of the noise sensitive lower neighbour. The tenant submitted proof of a noticeably cracked ceiling back in April 2021 (T#7), along with the evidence referenced in paragraph 13 documenting the progression of the crack, as well as a written summary of leaks experienced between April 2021 and September 2022 (T#8).

15. The tenant also submitted a printout of her text messages between herself and landlord1 (T#9). She agreed that her last message, for nearly a year, to the landlords regarding her concerns for the ceiling was 13 October 2021 when she wrote that she was worried about mold, and she also acknowledged that she wrote the following when she declared her intentions to find a new location to live:

"Hi, I am thinking of moving out. I will start looking for a new place. I will probably not be able to give you a month notice but I think by law I only need to pay you the days I live here as this place should have been deemed inhabitable (sic). I haven't been able to use the small bedroom for the past six months but I was paying for a two bedroom apartment".

16. The tenant testified that she reached out again in August 2022 because she felt she "waited long enough" to prove that no more water was coming through the ceiling and she wanted the ceiling repaired. The tenant referred to the photos of a significantly damaged ceiling, with gyprock boards split significantly apart, that were said to be taken on 21 September 2022 after subsequent leaks earlier that month (T#6). She testified that the ceiling no longer looks like the pictures because someone has since attended to the rental premises and has begun to repair the ceiling (on 01 October 2022).
17. The tenant testified that she was offended by landlord1's suggestion that she had personally damaged the ceiling in the smaller bedroom and spoke about her discomfort with being video-taped by landlord1 when he attended the rental premises in response to her complaints. She also testified that it was only in observing the individual who recently attended the rental premises to fix the ceiling, that she learned how sheets of gyprock are attached to the ceiling and seams are "taped together".

Landlords' Position

18. Both landlords expressed surprise at the tenant's request for rent and testified they had not previously known that the tenant had been using the smaller bedroom as a bedroom. Landlord1 testified that the shared asset of the roof on the condominium building was new in 2015 and submitted a written summary of efforts to respond to the tenant, each and every time that she raised concerns about exterior water entering her rental unit (L#1).

19. Landlord1 disputed the amount of the tenant's claim for refund of rent by stating that, "you could not rent a 1 bedroom apartment anywhere in St. John's for \$650.00 a month" (e.g., an approximate of the tenant's effective rate of rent if her \$300.00 monthly request for refund was approved). Landlord2 testified that the tenant's unit is sparsely furnished, and that based on this, she assumed the tenant was using the smaller bedroom throughout because there was always a dresser kept in the smaller bedroom.
20. Landlord1 testified that he has done everything possible to respond to the tenant's concerns with water in the rental unit, and that he did not address the ceiling damage between September 2021 and September 2022 because the tenant "did not bring it to his attention". Landlord1 testified that it has been challenging working with the condo owner and the condo board to investigate possible leak sources in the shared asset of the roof and the siding of the building, and that the necessary repairs to the ceiling of the rental unit will be covered by the insurance policy held by the Condominium building. Landlord1 confirmed that the current repair work is being completed by the condominium. Both landlord1 and landlord2 testified that there have been no documented issues with mold in the attic space over the rental unit, at any time since April 2021 when the leaks first began occurring and referred to three photos submitted, including photos from the attic space (L#2). Consequently, landlord1 disputed the tenant's claim that she could not use the room with the damaged ceiling for "habitability concerns".
21. Landlord2 testified that lots of people have damaged roofs as a result of recent rainfall and that she believed it was reasonable for people to "make do" as they awaited necessary roofing and building envelope repairs. Landlord2 also testified that she did not conduct a move in condition inspection or inspection report with tenant1 when she took possession of the rental unit, but declared that the unit was "spotless" and that it remains as such, except for the ceiling damage in the smaller bedroom and a "spot in the hallway" where the "tape has pulled" (L#3).
22. Landlord1 concluded his testimony by stating the condominium owners are refusing to send repair men to the tenant's unit because they are concerned with the tenant's behaviour. He also reiterated previously stated testimony that he believed, and "had evidence" of the tenant admitting, that she intentionally worsened the state of the ceiling decay in the smaller bedroom. However, such evidence, believed to be a video clip, was not submitted.
23. When asked if the landlords would rent their unit as is to new tenants, landlord1 testified that he would plaster the ceiling prior to attempting to secure new tenants.

Analysis

24. I accept that the rental unit is a condominium building owned by the landlords and that landlord1 in particular, has gone over and above in his efforts to promptly respond to the tenants concerns regarding water egress into the rental unit. That said, I also accept that the landlords and tenant agree that the tenant has been left with a noticeably damaged ceiling in the smaller bedroom of the rental unit for nearly 18 months since the original leak was reported on 12 April 2021.
25. Where landlord1 testified that he did not fix the ceiling between September 2021 and September 2022 because “the tenant did not ask him to”, he also made multiple references in his testimony to the text message chain between himself and the tenant, where, as noted in paragraph 15, the tenant put in writing that she has been paying for a two bedroom apartment despite being unable to use the second bedroom for 6 months. As such, I find that the tenant successfully established on the balance of probabilities that she is entitled to a refund of rent for her loss of access to the second bedroom from 12 April 2021 onward because all parties agreed that the physical state of the smaller bedroom was permanently altered 12 April 2022 and as of the date of this hearing, has not yet been returned to its original condition. I additionally find that this altered state continually worsened in response to subsequent rains, and that repairs to this ceiling have only very recently begun.
26. Because, as was noted in paragraph 20, the landlords disputed the tenant's claim for refund of rent based on habitability concerns, it is important to note the text of 10(1)(1) of the *Act* which states (emphasis added):

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.

