

Residential Tenancies Tribunal

Application 2023-1137-NL

Decision 23-1137-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 9:41 a.m. on 02-January-2024.
2. The applicant, [REDACTED] hereinafter referred to as "the tenant" attended by teleconference.
3. The respondent, [REDACTED] hereinafter referred to as "the homeowner" did not attend. He is represented by [REDACTED] of [REDACTED] she attended by teleconference, and will hereinafter be referred to as "the landlord."

Preliminary Matters

4. The tenant submitted an affidavit (TT#01) stating that he served the homeowner with notification of today's hearing on 11-December-2023 by prepaid registered mail. The landlord confirms that the homeowner contacted their office on 14-December-2023 saying he had received notice of the hearing.

Issues before the Tribunal

5. The tenant is seeking:
 - Damages \$50.83
 - Repairs made / Rent paid in trust \$1,250.00
 - Validity of termination
 - Hearing Expenses \$179.47

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 18: Notice of termination of rental agreement, Section 29: Termination for invalid purpose, and Section 47 Order of Director.

Issue 1: Damages \$50.83

Tenant's Position

8. The tenant reviewed the details of the rental agreement held with the homeowner. He stated that they have a verbal monthly agreement. He pays \$1,250.00 rent on the first day of each month. He moved in August 2017 and at that time he paid a security deposit of \$625.00.
9. The tenant confirms that the homeowner began using a property management company in November 2023.
10. The tenant submitted a receipt (TT#02) for a mold clean-up caused by a previous leak. The supplies cost \$50.83 and he is seeking reimbursement for this cost.

Landlord's Position

11. The landlord confirms the details of the rental agreement the tenant has with the homeowner. She explains that the homeowner is elderly and that he hired them in November to manage this rental property. She states that she reached out to the tenant on 22-November-2023 with their information.
12. The landlord does not dispute the cost of the cleaning supplies and agrees to reimburse the tenant for the full amount owed.

Analysis

13. There is no dispute, the landlord agrees to pay the cost of the cleaning supplies.

Decision

14. The landlord shall reimburse the tenant for the cost of cleaning supplies: \$50.83.

Issue 2: Repairs made / Rent paid in trust \$1,250.00

Tenant's Position

15. The tenant stated that he had served the landlord with notification of necessary repairs in October 2023. He later served a second "Tenant's Request for Repairs," (TT#05) to the homeowner on 20-November-2023. The requested repairs are as follows:
 - Front door to house / leaks and freezes in winter
 - Basement thermostat/doesn't work/arcs out
 - Water damaged ceiling and walls, paint peeling offThe notice states the repairs are to be completed on or before 27-November-2023.
16. The tenant confirms that the repairs to the basement thermostat have been completed.

17. The tenant explained that when he first moved in there was a whirlpool tub in the bathroom and later he discovered that it was leaking. He informed the homeowner and the tub was removed. There was mold discovered and the flooring and Gyproc around the tub were also replaced.
18. In the downstairs of the house there is a rec room and the leak from the tub ran down into the wall of the rec room and caused water marks on the downstairs ceiling.
19. The tenant explained that the wall actually became soft to the touch, and you could see the water on the walls. In 2019 he purchased a dehumidifier and a ceramic heater to dry this area out.
20. As a result of this water damage the paint has bubbled off the wall in the rec room, pictures provided (TT#03 & TT#04). The picture shows a large piece of paint missing from the wall.
21. Additionally, there are water stains on the downstairs ceiling; pictures provided (TT#06 – 09). The tenant has requested that these areas be painted and confirms that to date this work has not been finished.
22. The tenant also provided 10 pictures of the front door (TT#10). He explained that the pictures show that there are visible gaps in between the door and the frame. He said that the homeowner had put a rubber seal around the door when he first moved in but during cold weather the door freezes to the seal and has torn it in places. He requested that the door be replaced. To date it has not been replaced.
23. The tenant is seeking that rent be paid in trust to the Director until the repairs are completed.

