

Residential Tenancies Tribunal

Application 2023-0998-NL

Decision 23-0998-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:03 a.m. on 27-November-2023.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant" attended by teleconference.
3. The respondent, [REDACTED], represented by [REDACTED], hereinafter referred to as "the landlord" attended by teleconference.

Preliminary Matters

4. The tenant submitted an affidavit stating that he served the landlord with notification of today's hearing on 25-October-2023. The landlord confirms receipt of notification as stated by the tenant.

Issues before the Tribunal

5. The tenant is seeking:
 - Repairs completed
 - Rent reduced until repairs completed \$650.00
 - Rent paid in trust until repairs completed
 - Compensation for inconvenience \$200.00
 - Hearing expenses \$20.00

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, Section 16: Rent increase, and

Section 47: Order of director, as well as Policy 04-002: Tenant's request for repairs and Policy 12-001: Fees, costs and interest.

Issue 1: Repairs completed

Tenant's Position

8. The tenant stated that he entered a term rental agreement with the landlord 01-October-2023 until 30-September-2024. His rental period is from the first day of the month until the last with rent of \$1,850.00 being due on the first day of each month. He said that before taking occupancy he paid a security deposit of \$1,375.00. He said that he started moving in a few days before the start of his tenancy.
9. The tenant disputes that he agreed to pay a prorated amount for the days he moved in before the start of the tenancy.
10. The tenant explained that he first viewed the property in August with another property management staff member. He said that at that time the leasing agent made promises of work being completed prior to him moving into the property. He was assured that not only would the work be done, but additionally that the property management company would be a partner in ensuring the tenant's rights were protected.
11. The tenant submitted three requests for repairs that he had given to the landlord. The first (TT#03) is signed for 14-October-2023 with a request for the work to be completed on 14-October-2023. He listed the same items on a second request for repairs (TT#04) dated 16-October-2023 with a request for the work to be completed on 19-October-2023. His third request is for the front door to be sealed; it is signed for 22-October-2023 with the work to be completed on 27-October-2023. The combined requests for repairs are as follows:
 - i. Replace Kitchen Oven
 - ii. Replace door lock (entry 2) no key
 - iii. Install new cupboards
 - iv. Install flooring for stairs in entry
 - v. Install doors for bathroom closet
 - vi. Install doors for laundry closet
 - vii. Install board for above hanger rod front entry
 - viii. Replace window panes broken glass
 - ix. Replace/repair window seals
 - x. Replace control arms on windows
 - xi. Repair broken seal on front door
12. The tenant explained that the stove is not working he provided pictures (TT#08 and TT#09). He explained that it can be seen in the picture that the stove has a rust build up around the bottom oven element. He believes that this is flammable and can heat up and catch the stove on fire. When he has heated the stove, he said that the oven smokes. Because of this he does not use the stove. He said that the safety pan was against the kitchen door when he moved in. He goes on to say that the front of the stove

has a door handle (shown in picture TT#08) on the oven not an oven handle but instead a household closet/cupboard door handle.

13. The tenant said that he has not been provided a key to his back door. He requested this from the landlord and was refused. He is seeking a key for that door.
14. The tenant stated that when he did a walkthrough, he was told that there would be new cupboards installed before he took occupancy and he shows that this was listed in the ad for the rental (TT#18).
15. The tenant said that when he moved in there was no flooring on the stairs. He believed that the landlord was attempting to have this completed. He said that the staples were exposed, and it was bare wood on the steps. He confirms that this work was completed on 30-October-2023 and that while the floor was being installed, he discovered that the work was just scheduled a few days before. He said that he is still waiting for the section by the railing between the carpet and laminate to be completed.
16. The tenant furthered that during the walkthrough he was promised a closet door would be installed in the bathroom closet (TT#10). The tenant's picture shows that the tracks for the door are there but not the door.
17. The tenant said he was told during the first viewing that there would be a door installed on the laundry area (TT#12).
18. The tenant said he was also told during the walkthrough that there would be a shelf installed above the clothing rod in the front porch (TT#11).
19. The tenant provided pictures to show that one of the windows is cracked and another completely broken (TT#05 & TT#06). He said that the glass that is completely broken is in his daughter's room and a piece of glass fell out onto her floor. In addition to this, the seals are gone from other windows (TT#07). He said that Tulk's recommended replacing the glass in all 3 bedrooms and the living room. He explained that the children's rooms are cold and his daughter has to sleep in his room. His son has had to wear his coat in his room.
20. The tenant stated that the control arms are missing or not working on the windows. He determines that this is a fire hazard and in the event of an emergency they would not be able to open the windows.
21. The tenant submitted a video (TT#16) showing that the front door is not sealed and that air flows through. He is requested that the door be sealed.
22. The tenant said that he has repeatedly requested repairs and that the landlord has not taken care of the work that needs to be done. He explains that he viewed this house in August, moved in September and now it is the end of November, and this work is still not done.