27. This means, that not only is the landlord required to maintain standards of habitability, but also required to maintain a “good state of repair”. That said, it is also important to note that 10(1)(2) of the *Act* similarly requires the tenant to “keep the residential premises clean.. and repair damage caused by a wilful or negligent act...” because landlord1 testified in paragraph 22 that he believed the tenant was responsible for significantly cracked apart of the ceiling in the smaller bedroom of the rental premises (as shown in T#6). Such testimony was then countered by the tenant, as shown in paragraph 17, when she respectfully stated during her allotted follow-up to the landlords testimony, that she was “offended” by such an accusation. Consequently, I gave little weight to landlord1's accusations as he failed to provide any verifiable proof of his concerns with the tenant's behaviour.

28. Based on my own review of testimony from both parties and evidence submitted, I found that there to be consensus on the source of the issue, that is repeated leaks through the roof and siding of the rental premises that impacted the visual and potentially structural integrity of the ceiling in the smaller bedroom of the rental premises. I found that all parties also agreed on related timelines and acknowledged that the tenant was left with a notably damaged ceiling from April 2021 until the day of the hearing, with repairs only recently underway. Where the parties disagreed, was the impact of the damaged ceiling on the tenant, with the tenant putting in writing on 13 October 2021 that she has lost use of the smaller bedroom, and the landlords both testifying that they only became aware during the hearing, that the tenant was no longer using the smaller bedroom in response to the continued leaks and subsequent ceiling damage.

29. According to Residential Tenancy Policy 13-02 Rental Rebate and 16(5) of the Act:

Where a landlord discontinues a service, privilege, accommodation or benefit or a service, privilege, accommodation or benefit is unavailable for a period of time, and the discontinuance or unavailability results in a reduction of the tenant's use and enjoyment of the residential premises, the value of the discontinued service, privilege, accommodation or benefit is considered to be an increase in the amount of rent payable.

30. Taken in the context of this specific dispute, I accept that the landlords did all that was possible and responded promptly to water ingress in the rental premises, but I also find that they neglected the associated matter of a damaged ceiling for far longer than considered reasonable. As shown in paragraph 16, then tenant reached out again to the landlords in August 2022, more than a year after the first ceiling leak occurred, to inquire about when her damaged ceiling would be repaired and it was then, only after subsequent water damage that appears to have worsened the state of the ceiling the following month, that the ceiling is now being repaired.

31. Consequently, I find that the tenant is entitled to compensation in proportionate monthly amount since 13 October 2021 when she texted her landlord to state that she was considering moving out because she's been paying for a two bedroom, but can only access one. With respect to WHY and HOW the tenant lost access to the impacted bedroom, I find that she successfully established on the balance of probabilities, that the continued presence of a significantly sized (at least a metre long) crack in the ceiling between two sheets of gyprock, in addition to her personal concerns for mold both prevented her from using the bedroom as she had previously (for sleeping). This change resulted in her having to use the bedroom above her noise sensitive lower neighbour, causing the tenant additional stress and diminishing her right to peaceful enjoyment of the rental premises, regardless of the actual presence of mold.

32. With monthly rent set at \$925.00, and the total square footage of the rental premises said to be approximately 800 square feet, I calculate the rental rate per square foot to be \$1.16 (e.g., \$925.00 / 800) and because the affected bedroom in question is approximately 103 square feet, I find the proportional rental rate for the smaller bedroom to be \$119.48 (e.g., \$1.16 x 103) and that the tenant is entitled to a refund in that amount for each of the approximately 12 months between 13 October 2021 and the day of the hearing (03 October 2022).

Decision

33. The tenant's claim for refund of rent succeeds in the amount of \$1,433.76 (e.g., \$119.48 x 12).

Issue 2: Hearing Expenses


34. The tenant claimed the \$20.00 application fee as a hearing expense along with the \$35.00 fee that she incurred for a commissioner of oaths (T#10). As her claim has been successful, the landlords shall pay this expense of \$55.00 (e.g., \$20.00 + \$35.00).

Summary of Decision

35. The tenant is entitled to the following:
- An order for payment in the amount of \$1,488.76, determined as follows:

a) Refund of Rent	\$1,433.76
b) Hearing expenses.....	\$55.00
c) Total.....	<u>\$1,488.76</u>

06 October 2022
Date


Jaclyn Casler
Residential Tenancies Tribunal