Landlord's Position

24. The landlord confirmed that they did have the thermostat in the basement replaced as per the tenant's request.
25. The landlord does not dispute that the home requires painting. She explains that the homeowner also agrees that it has been 8 years since the house was painted and that he would like to paint the entire interior of the home. It is his preference to wait until the home is vacant. He has determined that after the tenant moves this work will be done.
26. The landlord also agrees that a new door is required, she explained that the door was ordered in September. At that time, they were told that it could take 3 months for it to be delivered. They recently received the door and are in the process of arranging for it to be installed. She assures that it will be in on or before 15-January-2024.

27. The landlord states that the rental is a beautiful home and that the repairs requested are cosmetic. She doesn't dispute that the cosmetic upgrades will be done but prefers that the painting of the home occur once it is empty.

Analysis

28. Both parties agree that the requested repairs are required to maintain the home. It must be noted that the landlord has already committed to replacing the door on or before 15-January-2023. The issues with the thermostat are already resolved.

29. Both parties also confirm that the home is due to be painted throughout. I agree with the landlord that this repair is cosmetic in nature and does not impact the habitability of the home. The landlord is required to maintain the premises in a good state of repair and comply with health and safety laws. I do not agree that a cosmetic upgrade is necessary for the landlord to fulfil that obligation. See Section 10 of the Residential Tenancies Act, 2018 below:

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.

30. The tenant has requested that rent be paid in trust until repairs have been completed, as per 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;

31. I acknowledge that the tenant may feel frustrated that his demand for repairs has not been met in a timely fashion. However, the landlord has already taken action to correct the issues with the thermostat and replacement of the door. The only outstanding issue is that of the painting of the premises, which is cosmetic.

32. I find that paying the rent in trust, which will mean that the landlord will not receive income on this property until the painting has been finished is not appropriate as this repair is cosmetic in nature. The payment of rent in trust is an excessive sanction that is used when a landlord is not compliant with the terms of their rental agreement and/or the Act. The burden of proof is that of the applicant, and the tenant has not proven that the landlord is not compliant or in violation of their responsibilities.

33. The tenant's claim for rent paid in trust fails.
34. The tenant's claim for repair completed succeeds and the landlord will install the new front door on or before 15-January-2023.

Decision

35. The landlord will install the new front door on or before 15-January-2023.

Issue 3: Validity of termination notice

Tenant's Position

36. The tenant submitted the notice (TT#11) served to him electronically 28-November-2023. The notice is on a "Landlord's Notice to Terminate - Standard" form. The notice is signed and dated for 28-November-2023 with a termination date of 29-February-2024.
37. The tenant believes that this notice was served in retaliation for his request for repairs. He confirms that he served his request for repairs (TT#05) on 20-November-2023 and the repairs were requested to be completed by 27-November-2023. He received the termination notice 28-November-2023.

Landlord's Position

38. The landlord declares that there was no retaliation intended by the homeowner. The tenant had raised concerns and they acknowledge that the tenant had lived there since 2017 and that the home did require work to be completed. She said that it was determined that the simplest solution to the issue was to give the tenant a standard notice so that he could find new housing. Then the landlord was going to complete any work required on the house.

Analysis

39. The notice served to the tenant is a Section 18 notice, as follows:

According to Section 18 of the *Residential Tenancies Act, 2018*:

Notice of termination of rental agreement

18. (2) A landlord shall give the tenant notice that the rental agreement is terminated and the tenant is required to vacate the residential premises

(a) not less than 4 weeks before the end of a rental period where the residential premises is rented from week to week;

(b) not less than 3 months before the end of a rental period where the residential premises is rented from month to month; and

(c) not less than 3 months before the end of the term where the residential premises is rented for a fixed term.

.....

