

Residential Tenancies Tribunal

Application 2023-0687-NL

Decision 23-0687-00

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 9:09 a.m. on 28-August-2023.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondents, [REDACTED] (respondent 1) and [REDACTED] (respondent 2), hereinafter referred to as “the landlords” attended by teleconference.

Preliminary Matters

4. The tenant submitted 2 affidavits with her application stating that she had served respondent 1 and respondent 2 the notice of hearing electronically by text to; [REDACTED] [REDACTED] and [REDACTED] respectively on 16-August-2023 (TT#1). The landlords confirmed receiving documents on that date. In accordance with the *Residential Tenancies Act, 2018* this is good service
5. There was a written term rental agreement that commenced on 4-September 2015 which is now a month to month agreement. Rent is \$550.00 per month due on the first of the month. A security deposit of \$275.00 was paid on 4-September-2015.

Issues before the Tribunal

6. The tenant is seeking:
 - a. Compensation paid for damages \$850.00
 - b. Rent refunded \$1650.00
 - c. Repairs made – rent paid in trust
 - d. 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 is the following section of the *Residential Tenancies Act, 2018*: Section 10; Statutory Conditions. Also relevant and considered in this decision is the following section of the *Residential Tenancies Policy Manual, Section 9: Claims for Damage to Rental Premises*.

Issue # 1: Compensation paid for Damages \$850.00

Relevant Submission

9. The tenant testified that some of her furniture was destroyed with mice feces dating back as far as 2018. The tenant submitted a list of damages to support her claim (TT#3) as follows:

Sofa Bed	\$300.00
Blankets and bedding	100.00
Footwear (15 pairs).....	300.00
Clothes	100.00
PPE (gloves & masks)	<u>50.00</u>
Total	<u>\$850.00</u>

Tenant's Position

10. The tenant testified that she has a rodent problem dating back as far as 2018 which resulted with her having to throw out her sofa bed, replace blankets, bedding, footwear and clothing. She also testified that she had to purchase gloves and masks to deal with the feces

11. The tenant stated that she believes that the mice are getting in the house from the main unit upstairs. The tenant would like to be reimbursed for the loss of items as stated above.

Landlord's Position

12. The landlord's testified that the first time they heard anything about a rodent problem was 13-January-2023, followed up with a letter from the [REDACTED] on 8-March-2023 after a complaint was issued by the tenant. The landlord's stated that the property is located close to farm land and rodents are naturally in the area. Respondent 1 stated that rodents are more likely to seek areas where there is garbage and clutter which she stated is a problem at the unit. The landlord's testified that they took every precaution necessary to deal with the rodent problem ranging from providing rodent traps, covering the perimeter with peet steel wool to discussing with the tenant all the precautionary means that she can take to mitigate the problem.

Analysis

13. In accordance with Residential Tenancies policy 9-3, the applicants are required to show:

That the damage exists;

That the respondents are responsible for the damage, through a willful or negligent act;

The value to repair or replace the damaged item(s)

14. The tenant did not provide any evidence to support her claim. She did not dispute that the first time she notified her landlords of the rodent problem was 13-January-2023. The tenant did not show that the damages existed. The tenant did not show that the landlord was responsible for the damage through a willful or negligent act and the tenant did not provide any receipts to show the value of her contents. The tenant agreed with the landlords that they immediately reacted when they were notified of a rodent problem and took all precautionary measures to deal with the problem.
15. I find that the tenant did not support her claim for damages, and as such the landlords are not responsible to replace the items listed in paragraph 9.

Decision

16. I find the tenant's claim for damages does not succeed.

Issue # 2: Rent Refunded \$1650.00

Relevant Submission

17. The tenant testified that she had to move out of the unit due to a water leak from the upstairs unit and is seeking a refund of rent in the amount of \$1650.00 for the months of May, June and July 2023. The tenant submitted a breakdown of the period she is seeking a refund of rent for with an explanation to support her claim (TT#3).

