

Residential Tenancies Tribunal

Application 2022-0758-NL

Decision 22-0758-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:16 a.m. on 18-October-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant,” was represented by his son, [REDACTED], who will hereinafter be referred to as “the authorized representative” (TT#01); he attended by teleconference on behalf of his father.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” did not attend.

Preliminary Matters

4. The landlord was not present or represented at the hearing and I was unable to reach him by telephone at the start of the hearing, a message was left at the number provided [REDACTED]. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as he has been properly served. The authorized representative submitted an affidavit (TT#02) with the application stating that he had served the landlord with notice of the hearing, in person on 16-September-2022. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in his absence.

Issues before the Tribunal

5. The tenant is seeking:
 - Rent refunded \$4,400.00
 - Compensation for inconvenience \$2,600.00

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 are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions and Section 16: Rental increase, as well as, Residential Tenancies Policy Section 4-002: Tenant request for repairs.

Issue 1: Rent \$4,400.00

Tenant's Position

8. The authorized representative said that the landlord would not provide him with a copy of the rental agreement. He said that he believes that the tenant has a written monthly agreement with the landlord. He said that his father has rented from the landlord for a long time, but believes that he moved into this rental unit in 2018. He said that income support pays \$550.00 each month for rent and that this doesn't include utilities. He said that his father didn't pay a security deposit.
9. The authorized representative said that his father moved out of this house 01-October-2022. He directed Social Services not to pay September's rent and then used this money to set his father up with the current rental. Rent was paid in full, up to and including August and the only month not paid is September 2022.
10. The authorized representative said that his father has been diagnosed with [REDACTED] and [REDACTED]. He said that he is very frail.
11. The authorized representative said that the house that his father is renting has fallen into a state of disrepair and that the landlord is refusing to complete necessary repairs. He said in February he contacted the landlord because there was no heat in the apartment. He said that the landlord refused to repair the heaters, so the authorized representative provided space heaters to his father to use for heat. He said that it was so cold in the apartment that ice formed on the kitchen window and it cracked.
12. The authorized representative said that the landlord indicated that the heaters didn't work because his father had damaged them. The authorized representative said he has a friend who is an electrician, who looked at the heaters and said that they are not working because they are defective not because of damage.
13. The authorized representative said that with spring thaw, in April, the water main broke and that his father has been mostly without water since that time. He said that there is a small trickle of water in the bathroom and that his father keeps a bucket in the washroom and fills it from the bathtub to flush the toilet. In addition to this, the hot water boiler doesn't work. He said he checked with the town and they said it is the landlord's responsibility to have it repaired. He said that when he told the landlord about it in April he refused to do the repair and has said to the authorized representative that this is the town's responsibility.
14. The authorized representative said that the maintenance worker told his father that he was concerned with the hot water boiler burning out, so the maintenance worker took out the fuse. The authorized representative purchased a new fuse and replaced the missing one; he said after he replaced the fuse the tenant had water that would become slightly warm.

15. The authorized representative said that because there is no water his father has to go across the street or take a cab to a friend's house in town to get a shower or clean his clothes. He said he is unable to wash his dishes and they had to replace the dishes after he moved. He didn't provide receipts for the new dishes, he said he estimated the cost for replacement.
16. The authorized representative stated that the stove stopped working in August and provided a picture (TT#07) showing he could place his hand on the burner with the burner turned on. He said that the landlord also refused to do this repair.
17. The authorized representative said he was speaking to people in the community about a leak in his father's bedroom ceiling (TT#06). He said that people told him that the landlord did tar the roof a few years ago, but the leak is back and there is mold.
18. The authorized representative said that there was no flooring on the bathroom floor and provided a picture (TT#05). He said that the landlord wouldn't repair the flooring, so he found a piece of cushion floor and his father's worker installed the flooring in August.
19. The authorized representative provided a letter (TT#03) from his father's social worker about the condition of the apartment. The Social Worker agrees with the damages stated. She said that the apartment is poorly lit, most of the floors aren't covered, the water main broke and there is very low water pressure, there is no hot water, there was a leak in the bedroom ceiling and there is mold, as well as there are no working heaters in the home and the tenant has to use space heaters. In the letter, she said that the property is not adequate to be rented in its current condition. The letter is dated for 06-September-2022.
20. The authorized representative said that the landlord is refusing to do any repairs and has stated that no repairs will be completed until after the tenant moves. He said that the landlord has told him that the house is too dangerous to enter. He doesn't know if the landlord means it is dangerous because of the state of disrepair or because of his father. He points out that his father is unwell and frail.
21. The authorized representative said that he gave the maintenance person a request for repairs on 07-August-22. The request is signed by the tenant and the authorized representative said that he gave it to the maintenance person on 07-August-22. The request for repairs (TT#08) lists the following for repair:
 - Hot and cold water
 - Heating units
 - Taps/bath and shower
 - Bathroom flooring
 - Mold damage