Landlord's Position

23. The landlord confirms the details of the rental agreement as stated. He disputes that rent is up to date, he said that the tenant sent a text (LL#01) on 18-September-2023 and he promised payment of a prorated amount of rent from 27-September- 01-October-2023. The landlord said that he made the monthly rent payment of \$1,850.00 on 27-September-2023, but he never paid the prorated amount. This issue was raised for the first time in the hearing.
24. The landlord disputes that the stove doesn't work. He said that as shown in the picture the safety pan was not in place above the element. He explains that he had an electrician look at the stove and he replaced the pan. The electrician said that the stove works. He said that the website for General Electric states that this red dust is not harmful and provided that statement from the website (LL#01).
25. The landlord said that they do not have a key for the back door. He said that this door is only for exiting not for entry and can be unlocked from inside to exit.
26. The landlord disputes that there was a promise of new cupboards. He explains that there have been a number of renovations and the homeowner has already spent a large amount of money on the house.
27. The landlord confirms that there is still a section of flooring to be completed between the carpet and the laminate.
28. The landlord said that because the door in the bathroom closet would open out into a small space they decided not to replace the door to the closet.
29. The landlord explained that there has never been a door to the laundry area; the washer and dryer stick out past the door frame.
30. The landlord said that there was never a shelf above the clothing rod.
31. The landlord acknowledges that the issues with the windows exist. He said that tomorrow the two broken windows are being replaced, however the homeowner is unable to afford the replacement of the others that the seals are gone.
32. The landlord said that he will consult with the homeowner about the replacement of the control arms for the windows.
33. The landlord points out that the homeowner has replaced the carpet, fixed the dishwasher and HRV he has also had an electrician in to look at the heaters and electrical outlet and has determined that they are working but the outlets have been overloaded by the tenant's appliances.

Analysis

34. The landlord's evidence (LL#01) clearly shows that the tenant made an offer of rent for the 3 days in September, however there is no response from the landlord that he is expecting or demanding payment for that time period. It is apparent in the text thread that the landlord is accommodating the tenant's request for early possession and that there is no demand of payment from the landlord for that period. Additionally in an email from the landlord to the tenant (TT#17) the landlord states that they allowed him to move in early without payment. I therefore accept that the tenant is reasonable in his assertion that his rent has been made in full.
35. Section 04-002 of the Residential Tenancies policy 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.... Before submitting an application for Dispute Resolution seeking an order for the landlord to make repairs, the tenant must:
 - Serve a request to make repairs on the landlord and allow a reasonable time for the landlord to undertake the repairs; and
 - Ensure rent is not in arrears."
36. The tenant has given the landlord three written requests for the repairs, the first request did not provide any time to complete the work. The second and third request both provided time for the repairs he is seeking to be completed. Additionally, I have determined that the tenant's rent is paid in full (paragraph 34).
37. The landlord has explained that the homeowner has already incurred costs in having the rental repaired and renovated. The tenant however has raised valid issues that have been ongoing with the house. I accept his understanding of the walkthrough, the promises made about the ongoing renovations and the role of the property management company in protecting his rights under the agreement. The submitted ad for the house (TT#18) states that the home is cozy, renovated with new cupboards and flooring. The tenant's evidence supports that the house he has rented does not meet the expectations of the house he was promised.
38. As per Section 10 of the *Residential Tenancies Act, 2018*, the landlord is responsible to maintain the house in a good state of repair, 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. 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.***

39. I accept the testimony of the tenant that the stove smokes. It is evident that the debris under the element is not a rusty film on the element but actual debris. Debris around an

element will burn and smoke, as stated by the tenant. The tenant said that he found the safety pan by the kitchen door, potentially the last tenant removed the pan and was using the stove without a safety pan in place. The debris found under the element is probably from this use.

