Residential Tenancies Tribunal

Application 2024-0553-NL

Seren Cahill
Adjudicator

Introduction

1. Hearing was held on15-August-2024 at 9:00 am and continued on 30-August-2024 at 9:02 am.

2. The applicants, [redacted] and [redacted], hereinafter referred to as the tenants, attended via teleconference.

3. The respondent, [redacted], hereinafter referred to as the landlord, attended via teleconference alongside counsel, [redacted].

4. [redacted] attended via teleconference as a witness for the landlord.

Preliminary Matters

5. The respondent acknowledged they received notice of this hearing more than ten days before the hearing date.

6. Initially, the tenants had filed to dispute the validity of a termination notice. Prior to the hearing, that notice was withdrawn by the landlord and a new notice was provided giving a move out date of 30-November-2024. Parties acknowledged that this new notice was valid.

Issues before the Tribunal

7. Should the tenant's claim for a refund of rent be granted?

8. Should the tenant's claim for damages be granted?

9. Should the tenant's claim for compensation for inconvenience be granted?

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act,* 2018 (the *Act*).

Issue 1: Refund of Rent

Tenant's Position

11. The tenant claims for a refund of rent in the amount of $2800, which represents $100 of the $1000 monthly rent for each of the 28 months between the dates of February 2022, when the tenancy began, and June 2024, when the landlord lowered the monthly rent to $900. The tenants submit that this is an appropriate amount of compensation for the deprivation of the use of a storage shed which they say had been provided for their use as part of the rental agreement and the effective deprivation of the use of the basement, which they say was uninhabitable due to an unaddressed mold issue.

Landlord's Position

12. The landlord submitted that the storage shed was never part of the rental agreement but its use was temporarily provided to the tenants as a courtesy. She testified that the tenants were made aware that the basement was in poor shape before they entered into the rental agreement. She denies that there was a mold problem in the basement.

Analysis

13. The tenants testified that they understood the rental agreement to include to include the use of a storage shed that was located on the property. The landlords deny this. The witness testified that he had erected the storage shed for the purpose of giving it to his son. He testified that he stored the shed on the property while his son was awaiting a permit from the town to place the shed on his own property and allowed the tenants to use the shed in the meantime.

14. The rental agreement contains no reference to any outbuildings. There was no evidence submitted regarding the storage shed aside from the testimony from both sides. Neither party's evidence on this point was self-contradictory or otherwise exhibited clear signs of being unreliable or not credible (but see Issue 2, below).

15. Considering the evidence in its totality, I do not find on a balance of probabilities that the tenants were entitled to and deprived of the use of this storage shed.

16. The landlord testified that the basement of the property is very old and that she has advised tenants that it is "not habitable." She also testified that the basement was part of the rental but that tenants "shouldn't be down there" and she had advised them as such.

17. Part IX of the rental agreement incorporates the statutory conditions prescribed by section 10 of the *Act.* The first of these conditions reads as follows:

> 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.

(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.

18. 1(a) mandates that the landlord shall maintain the premises in a state which is fit for habitation. 1(b) provides that this obligation applies notwithstanding the fact that the tenants were aware of the unfitness for habitation when they entered into the rental agreement. By the landlord's own admission, she was in violation of the rental agreement by failing to ensure the entirety of the premises were fit for habitation. This violation effectively deprived the tenants of the use of part of the premises.

19. I accept that $100 for each month is an appropriate remedy.

20. The tenant's claim for a refund of rent succeeds in the amount of $2800.

Issue 2: Damages

Tenant's Position

21. The tenants claim for $3500 in compensation for damages. They testified that black mould in the basement damaged several items of their property, including two flat screen televisions, a full bedroom set, and a child's car seat.

Landlord's Position

22. The landlord denies there ever being a mold problem in the basement and denies that the tenant's property was damaged.

Analysis

23. In accordance with the Residential Tenancies Program Policy and Procedure Guide policy 09-004, to succeed in a claim for damages to personal property, a tenant should provide at the hearing evidence showing the costs they had incurred to repair or replace damaged items, the condition and age of the damaged item, and that the damage was caused by the landlord's negligence. It is imperative the tenants provide sufficient evidence to prove their claim, including documentary evidence where possible. It is also the obligation of the applicant to establish the value of the items lost.