(9) *In addition to the requirements under section 34, a notice under this section shall*

- (a) *be signed by the person providing the notice;*
- (b) *be given not later than the first day of a rental period;*
- (c) *state the date, which shall be the last day of a rental period, on which the rental agreement terminates and the tenant intends to vacate the residential premises or the date by which the tenant is required to vacate the residential premises; and*
- (d) *be served in accordance with section 35.*

40. The notice meets the requirements of the *Act* for a Section 18 notice. The tenant's issue with the notice is that it was served, in his opinion, in reaction or retaliation for the notice to repair. Section 29 of the Residential Tenancies Act, 2018: as follows:

Termination for invalid purpose

29. (1) *A landlord shall not*

- (a) *terminate or give notice to terminate a rental agreement; or*
- (b) *directly or indirectly coerce, threaten, intimidate or harass a tenant or a member of a tenant's family,*

in retaliation for, or for the purpose of deterring the tenant from, making or intervening in a complaint or application in relation to a residential premises.

(2) *Where a tenant who is served with a notice of termination of a rental agreement believes that the landlord has contravened subsection (1), he or she may, not later than one month after receiving the notice, apply to the director under section 42 for an order declaring that the rental agreement is not terminated.*

41. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted and that their version of events are true. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant must establish that his/her account of events are more likely than not to have happened. Based on this balance of probabilities I find it is reasonable to believe that the landlord did give the notice of termination in response to the request for repairs.

42. The landlord may not have been malicious in his reaction and may have genuinely intended to just find the easiest solution. However, the tenant has a right under the *Act*, to request repairs be completed and he cannot be punished for exercising his rights under the *Act*. I therefore find that the termination notice was issued in retaliation and therefore not valid.

43. In light of this, it would negate the purpose of this decision, should the landlord immediately issue a three month notice upon the release of this decision. I therefore determine, in accordance with Section 47 (1) (p), that the landlord shall not terminate the rental agreement under Section 18 of the *Act* with this tenant until after a three-month cooling off period. This would thereby permit the parties to maintain the rental agreement and consider whether both parties wish to continue with the agreement.

Order of director

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

.....

(p) imposing terms and conditions the director considers appropriate, including terms and conditions to ensure compliance with this Act and the rental agreement;

44. I determine that the landlord may not issue a Section 18 termination notice before the 01-May-2024 rental period.

Decision

45. The termination notice dated 29-February-2024 is not valid.
46. The landlord may not issue a Section 18 notice before the 01-May-2024 rental period.

Issue 4: Hearing expenses reimbursed \$179.47

Tenant's Position

47. The tenant submitted the receipts for the cost of the hearing. He submitted the cost of the Registered Mail (TT#12) \$22.55, the receipt for his application fee (TT#13) \$20.00 and the receipt for the cost of computer ink (TT#14) \$136.92.

Landlord's Position

48. The landlord does not dispute the cost of the application fee or the cost of registered mail. She does question the cost of \$136.92 for printer ink, she stated it would have been more cost efficient to have paid for printing and doesn't agree that the homeowner should have to incur this cost.

Analysis

49. Pursuant to policy 12.01, the tenant is entitled to reimbursement of the costs from the tenant, however in any claim the applicant is expected to mitigate their loss. I agree with the landlord that the cost of replacing all the tenant's ink in his printer is excessive. The tenant could have chosen to pay for printing and the cost would have been much less. I therefore find that the tenant shall be reimbursed \$20.00 for the application fee, \$22.55 for the registered mail and a nominal fee of \$20.00 for the cost of printing, the total hearing expense to be reimbursed is \$62.55.

Decision

50. The tenant's claim for hearing expenses succeeds in the amount of \$62.55.

Summary of Decision

51. The landlord shall:

- Reimburse the tenant for the cost of cleaning supplies and hearing expenses, \$113.38 as follows:
 - Cleaning expenses..... \$50.83
 - Hearing expenses 62.55
 - Total \$113.38
- Install a new front door on or before 15-January-2024.
- Not issue a Section 18 notice before the 01-May-2024 rental period.

The termination notice dated 29-February-2024 is not valid.

January 11, 2024

Date

[REDACTED]
Jacqueline Williams, Adjudicator
Residential Tenancies Office