40. Additionally, another concern raised by the tenant is the handle installed on the stove. This handle is not a factory model and the use of a general doorknob on a hot stove is a safety concern. These issues are to be resolved. The rental agreement lists the provision of a stove and that stove must be in a good state of repair as stated in Section 10 of the *Act*. I therefore determine that the landlord will either have the stove repaired by an appliance technician or replaced.
41. The tenant is requesting keys for the locks on the back door, I do not accept the landlord's argument that this door is only for exiting the property. I find that the landlord will provide the tenant with keys to the locks on the back door.
42. Both parties confirm that the flooring between the carpet and laminate still needs to be completed. The landlord has indicated that it is the intent of the homeowner to complete this work. I find that the landlord shall complete the flooring.
43. The tenant has provided testimony that some of the windows have their seals broken and two of the windows are broken. The landlord stated that the broken windows will be replaced the day after the hearing. However, there was no indication that the windows with the seals broken will be repaired. A broken seal will impact the energy efficiency of a home and the tenant's testimony indicates this has already been problematic, as the children are unable to use their bedrooms. I therefore find that the windows with the seals broken will be repaired or replaced.
44. The tenant also stated that the control arms on the windows are either missing or do not work. The landlord did confirm that he will bring this issue to the attention of the homeowner. I find that the arms on the windows shall be repaired or replaced to ensure that the windows can be opened.
45. Lastly the tenant's video shows that the front door does not seal and air flows through. This will cause the home to not be energy efficient and the tenant would incur ongoing costs to heat his home. I find that the landlord will have the door sealed so that it is energy efficient.
46. The tenant is requesting the below items to be installed.
 - The door to the bathroom closet
 - The door to the laundry room
 - The shelf in the front closet
 - The kitchen cupboards

I acknowledge that the tenant has provided proof that the ad (TT#18) states that the home has "new cupboards." I also accept that he was under the belief that the homeowner was intending to make the above listed upgrades to the house. However, although the rental agreement (LL#02) shows a number of additional conditions for the

tenant's obligations, there are no additional obligations of the landlord to complete the promised renovations. The landlord's obligation under Section 10 is to maintain the premises in a good state of repair, this obligation does not extend to voluntary renovations to make the premises more esthetically pleasing. I therefore determine that the landlord is not obligated to make the repairs listed in paragraph 46.

Decision

47. The landlord shall:

- have the stove repaired by an appliance technician or replaced.
- provide the tenant with keys to the locks on the back door.
- complete flooring between the carpet and laminate
- repair or replace all the windows that have the seals broken
- repair or replace the control arms on the windows
- have the front door sealed so that it is energy efficient.

Issue 2: Rent reduced until repairs completed \$650.00

Tenant's Position

48. The tenant is requesting that the rent be reduced by \$650.00 from 01-October-2023 until such time as the repairs are complete. He said that he pays \$1,850.00 a month for rent and in a three bedroom home only one bedroom is warm enough to stay in. Also his oven doesn't work and that he has been inconvenienced since the start of the tenancy.

49. The tenant explains that it is the burden of the landlord to make the repairs. When he started his tenancy, he was told that he didn't have to worry that this work was going to be completed because he is working with a property management company and they would ensure that all the work was being done. His experience has not been as promised.

Landlord's Position

50. The landlord states that the windows that are broken are being replaced tomorrow and that there is no further issue to be resolved.

Analysis

51. As determined in the decision in paragraph 47 there are a number of outstanding issues that need to be resolved by the landlord. I accept the tenant's testimony and evidence that these repairs are not only inconvenient, they also are in violation the material terms of the rental agreement. The tenant does not have the use of a working stove and two bedrooms in his three bedroom rental are not able to be used due to broken glass and the cold.

52. Currently the landlord is in violation of the statutory obligation to maintain the premises in a good state of repair, in accordance with Section 10 of the *Residential Tenancies Act, 2018* as shown in paragraph 38.

53. I accept that the tenant's children are unable to use their bedrooms due to the cold, I also accept that the tenant is unable to use the stove in its present condition. These issues are impacting the use and benefit of a portion of the home. The inability to use these areas of the rental or be provided a promised service, such as the stove, are considered a rent increase, in accordance with 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).

54. I therefore determine a reduction in rent of \$400.00 a month from the start of the tenancy 01-October-2023 until such time as the repairs listed in paragraph 47 have been completed and the landlord has provided proof of this work to this Division and completed an affidavit stating same. The assessment of a \$400.00 reduction in rent has been determined to award the tenant a value for both services (i.e. the stove) and accommodations (i.e the bedrooms) that are unavailable to the tenant due to the landlord not meeting his obligations as per paragraph 46, in accordance with Residential Tenancies Policy 13-001. The tenant shall pay \$1,450.00 rent, as it comes due, until such time as he is ordered by this Section to reinstate payments of rent for the full amount of \$1,850.00.

