

Residential Tenancies Tribunal

Application 2023-0206-NL
2023-0226-NL

Decision 23-0206-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:02 a.m. on 17-May-2023.
2. The applicants, [REDACTED] and [REDACTED] hereinafter referred to as "landlord1 and landlord2" attended by teleconference.
3. The respondents and counter-applicants, [REDACTED] and [REDACTED] hereinafter referred to as "tenant1 and tenant2" attended by teleconference.

Preliminary Matters

4. Both parties confirmed receipt of notification of today's hearing, from our office, on 10-April-2023.
5. Landlord1 amended their claim to reduce the claim for damages from \$1,558.60 to \$1,308.60.

Issues before the Tribunal

6. The tenants are seeking:
 - Validity of termination
 - Security deposit refunded \$800.00
 - Hearing expenses \$20.00

The landlords are seeking:

- Rent \$1,600.00
- Compensation for damages \$1,308.60
- Security deposit applied to monies owed \$800.00
- Hearing expenses \$20.00

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
8. Also relevant and considered in this decision are the following sections of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, Section 14: Security deposit and Section 16: Rental increase, as well as, Residential Tenancies policies 07, 09 and 12.

Issue 1: Validity of termination notice

Tenants' Position

9. Tenant1 reviewed the details of the rental agreement (TT#01). He said that they had entered a written term agreement on 01-June-2022 – 31-May-2023. He explained that they had a real estate agent secure a residence for their family. He said that he moved [REDACTED] and took occupancy in August 2022. They pay \$1,600.00 on the first day of each month for rent. They paid a security deposit of \$800.00 on 01-June-2022, he submitted a copy of proof of this transaction (TT#02). He believes that the landlord is still in possession of the deposit.
10. Tenant1 said that after months of issues with the electrical in the house they gave the landlords notice of termination (TT#03) on 20-February-2023 by email, they would be terminating the rental agreement effective 28-February-2023. They provided a copy of the termination notice (TT#04), which is dated for 16-February-2023 and has a termination date of 28-February-2023.
11. Tenant1 submitted the “whats app” conversations they had with landlord1 (TT#05). He said in August 2022, just after they took occupancy, he first reported to landlord1 that the lights were flickering. The landlord had an electrician check this out. No repairs were made and the issues continued. In January the flickering of lights, the loss of power to the t.v., cable, internet, and appliances worsened. He once again informed landlord1. At that time, the electrician said that the house was wired for 100 amps and this wasn’t sufficient, it could be upgraded to at least 125 amps or 200 amps.
12. Tenant1 said that landlord1 told him and his wife he wouldn’t be upgrading the house, it would cost \$7,000.00 to do an upgrade and that as the tenants only had 3 months left on their lease he wouldn’t be incurring this cost. The landlord at that time told tenant1 he wasn’t renewing their lease.
13. The tenants submitted 9 videos (TT#06) showing the lights flickering, rooms losing power with all the lights and t.v. going dark. The microwave being turned on, the sound of the microwave running and midway going silent while the clock on the microwave continuing to countdown, in the video tenant1 declares it is no longer cooking. Tenant1 said that the stove would lose power part way through cooking and they had a malfunction with the fridge and the food spoiled. Tenant2 has had to go to the university to do online exams because they can’t rely on the power in the house. She also has had to go next door to heat the children’s food due to power issues. Tenant1 said that they

bought surge protectors for their electronics, but are concerned that the issue will damage their property. Since the winter, the issues have worsened.

14. Tenant1 states that he gave a notice (TT#04) stating that the house is uninhabitable, he said in the email (TT#03) that the landlord is not complying with part 9 of the rental agreement (TT#01) which states that "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. Etc." He said that the landlord failed to repair the issue with the power surges/dips and that the house is not habitable as is.

Landlords' Position

15. Landlord1 confirmed the details of the tenants' rental agreement as stated by tenant1.
16. Landlord1 disputes that the house is uninhabitable, he believes that they responded to the issues reported by the tenant in a timely manner. He said that he contacted an electrician when the tenants first reported an issue with the lights flickering in August and then he contacted a second electrician in January when they said it had gotten worse. The house is very old and was wired appropriately for the time it was built. He was told by the electricians that this is not a safety issue or a fire hazard and that although the house could be upgraded to 125 or 200; the decision is up to him.
17. He confirms that the tenants were told by him that he wasn't paying \$7,000.00 for an upgrade and that he would accept a months' notice if they wanted to end their lease early. He does not accept that the tenants only gave just over a weeks' notice.

Analysis

18. The tenants are seeking the validity of the termination notice be addressed. The question at hand is, can the rental premises be considered uninhabitable? Residential Tenancies policy 07-006 is as follows:

Residential properties are required to comply with the Occupancy and Maintenance Regulations under the Urban and Rural Planning Act. The enforcement authority for these regulation is most often identified as the municipal government. Where a landlord's compliance with laws regarding housing, health or safety conditions are questionable, the tenant contact the responsible authority (ie. municipal building inspector or Dept. of Health). **If the unit is declared uninhabitable by a regulatory authority**, the tenant may give notice to the landlord that the rental agreement is terminated and the tenant is vacating the rental premises immediately.