The request is for the repairs to be completed on or before 07-August-2022, the same day. The authorized representative said that when his father moved 01-October-2022, the repairs were still not completed.

22. The authorized representative said that the maintenance person brought the request back and threw it on the tenant's door step on 10-August-2022 and said that he wasn't

doing the repairs. The authorized representative said that he then put the same request for repairs in the landlord's mail box and posted about it on Facebook.

23. The authorized representative said that the only way for him to get a response from the landlord is to post on Facebook. The landlord responded to the post, the authorized representative read the response into record, as follows:

"I have asked for over a year for you to find a place for your father. This is the last time you put this on Facebook. I have asked you to fix your father's stuff. He has ripped out all the electrical heaters, he has removed all safety equipment, smoke detectors, fire extinguisher, he has broken a window, kicked the doors out, broken the kitchen taps and I've tried everything to help him... I'm not fixing anything until he moves out... Regarding the water issue, the [REDACTED] has had a main break on a neighbor's property and it's the town's responsibility to have it repaired."

24. The authorized representative said that the tenant is seeking his rent reimbursed from January – August, \$4,400.00, because of the living conditions in the apartment with no heat and starting April, no water.

Analysis

25. The testimony of the authorized representative is the only position represented in this hearing. He does provide supplemental evidence with the letter from the tenant's Social Worker, this letter is not sworn testimony and will be evaluated as such. Both of these individuals are representing that the apartment is in terrible condition and not an appropriate or safe environment for the tenant to be living in.

26. The authorized representative also read from his Facebook which has given us some insight into the perspective of the landlord, who didn't attend the hearing.

27. Section 10 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.

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8. Disconnection of Services - A landlord or tenant shall not, without the written consent of the other party to the rental agreement, disconnect or cause to be disconnected heat, water or electric power services being provided to the residential premises.

(2) Where a landlord and tenant enter into a written rental agreement, the statutory conditions set out in subsection (1) shall be reproduced in the rental agreement without variation or modification.

28. The landlord is responsible to maintain the property in a good state of repair, this board has only been given testimony to the current conditions but not to the how's and why's of those conditions. Further to this, a tenant has an obligation to inform the landlord and provide the landlord with appropriate notice of damages that require repair. All this being said, the responsibility still lies with the landlord to maintain the property in a good state of repair.
29. Section 04-002 states: "A tenant who requires a landlord to make repairs to the rental unit, may give the landlord a written request to make the necessary repairs within a reasonable time." The authorized representative was unable to recall exactly when he gave the landlord verbal notice of the repairs, he was only able to identify the months when the issues arose and he informed the landlord or maintenance person as issues occurred. He did give the maintenance person a "request for repairs" on August 7th and when the maintenance person refused the repairs, the authorized representative gave the request to the landlord on August 10th. The request is for the repairs to be completed on August 7th.
30. The authorized representative's written notification to the landlord is not adequate. The level of disrepair in the apartment cannot be reasonably repaired in one day. The Social Worker's assessment that the apartment is uninhabitable is correct, an elderly gentleman, who is described as frail was left in an apartment with no heat and no water for a number of months, and this is unacceptable. I find that the landlord is remiss in his obligations and that the matters should have been dealt with in a timely fashion. I acknowledge that the tenant didn't file notice with the landlord until August, however, I accept the testimony of the authorized representative that the landlord was aware of the issues and refused to do the repairs.
31. The tenant paid rent in full up to and including August 2022. Section 16, of the Residential Tenancies Act, 2018, states:

Rental increase

16. (3) Where a landlord increases the amount of rent payable by a tenant, the increase shall be effective on the first day of a rental period, and the landlord shall give the tenant written notice of the increase

(a) not less than 8 weeks before the effective date of the increase where the residential premises is rented from week to week; and

(b) not less than 6 months before the effective date of the increase where the residential premises is rented from month to month or for a fixed term.

(4) In addition to the requirements under section 34, a notice under subsection (3) shall

(a) be signed by the landlord;

(b) state the effective date of the increase;

(c) state the amount of the increase;

(d) state the amount of rent payable when the increase becomes effective; and

(e) be served in accordance with section 35.

(5) 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.

32. The tenant is seeking full reimbursement of rent from January to August totaling 8 months x \$550.00 = \$4,400.00. I find that the loss of both heat and water is a loss of a service as per Section 16.5. I will value the absence of the heaters as 25% of the rental cost from February – August, therefore 25% x \$550.00 = \$137.50 x 7 months = \$962.50. I will also value the absence of running water as 25% of the rental cost from April to August, therefore 25% x \$550.00 = \$137.50 x 5 months = \$687.50.
33. I find that the landlord will reimburse the tenant for \$1,650.00 in rent due to the discontinuation of heat and water services in the apartment.

Decision

34. The landlord shall reimburse the tenant \$1,650.00 for rent.

Issue 2: Compensation for inconvenience \$2,600.00

Tenant's Position

35. The authorized representative said the landlord is seeking \$2,600.00 as follows:
 - 6 months of travel, at \$7.00 each way, to wash \$1,250.00
 - Pain and suffering for physical and mental harm \$1,000.00
 - Loss of cookware \$350.00
36. The authorized representative said that the tenant had to go out to shower due to no water. Somedays he would go to the house across from him other times he would travel to a friend across town. The tenant doesn't drive and he travelled about every second day by cab to his friend's house to shower and to wash his clothing, he said that the cab cost \$7.00 each way. 6 months = 182 days, every second day 91 days x \$14.00 (2 cabs @ \$7.00) = \$1,274.00. He is seeking \$1,250.00.
37. The authorized representative said that the tenant's cookware was no longer useable, he had gone a long time with no water and no hot water. He said it all had to be replaced. He said that they estimated the value of what was lost; he didn't provide receipts.
38. The authorized representative said that the tenant is seeking \$1,000.00 for pain and suffering, the house wasn't fit for habitation and that the tenant had fallen and hurt himself numerous times due to the state of the house.

Analysis

39. The authorized representative did not provide receipts for the replacement of cookware. There is no accurate means to assess this value and it therefore will not be considered. In addition to this, this tribunal does not award damages for pain and suffering.
40. The authorized representative said that the tenant travelled from April until August, every second day to shower and wash his clothing. He said that the cab fare across town in [REDACTED] cost \$7.00 and return would therefore be \$14.00. Although there were no

receipts provided, this amount is within reason and I accept the stated cost of \$14.00 return. I accept that the tenant therefore paid for 5 months from April to August, 152 days, as he is travelling every second day: 76 days x \$14.00 = \$1,064.00.

41. I find that the tenant was inconvenienced and was required to travel, to shower and wash his belongs. The landlord shall reimburse the tenant \$1,064.00 for the cost of travelling to shower and wash his clothes.

Decision

42. The landlord shall compensate the tenant \$1,064.00 for the cost of the inconvenience.

Summary of Decision

43. The landlord shall reimburse the tenant \$3,254.00, for the loss of heat and water services to the apartment and the inconvenience that was caused, as follows:

- Rent \$1,650.00
- Inconvenience 1,604.00
- Total..... **\$3,254.00**

October 24, 2022

Date

 Jacqueline Williams, Adjudicator
Residential Tenancies Office