Decision

55. The tenant's rent will be retroactively reduced by \$400.00 beginning October, November and December 2023; totaling \$1,200.00. This amount shall be deducted from the rent owed for 01-January-2024.

56. Commencing 01-January-2024 the rent will continue to be reduced by \$400.00 a month and the tenant shall pay \$1,450.00 rent, as it comes due, until such time as he is ordered by this Section to reinstate payments of rent for the full amount of \$1,850.00.

Issue 3: Rent paid in trust until repairs completed

Tenant's Position

57. The tenant is asking that going forward rent be paid in trust until such time as the repairs are complete.

Analysis

58. In accordance with Section 47 of the *Residential Tenancies Act, 2018*:

Order of director

47. (1) After hearing an application the director may make an order

(a) determining the rights and obligations of a landlord and tenant;

(k) directing a tenant to pay rent or a specified amount of rent to the director;

59. It has been determined in paragraph 47 that the landlord is to complete the repairs listed. Until these obligations are fulfilled the tenant shall pay a reduced amount of rent for the services that are currently lacking (paragraph 56).

60. The landlord shall upon completion of the repairs provide proof of this work to this Board and complete an affidavit stating same. Once he has complied with the Order, the tenant will be instructed by our office to commence full rent payments to the landlord as per the rental agreement. I find that the tenant's claim to have rent paid in trust is unnecessary as the reduction in rent should be sufficient to ensure that the landlord complies with the decision of this tribunal.

61. Of note: Residential Tenancies Policy 04-002 states that *"If an order for repairs is issued and the tenant moves out before repairs are completed the landlord is required to complete the repairs prior to re-renting the unit."*

Decision

62. The tenant's claim to have rent paid in trust until repairs are completed fails.

Issue 4: Compensation for inconvenience \$200.00

Tenant's Position

63. The tenant submitted a list of inconveniences (TT#02) for which he is seeking compensation as follows:

Inconvenience	Compensation
Broken window – window wrap and blankets	\$30.00
Cleaning products for dishwasher	20.00
Purchased used air fryer – no stove	50.00
Purchased used microwave	40.00
Cook and prep meals at partners	No amount
Gas for inconvenience and picking up items	60.00
Total	\$200.00

64. The tenant stated it took about 3 hours personal time to pick up items to resolve the ongoing issues with the home.

65. The tenant provided a receipt (TT#13) for the window shrink insulation to place on the windows totaling \$40.10.

66. The tenant said he purchased items and dealt with issues himself because his ongoing requests have been either ignored or refused.

67. The tenant is seeking reimbursement for his inconvenience.

Landlord's Position

68. The landlord questions the tenant's process. He explains that they manage over 100 properties and the typical process is that when there is an issue, the tenant makes them aware and that they then attend to the issue.

Analysis

69. I accept that the tenant was inconvenienced and that he was left with no option but to make his own repairs. I will award the tenant the cost of the window wrap as he provided proof of the cost with his submitted receipt (TT#13) and I will also award 3 hours personal time at the approved rate of minimum wage + \$8.00 for a total of \$23.00 an hour.

70. The landlord shall reimburse the tenant \$109.10, as follows for inconvenience.

• Window wrap	\$40.10
• Personal time	<u>69.00</u>
• Total	<u>\$109.10</u>

Decision

71. The landlord shall reimburse the tenant \$109.10, as follows for inconvenience.

Issue 5: Hearing expenses reimbursed \$20.00

72. The tenant submitted the receipt for \$20.00 for the cost of the hearing (LL#04) and pursuant to policy 12.01, he is entitled to reimbursement of that cost from the landlord.

Summary of Decision

73. The landlord shall make the following repairs:

- have the stove repaired by an appliance technician or replaced.
- provide the tenant with keys to the locks on the back door.
- complete flooring between the carpet and laminate
- repair or replace all the windows that have the seals broken
- repair or replace the control arms on the windows
- have the front door sealed so that it is energy efficient.

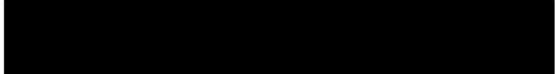
The landlord shall upon completion of the repairs shall provide proof of this work to this Board and complete an affidavit stating same.

Commencing October 2023 rent is reduced by \$400.00, to \$1,450.00, until such time that the tenant is ordered by the Director of Residential Tenancies to resume paying the original agreed amount of \$1,850.00.

Rent for January is reduced by \$1,200.00 as a retroactive rent reduction for October, November, and December 2023. January's rent is additionally reduced by \$129.10 to cover the tenant's cost of inconvenience and hearing expenses.

December 22, 2023

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office