24. In the present case, the only documentary evidence provided was of five pictures, T#1-T#5. These show some pieces of a bedroom set in a state of disassembly, and they appear to be partially covered in a powdery white substance which could be some form of fungus but does not resemble black mould. As noted by counsel for the landlord, aside from the tenant's testimony there is no evidence of the existence of the flat-screen televisions or the car seat.

25. I do not have sufficient evidence before me to support a claim that the tenants had a car seat or one or more flatscreen televisions which were damaged by the landlord's

negligence. In relation to the bedroom set, there was no evidence presented as to the value of the items.

26. The tenant's claim for compensation for damages fails on evidentiary grounds.

Issue 3: Compensation for Inconvenience

Tenant's Position

27. The tenants submitted that the landlord refused to make necessary repairs despite being served a written request for repairs, and that this refusal led to an increased cost of heating. They claim $2000 as compensation toward their electricity bills over the course of the residency.

Landlord's Position

28. The landlord denies ever being served a written request for repairs and disputes the tenant's alleged increase in electricity bill.

Analysis

29. As noted by counsel for the landlord, no documentary evidence was provided in relation to this claim. This tribunal has only the word of the tenants. The tenants could have provided their billing history with Newfoundland Power regarding this location but chose not to do so. As the applicant, it is their responsibility to prove their claim. The landlord cannot be said to have had the opportunity to dispute these bills if she was never given an opportunity to review or challenge them.

30. This portion of the tenants' claim fails on evidentiary grounds.

Decision

31. The tenants' claim for a refund of rent succeeds in the amount of $2800.

32. The tenant's claim for compensation for damages fails.

33. The tenant's claim for compensation for inconvenience fails.

34. The tenants seek to be reimbursed for hearing expenses in the amount of the $20 application fee and approximately $100 for the cost of gas in preparing for the hearing, for which no receipt was provided. Counsel for the landlord asked that I consider awarding her costs in terms of her fees at a rate of $200/hour for the 3 hour and ~34 minute hearing, as well as the cost of hiring a process server to deliver a letter which served as notice of entry and notice that the landlord had retained counsel. She acknowledged that the tenant's objections to the initial termination notice (see preliminary matters) had some merit, but suggested the other claims were frivolous. She highlighted the paucity of the evidence provided by the tenants to support their claim both in terms of how it speaks to the seriousness of the claim and the difficulty it caused in preparing a response.

35. Section 47(1)(q) of the *Act* grants the director the authority to order an unsuccessful party to an application to pay costs to a successful party on an application. Policy 12-001 provides guidance on how costs are to be awarded.

36. In determining whether to award costs, I am mindful that this dispute resolution process is intended to be a quick an inexpensive way for landlords and tenants to resolve disputes without entering into comparatively lengthy and expensive court hearings. In general, the only required expenditure is the applicant's $20 fee. It is important that the practice of this tribunal ensures that concerns about large costs awards do not deter applicants acting in good faith from bringing an application.

37. In determining whether to award costs, I consider the following factors. First, the applicants were awarded about one third of their claim and were unsuccessful in two-thirds of their claims that proceeded to the tribunal. The landlord's counsel submitted that she felt the need to hire a professional to deal with the claim. The proceeding was somewhat lengthy though not particularly complex. There was no counterclaim. The applicant's costs are proportional to the award they received.

38. It should also be noted that costs may be awarded to penalize a party or deter them from unreasonable conduct. Making an application that is frivolous or vexatious or done in bad faith is an example of unreasonable conduct. Having found the applicants succeeded in part of their claim, I naturally do not find their claim to be entirely frivolous. I do note the lack of evidence supporting the majority of the applicant's claim.

39. Considering all of the above factors in their totality, I decline to award costs for either party.

Summary of Decision

40. The landlord shall pay to the tenant $2800 in a refund of rent.

13-September-2024
Date

[redacted]
Seren Cahill
Residential Tenancies Office