Tenant's Position

18. The tenant testified that there was a water leak which most likely happened on the 5th or 6th of April, 2023. Water started to seep into her unit on 7-April-2023 from the main house area which caused water damage to her unit and as a result she had to move out of the unit for 3 months. The tenant testified that the landlords were away on vacation and she did not have assistance until 8-April-2023 when the landlord's brother showed up with a shop vacuum. The tenant testified that she moved in with a neighbor on 5-May-2023 due to a smell of mold around the baseboards.

19. The tenant paid rent in full for the months that she was not living in the unit and she stated that she feels she is entitled to a refund of rent for those months.

Landlord's Position

20. The landlord's stated that they were out of the Country on vacation but took every measure to ensure that the water leak was dealt with and the damage to the tenant's unit was cleaned up in a timely manner.

21. The landlord's testified that they were dealing with a non-compliant tenant upstairs and they were unable to get anyone into the unit due to security issues and advice from the RCMP to stay away. They stated that they were unsure where the water was coming from until 7-April-2023 when it was confirmed that the hot water tank busted. The landlord's stated that they initially thought it could be a blocked storm drain but once they knew what they were dealing with, they actioned the situation immediately.

22. The landlord's testified that they returned home on 15-April-2023 and all the necessary plumbing work had been completed since 12-April. Respondent 1 stated that when she

checked in on the unit, there was cardboard in the hallway where the water had been and a dehumidifier in use. Respondent 1 testified that on 13-April, there was a bit of an odor and on 15-April everything was ripped up and baking soda was put around the damp areas and all the walls were washed.

23. Respondent 1 testified that in addition to washing the walls, she decided to paint the apartment as well. The landlord's stated that on 22-April everything was dried out and a contractor had put new baseboards in the unit.
24. Respondent 1 testified that when she contacted the tenant to let her know that everything is freshened up for her, the tenant advised her that she is attending her nephews graduation in [REDACTED] and that she will be taking some time to visit with her sister.

Analysis

25. Section 10(1) 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.*
26. I asked the tenant if she agreed with everything that the landlord's stated and if their testimonies were true and her response was yes she did agree with everything they said. I also asked the tenant if she had tenant insurance and she responded that she did have it but did not want to make an insurance claim as it would increase her policy premiums.
27. Based on the testimonies of the landlord's, I find that they did everything they could to deal with the water leak and to repair the unit in a timely manner. I find that the tenant was out of the unit for almost 3 months for reasons not related to the damages. The tenant moved out in May when the unit was all dried out at the end of April. I asked the tenant why she felt she could not stay there and her response was that her furniture wasn't put back to where it should be. I find that the landlords were not negligent in anyway and went above and beyond to carry out extra work within the unit.
28. I find that the landlords were not negligent in causing the damage and they took all measures necessary to rectify the problem.
29. I find that the tenant chose to be away from the unit for reasons other than damages to the unit and as such is responsible for the payment of her monthly rent.

Decision

30. The tenant's claim for rental arrears in the amount of \$1650.00 does not succeed.

Issue # 3: Repairs made - Rent Paid in Trust

Tenant's Position

31. The tenant stated that once all the repairs were made and she returned to the unit, she found that there was a floor transition strip missing and as a result she is seeking rent to be paid in trust until the strip is replaced.

Landlord's Position

32. The landlord did not dispute that the floor transition strip was missing.

Analysis

33. I asked the tenant why she would request to have rent paid in trust because of a single floor transition strip and her response was that she was upset over the entire rodent issue and she really didn't have any other reason.

34. I find that the tenant acted out of rage and really don't have any basis to make a request to have rent paid in trust.

Decision

35. The tenant's claim for repairs to be made and rent paid in trust does not succeed.

Issue # 4: Hearing Expenses \$20.00

36. The tenant paid a fee of \$20.00 to file the application (TT#5). As the tenant's claim has not been successful, the landlord's are not responsible for any hearing expenses.

Decision

37. The tenant's claim for hearing expenses does not succeed.

Summary of Decision

38. The tenant's claim for damages does not succeed.

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

40. The tenant's request to have rent paid in trust until repairs are made does not succeed.

41. The tenant's claim for hearing expenses does not succeed.

September 7, 2023

Date

Pamela Pennell
Residential Tenancies Office