19. The tenants have not shown that a regulatory authority was contacted in relation to the issues with the electricity in the rental. It is not under the scope of this tribunal to deem the property uninhabitable due to a violation of the Occupancy and Maintenance Regulations. Despite this, it is important to note that the tenants have shown that they informed the landlord of the ongoing issue with the electricity. The landlord did respond to the concerns of the tenants by contacting an electrician in August and again in January, however, as shown in paragraph 17 they determined that they would not be correcting this issue for financial reasons.

20. The tenant has cited part 9, from his rental agreement (TT#01) the landlord's obligation, this is directly from Section 10 of the *Residential Tenancies Act, 2018*, as follows:

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.***

21. I agree with the tenants that the landlord did not sufficiently respond or correct the issues with the electricity. It is understandable that this would impact the enjoyment of the premises by the tenants, however for a property to be considered uninhabitable it would be unlivable and condemned, I do not accept that this property is uninhabitable. I therefore find that the termination notice is not valid.

Decision

22. The termination notice is not valid.

Issue 2: Rent \$1,600.00

Landlords' Position

23. The landlord had stated that due to the ongoing issues with the electrical he had offered the tenants the opportunity to give one month's notice and end their contract. As shown in the rental agreement (TT#01), they are in a term agreement and the landlord states he is entitled to notice of termination. The tenants moved out the end of February and he is seeking rent for the month of March 2023.

Analysis

24. The landlord is correct in stating that if a tenant is to end a term contract he must show cause and give notice in accordance with the cause cited. It is also true that in accordance with the rental agreement signed by both parties the landlord also bears responsibility to the tenant.

25. The landlord has explained that the house is very old and has been wired appropriately for that time. However, included in the rental agreement (TT#01) Part 10 the landlord provides the following services in the Rent:

- Stove
- Refrigerator

- Dishwasher
- Microwave
- Washer
- Dryer

Both parties have agreed, through their testimony and the tenants' video evidence, that the tenants are not able to enjoy these services without restriction, due to the ongoing issue with electrical surges/dips. The landlord, by not correcting this issue, is in violation of his rental agreement, as the tenants are without these services, which are included in their rental and the landlord has not met his obligation to maintain the premises, as he is aware that the system can't handle the load of appliances offered under the agreement.

26. Although it was not sought the tenants could have requested a reduction in their rent due to lack of services. As per section 16 of the Residential Tenancies Act, 2018, as follows:

Rental increase

16. (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.

(6) The director may, upon hearing an application under section 42, value a service, privilege, accommodation or benefit discontinued or unavailable for a time under subsection (5).

(7) Notwithstanding subsection (1), where the landlord and tenant agree in writing, a landlord may increase the amount of rent payable by a tenant for the residential premises without notice under subsection (3) where the increase is due to the provision of a service, facility, privilege or benefit, including a parking space, that was not previously provided under the rental agreement.

27. I acknowledge that the tenants did not give appropriate notice, however I agree that their rental was significantly impacted by the unreliable electricity in the home. I also agree that the landlord is responsible to maintain the home in accordance with Section 10 of the *Residential Tenancies Act, 2018*, as follows:

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.***

...

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.

It should be noted in Section 10(8), that a landlord shall not cause to be disconnected heat, water or electric. The landlord is not causing the electric and subsequently the heat to be disconnected, however he is, by his inaction, permitting an ongoing issue of inconsistent and unreliable electric service to the residence. I agree with the tenants that the landlord is not meeting his obligations under their rental contract.

28. I therefore determine that the landlord did not mitigate his loss of rent, he did not repair an ongoing issue, impacting the tenants from the start of their tenancy, and therefore he bears some responsibility for the termination of the contract. I find his claim for loss of rent fails.

Decision

29. The landlords' claim for loss of rent fails.

Issue 3: Damages \$1,308.60

Landlords' Position

30. The landlord submitted the following damages ledger (LL#01)

Damages	compensation
2 baseboard heaters	\$137.98
Paint for burnt walls	\$44.84
Fridge with delivery	\$1,056.79
Missing light fixture	\$68.99
Total	\$1,308.60

31. The landlords submitted a picture (LL#02) showing two baseboard heaters and the walls above them showing burn marks. Landlord1 said that the tenants had the heat turned up to 29 degrees and that it was too hot and burnt the heaters and the walls behind them. He submitted receipts for the heaters \$103.48 (LL#03) and the primer paint \$43.66 (LL#04). He said that the walls were last painted and the heaters were installed 3 years ago. He stated that the two electricians, while checking on the house didn't address this issue.
32. The landlord referred to the tenants' submission of the "whats app" conversations (TT#05). He said that the tenants returned from vacation and informed him that the fridge wasn't cooling. He questioned if the flipped the breaker and tenant1 said that the light was on but the fridge wasn't cold. The landlord, at the time determined that the fridge was older and he would replace it. After this occurred the tenant reported that there was a smell coming from the fridge, potentially from the rotted food and that they were struggling to get rid of the smell. After the tenants moved out, the landlord replaced the fridge due to the smell. He provided the receipt \$1,046.30 (LL#05).

