

Residential Tenancies Tribunal

Application 2023-0211-NL

Decision 23-0211-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:06 a.m. on 05-April-2023.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant 1 and tenant 2” respectively, attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference.

Preliminary Matters

4. The landlord presented on the phone line with a witness. The rules surrounding having a witness testify were explained to all parties and the witness was asked to disconnect. The application shows that the residential tenancies office never received notification of a witness and the tenants were not aware of any witnesses either. The tenants were asked if they wanted to waive the notice to have a witness testify and they declined. No witness testimony was heard.
5. The tenants submitted an affidavit with their application stating that they had served the landlord with notice of the hearing, by pre-paid registered mail ([REDACTED]) on 15- March 2023 (TT#1). The registered mail tracking indicates that the landlord did retrieve this mail on 31-March-2023. In accordance with the *Residential Tenancies Act*, 2018 registered mail is considered served 5 days after it has been sent. The landlord is considered properly served.
6. The tenants amended the application to remove the validity of the termination notice as they moved out of the unit on 31-March-2023. The tenants are seeking hearing expenses reimbursed.
7. There is a written fixed rental agreement submitted by the tenants that began on 1-April-2022 (TT#2). The tenant’s lived on the top floor of a house with other tenants living in the basement apartment. The tenants paid \$1200.00 per month for rent due on the 1st of each month. The landlord has in his possession a security deposit of \$900.00 that was collected in March 2022.

Issues before the Tribunal

8. The tenants are seeking:
 - a. An order for the refund of rent in the amount of \$1200.00
 - b. An order for compensation for inconvenience in the amount of \$230.52
 - c. Hearing fees \$33.44

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*.

Issue 1: Refund of Rent \$1200.00

Relevant Submissions

10. The tenant's submitted pictures showing water damage to their unit in 3 different rooms; the spare bedroom, the master bedroom and the bathroom (TT#3).
11. The landlord issued a landlord's notice to terminate early with cause under section 21; notice where premises uninhabitable (LL#4).

The Tenant's Position

12. The tenants feel that they should be reimbursed \$1200.00 for the rent paid for the period of 01-March-2023 to 31-March-2023 due to a problem with the HVAC system that caused water and debris to leak from the vents in the ceiling onto their bed and flooring. They stated that they experienced personal stress due to the entire situation and feel that they should not have to pay rent for the month of March.
13. The tenants state that they continually had issues with the unit such as dampness and buildup of mold and they found that it was difficult to get these issues addressed by the landlord.
14. The tenants state that on 03-March-2023 they called the landlord when they experienced water leaking from the vent in the spare room and on 07-March-2023, tenant 2 had an altercation with the contractors who entered the premises without her consent or the consent of tenant 1. The contractor's left the unit and refused to return, as a result the work was not completed up to the point of the tenant's departure on 31-March-2023.

The Landlord's Position

15. The landlord testified that he was contacted on 03-March-2023 by the tenants making him aware of the situation. He arrived at the unit within 30 minutes to assess the situation. He stated that he made every effort to get a contractor into the unit as soon as possible as he felt his unit was at risk. He found a contractor in [REDACTED] who was certified to do the work and he could get started on 06-March-2023. The landlord stated that he gave both verbal notice and written (text) to the tenant's that his contractor would be there on 06-March-2023. On that day, at approximately 10:00am he knocked on the door and nobody answered. He decided to enter the premises and start the work. Tenant 2 arrived home and was rather upset that there were strange men in her unit doing work without her or tenant 1 present. The workers were asked to leave the unit by

tenant 2 who was screaming at the workers to get out of the unit. The landlord stated that the contractor emphasized the importance of getting the work done as quickly as possible to avoid further damage to the unit.

16. The landlord issued a landlord's notice to terminate early with cause under section 21; notice where premises uninhabitable dated 7-March-2013 (error in the year) to be vacated on 8-March-2013 (TT#4). The landlord did not feel that his unit was uninhabitable but he stated that if he cannot get the contractor in there to complete the work, he feared that it may become uninhabitable.

