

Residential Tenancies Tribunal

Application 2024-0339-NL

Pamela Pennell
Adjudicator

Introduction

1. Hearing was called at 2:01 p.m. on 19-August-2024.
2. The applicant, [REDACTED] (applicant 1), hereinafter referred to as "the tenant" attended by teleconference. The applicant, [REDACTED] (applicant 2), hereinafter referred to as "the tenant" did not attend. [REDACTED], translator was present as a support person.
3. The respondent, [REDACTED], hereinafter referred to as "the landlord" did not attend.

Preliminary Matters

4. The landlord was not present or represented at the hearing and I was able to reach him by telephone at the start of the hearing, at which time he demanded that the hearing be postponed. The respondent chose not to attend. This Tribunal's policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent's absence so long as he has been properly served. The tenants submitted an affidavit with their application stating that they had served the landlord with the notice of hearing personally at the residential premises (TT#1). I acknowledged that the address on the affidavit did not correspond with the landlords address as per the application and applicant 1 confirmed that the address on the affidavit had a minor clerical error. In accordance with the *Residential Tenancies Act, 2018* this is good service. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenants, I proceeded with the hearing in his absence.
5. There was a written month-to-month rental agreement that commenced on 1-January-2021. The tenants vacated the premises on 30-May-2024. Rent was \$1100.00 per month, due on the first of each month. A security deposit of \$650.00 was paid on 1-January-2021 and is in the landlord's possession. Applicant 1 testified that they had a verbal agreement with the landlord allowing him to retain the security deposit to cover the cost to remove their damaged furniture.
6. The tenant's application was amended to omit *rent paid in trust* and to add hearing expenses.

Issues before the Tribunal

7. The tenants are seeking:
 - Compensation paid for damages \$3400.00
 - Hearing expenses \$20.00

Legislation and Policy

8. The jurisdiction of the Director of Residential Tenancies is outlined in Sections 46 and 47 of the *Residential Tenancies Act, 2018*. 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 are the following sections of the *Residential Tenancies Policy Manual*, Section 9-4: Compensation for damage to tenant's personal property, Section 9-5: Depreciation and life expectancy of property and Section 12-1: Recovery of costs.

Item # 1: Compensation for damages \$3400.00

Relevant Submission

9. Applicant 1 testified that there were damages / losses to their furniture, and he stated that they are seeking reimbursement of their cost to purchase the items in the amount of \$3400.00. The tenants submitted a damages ledger (TT#2) as follows:

Itemized List of Damages

Couch - \$400
Couch - \$400
Couch - \$250
Couch - \$250
Mattress - \$300
Mattress - \$300
Mattress - \$300
Mattress - \$300
Rug - \$200
Rug - \$200
Rug - \$200

Tenant's Position

10. Applicant 1 testified that 4 couches, 5 mattresses and 3 rugs were damaged due to the build up of mold and mildew in the unit. Applicant 1 stated that they purchased the couches and mattresses used in 2021 after they moved into the unit. Applicant 1 also stated that the rugs were purchased new in the summer of 2021 at \$200.00 each.

Applicant 1 testified that the landlord was negligent in causing damage to the above list of items as he ignored their requests to deal with a water problem entering the unit through the basement floor. Applicant 1 testified that they made the landlord aware of the water entering the unit and how this situation created a mold problem within the unit ultimately damaging their couches, mattresses and rugs. The landlord submitted a copy of a *Request for Repairs* form to support their claim (TT#3).

Analysis

11. Section 10(1) 1 (a) of the *Residential Tenancies Act, 2018* states:

Statutory Conditions

10(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.*

12. I asked applicant 1 when was the first time that they noticed a mold problem within the unit and he responded that it was around the middle of February 2024 and he stated that they made several requests to the landlord to deal with the issue of water coming in through the basement floor and he testified that they gave the landlord a *tenant's request for repairs* form on 21-Febraruay to remove the mold in the unit and to deal with the water coming in through the basement floor. I accepted the *repairs form* into evidence that shows that there was a mold problem and it also showed that the tenants made the landlord aware of the problem. The *tenant's request for repairs form* was dated for 21-February-2024 with a completion date of 31-March-2024 which gave the landlord plenty of time to deal with the problem. I asked applicant 1 if the landlord fixed the water problem or dealt with the mold issue and he responded that the landlord never fixed anything and as a result, their furniture was destroyed due to the dampness and build up of mold within the unit. In accordance with Section 10(1) 1(a) as stated above, I find that the landlord contravened the *Act* and failed to meet his obligations as a landlord.

13. In accordance with Section 9-4 of the *Residential Tenancies Policy: Compensation for damage to tenant's personal property*, where a landlord's negligence results in damage to a tenant's personal property, the landlord may be responsible for compensating the tenant for the costs of repairing or replacing that damaged property. As the landlord failed to meet his obligations as stated above and has been found to contravene the *Act*, an award of some amount is warranted. The only question is how much should this tribunal award for used furniture when the age and condition of the furniture is unknown. The tenant's *damage ledger* shows that they had 2 couches that they paid \$400.00 each for and 2 other couches that they paid \$250.00 each for back in 2021. They also had 5 mattresses that they paid \$300.00 each for back in 2021. As I do not know the age of the couches or the mattresses when they were purchased and as the tenants have had those items for 3 years, and as there are no photographs to show the condition of those items, a nominal amount shall be awarded. I find that the landlord shall reimburse the tenants \$120.00 for the \$400.00 couches, \$75.00 for the \$250.00 couches, and \$90.00 for each mattress for a total of \$840.

14. With regards to the rugs that were purchased new in 2021, straight depreciation shall be

taken into consideration. In accordance with Section 9-5 of the *Residential Tenancies Policy*, depreciation and life expectancy of property, the life expectancy of a carpet /rug is 10 years. As 30% of the rug's life cycle has past, I find that the landlord is responsible for 70% of the costs of the rugs in the amount of \$140.00 each for a total of \$420.00.

Decision

15. The tenant's claim for compensation for damages succeeds in the amount of \$1260.00.

Issue # 2: Hearing expenses

16. The tenants are seeking \$20.00 for reimbursement for the cost of the filing fee. The tenant's submitted a copy a receipt to support the claim (TT#4). In accordance with Section 12-1 of the *Residential Tenancies Policy*, filing costs are claimable costs. For that reason, I find that the landlord shall reimburse the tenants for their hearing expenses in the amount of \$20.00.

Decision

17. The tenants claim for hearing expenses succeeds.

Summary of Decision

18. The landlord shall pay the tenants \$1280.00 as follows:

Compensation for damages	\$1260.00
Hearing expenses	20.00

Total \$1280.00

September 13, 2024

Date

Pamela Pennell, Adjudicator
Residential Tenancies Office