33. The landlord also provided a picture (LL#06) of a missing light cover in the laundry room. He said he has found a similar cover and is seeking \$68.98 to replace it.

Tenants' Position

34. The tenants confirm that at one time they did leave the heat off for vacation and didn't realize that they shouldn't do that. Tenant1 said when they arrived back it was very cold in the house so they turned the heat up to warm the home quicker. He also confirms that this was not when the walls were burnt. He said from the first time that they turned on the heaters the walls showed signs of burning and this damage occurred over the duration of their tenancy. He believes the issue was with the heaters. Tenant2 stated that they never used the heaters inappropriately.

35. Tenant1 said that when they returned from vacation, the fridge was no longer working. He opened the door and the light was on, but the fridge wasn't cooling. The food had gone bad. He said that he flicked the breaker and the fridge did start cooling. He wondered, as they had left the heat off, if the fridge stopped cooling because the house was so cold. He said that they tried everything to get rid of the smell caused by the rotting food, but were having a hard time. He said that he thought they had managed the smell by the time they moved out. Tenant2 said that no one knows what happened that the fridge stopped working, she doesn't accept that they are to blame. She said that there were so many issues with the electricity that more than likely the fridge stopped working because of the electricity or due to the age of the fridge.

36. Tenant2 said that when they first moved in the kids were jumping on their beds. She said that the ceilings were low and one of her children accidentally hit and broke the light cover in their bedroom. She reported it to the landlord and he told her not to worry about it. She said that the light cover in the laundry room was the same, so they switched out that cover. She does not dispute the damage and agrees to pay the landlord for same.

Analysis

37. In any damage claim, the 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)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

38. In relation to the damage to the heaters and the walls, the landlord has not shown that the tenants are responsible for this damage. It is unfortunate that while the electricians were assessing the house that these heaters were not evaluated. Thin wall heaters that blow the air upwards must be installed with a spacer behind them, so that they do not damage the walls. In my experience, it appears that these heaters are flush with the walls, and not correctly installed, thereby creating the damage shown. I find the tenants are not responsible for this damage.

39. Additionally, the landlord failed to show that the tenants are responsible for the loss of the fridge. I agree with tenant2 that due to the age of the fridge and the unreliable electricity it cannot be determined the reason for the fridge malfunction. I find the tenants are not responsible for this damage.
40. Finally, there is no dispute concerning the damages to the light cover. The tenants are responsible for this damage, they are agreeable to pay the compensation sought and will compensate the landlord \$68.98 for the replacement.

Decision

41. The landlords' claim for compensation for damages succeeds in the amount of \$68.98.

Issue 4: Security deposit applied/refunded \$800.00

Landlords' position

42. The landlords are seeking to retain the security deposit against monies owed.

Tenants' position

43. The tenants are seeking refund of their security deposit.

Analysis

44. As per Section 14 of the *Residential Tenancies Act, 2018*:

Security deposit

14. ...

(8) A security deposit is not an asset of the landlord but is held by the landlord in trust and may be used, retained or disbursed only as provided in this section.

(9) Not later than 10 days after the tenant vacates the residential premises, the landlord shall return the security deposit to the tenant unless the landlord has a claim for all or part of the security deposit.

(10) Where a landlord believes he or she has a claim for all or part of the security deposit,

(a) the landlord and tenant may enter into a written agreement on the disposition of the security deposit; or

(b) the landlord or the tenant may apply to the director under section 42 to determine the disposition of the security deposit.

45. Section 14 states that the landlords may file a claim and as shown in paragraph 41 for compensation owed; their claim has been awarded totaling \$68.98.
46. The landlords shall retain \$68.98 of the security deposit, the remainder of the deposit is the property of the tenants and the landlords shall therefore, return the security deposit balance totaling \$731.02 to the tenants.

Decision

47. The landlords shall retain \$68.98 of the security deposit. The landlord shall return the balance of the security deposit totaling \$731.02 to the tenant.

Issue 5: Hearing expenses reimbursed \$20.00

48. Both parties submitted their receipts for \$20.00 for the cost of the hearing (TT#07 & LL#07) and pursuant to policy 12, a party may claim the filing fee as a hearing expense where they have received an award that is in an amount that is greater than the security deposit therefore this expense will not be awarded.

Summary of Decision

49. The termination notice served by the tenants, with a termination date of 28-Febrary-2023 is not valid.

The landlords are awarded \$68.98 in damages and shall refund the remaining \$731.02 of the security deposit to the tenants.

May 25, 2023

Date

Jacqueline Williams, Adjudicator
Residential Tenancies Office