Analysis

17. The pictures submitted by the tenant's (LL#3) show water leaking from vents in the ceiling and water and debris on the bed and floors. The tenants were asked if they felt that their unit was uninhabitable due to the water damage and they both responded no. I asked the landlord if he felt that the unit was uninhabitable and he responded no. I asked the landlord why he gave the notice to vacate under section 21 – uninhabitable, and he responded that he felt that if he could not get his contractor in to do the work then he feared that things would escalate to the point where the unit would become uninhabitable. He stated that his contractor would not re-enter the premises due to the previous altercation with tenant 2 on 6-March-2023.
18. The tenants remained in the unit until 31-March-2023 without the work getting completed and with the contractor's tools and ladder since in the unit. The landlord was not in a position to complete the necessary work on his unit.
19. The tenants felt that the unit was in a condition that allowed them to live there for the month of March and they refused to leave when given a termination notice. When a tenant is granted the right to use or occupy a residential premises, it is on the condition that rent is paid. The tenants stayed in the unit until 31-March-2023 and rent is expected to be paid for that period.

Decision

20. The tenant's claim for refund of rent does not succeed.

Issue 2: Compensation for Inconvenience

Relevant Submissions

21. The tenants submitted a list of the inconveniences for which they felt they should be reimbursed. They are seeking a total amount of \$230.52 (TT#5). There are 3 items on the list as follows:

| | |
|------------------------------|----------|
| 3 mats (water damaged) | \$60.00 |
| 4 hours lost wages @ \$17.63 | \$70.52 |
| cleaning up of water, debris | \$100.00 |

The Tenant's Position

22. The tenants showed pictures of the bed and 3 mats which contained water and debris from the vents. I asked if the tenants had to replace the mats and the comforter and they said no. The mats and comforter needed to be washed and dried but otherwise had no damage to them. Tenant 1 stated that he had to leave work to come home when tenant 2 called him on 06-March-2023 after she found contractors in the unit. He stated that he lost 4 hours work that day at an hourly wage of \$17.63. The tenant's stated that they had to clean up the water and debris which was all over the comforter and the mats and the floor. They had to use their own materials to clean it up. They stated that the cleanup took them roughly 3 hours of personal labor.

The Landlord's Position

23. The landlord states that he was told to leave the house roughly 11:00am on 06-March-2023. He and the contractors were ordered to get out of the house. He was unable to assist with any clean up after that time. The contractors could not get back in to collect their tools or ladder until the tenant's left on 31-March-2023.

Analysis

24. I accept that the tenants were inconvenienced due to the leak and having the contractors in their unit but when a landlord feels that his unit is at risk, he/she has the right to enter without notice and the tenants have an obligation not to interfere with the rights of a landlord. The tenants are asking for \$60.00 to cover the 3 mats that got wet due to the leak in the vents. The wet mats probably did inconvenience the tenants because they had to be washed and dried, however there was no loss incurred thus no financial loss to the tenants.

25. I do not doubt that tenant 1 had to leave work on 06-March-2023 to assist tenant 2 during the time when she was faced with strangers in her unit and feeling violated, however leaving work was a choice that tenant 1 made and there is no compensation available for loss of wages.

26. There evidently was water on the bed and floors from the vents and I accept that the tenants had to clean it up themselves. The tenants stated that it took them roughly 3 hours to complete the cleanup and they are seeking \$100.00 for their time. Policy surrounding self-labor allows \$21.70 per hour. I accept that it could have taken roughly 3 hours to clean up the water and debris to get the unit back to normal, however the leak was not the fault of the landlord and tenants are responsible to have tenant insurance which the tenants confirmed they did have. The landlord is not liable for the leak thus he cannot be responsible for the cost of self labour to clean it up if he wasn't provided an opportunity to complete the cleanup

Decision

27. The tenant's claim for inconvenience does not succeed.

Issue 3: Hearing Expenses \$33.44

28. The tenants paid a fee of \$20.00 to file the application and they submitted a receipt showing that they were charged \$13.44 to serve the landlord with the application by registered mail. As the tenants claim is not successful, the landlord is not required to reimburse the tenants for hearing fees.

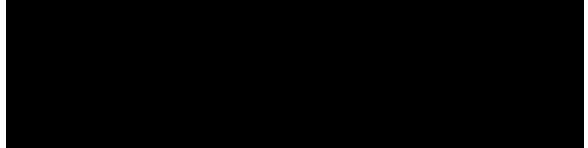
Summary of Decision

29. The tenants claim for refund of rent does not succeed.

30. The tenants claim for compensation for inconvenience does not succeed

31. The tenants claim for refund of hearing expenses does not succeed

April 11, 2023
Date


Pamela Pennell, Adjudicator
Residential Tenancies Office