

Residential Tenancies Tribunal

Application 2024-0710-NL

Oksana Tkachuk
Adjudicator

Introduction

1. Hearing was called at 1:51 p.m. on 11-September-2024.
2. The applicants, [REDACTED] and [REDACTED] attended by teleconference, and are hereinafter referred to as "the tenants".
3. Respondent 1, [REDACTED], did not attend via teleconference; however, she was represented by respondent 2 [REDACTED]ey, hereinafter referred to as "the landlord", who attended via teleconference.

Preliminary Matters

4. The applicants stated that they served respondent 1 with the notice of the hearing via email on 28-August-2024 and she responded by stating that the respondent 2, her father, would handle the matter on her behalf during the hearing. The tenants submitted copy of the respondent's 1 email (TT#1). The tenants submitted affidavit with their application stating that they had served respondent 2 with the notice of hearing electronically via message to [REDACTED] on 28-August-2024 (TT#2). The respondent 2 confirmed receipt of the hearing documents on that date and stated that he will represent respondent 1. In accordance with the *Residential Tenancies Act, 2018* this is good service, and we proceed with the hearing.
5. There was a written month-to-month rental agreement which commenced on 10-April-2024. The tenants moved out on 1-August-2024. Rent was \$650.00 per month, due on the 1st of each month. A security deposit was paid on 12-July-2024 in the amount of \$487.50 and was returned to the tenants on 28-August-2024.
6. The tenants amended their application to include hearing expenses of \$20.00.

Issues before the Tribunal

7. The tenants are seeking:
 - Compensation for inconveniences \$1100.00;
 - 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*.
9. Also, relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 16: Rental increase. Also, relevant and considered in this decision are Sections of the *Residential Tenancies Policy Manual*: Section 13-2: Rental Increases and Rebates and Section 12-1: Recovery of Costs.

Issue # 1: Compensation for inconveniences \$1100.00

Tenant's position:

10. The tenants have reported several inconveniences that occurred after they moved into the rental unit, as follows:
 - **Moving respondent's belongings \$300.00** - The tenants stated that prior to their move, respondent 2 was residing in the rental unit. On the day of the move, the tenants claim they spend the better part of the day removing the respondent's belongings, which included two bedrooms sets, furniture, the bathroom supplies, and a kitchen full of personal property. The tenants stated that this required several truckloads of garbage and old furniture and many hours of work of themselves and their family and friends to clean and pack landlord's belongings and to prepare the unit for them to move in. The tenants are seeking compensation for 6 hours of labor for 2 individuals, at a rate of \$20.00 per hour, totaling \$240.00. Additionally, the tenants are seeking reimbursement of \$60.00 for half a tank of gas used for transporting garbage and disposing of various furniture items.
 - **Rent reduced \$800.00** - The tenants stated that they agree to rent a house with 2 bedrooms and basement for \$650.00 per month. However, upon moving in, they found the basement was completely filled with respondent's belongings, rendering it unusable as storage space. As a result, the tenants had to use the second bedroom as a storage room, as they were unable to store any of their items in the basement. The tenants are seeking to reduce their rent by \$200.00 per month for 4 months, amounting to a total rent reduction of \$800.00, as they were inconvenienced by having to use the second bedroom as a storage room instead of the basement, which was unavailable due to the respondent's belongings.

Landlord's position:

11. The landlord disputed any responsibility for owing money to the tenants as follows:
 - **Moving respondent's belongings \$300.00** - The landlord did not dispute that he left his personal belongings in the unit, however he claimed that the tenants agreed to move his belongings voluntarily, without him asking them to do so, and therefore he is not responsible for the costs associated with moving the furniture.
 - **Rent reduces \$800.00** - The landlord argues that it is unreasonable to reduce the rent as the tenants had access to the basement.

Analysis

12. Section 16(5) of *The Residential Tenancies Act* states:

Rental increase

....

(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.

....

13. I have considered the testimonies of both the landlord and the tenants as follows:

- **Moving respondent's belongings \$300.00** - The tenants stated that prior to their move, respondent 2 was residing in the rental unit. The tenants stated that they removed the respondent's belongings, which included two bedrooms sets, furniture, the bathroom supplies, and kitchen full of personal property. The tenants stated that this required several truckloads of garbage and old furniture and many hours of work of themselves and their family and friends to clean and pack the landlord's belongings and to prepare the unit for them to move in. The tenants are seeking compensation for 6 hours of labor for 2 individuals, at a rate of \$20.00 per hour, totaling \$240.00. Additionally, the tenants are seeking reimbursement of \$60.00 for half a tank of gas, used for transporting garbage and disposing of various furniture items. The landlord did not dispute that he left his personal belongings in the unit, however he stated that the tenants moved his belongings voluntarily, without him asking them to do so, and therefore he is not responsible for the costs associated with moving the furniture. I asked the tenants if they had agreed to remove the landlord's belongings, and they responded that they had never agreed to clean the whole rental unit and to pack and remove the furniture or dispose of the landlord's remaining personal belongings in each room of the rental unit. The tenants stated that they expected the rental unit to be ready for them to move in on the move-in date, and that they asked the landlord if he needed any help as a gesture of kindness. The tenants stated that they felt they had no choice but to prepare the unit themselves to move in, as the rental unit was not in a ready condition when they arrived. I accept the tenant's testimony as the landlord did not dispute that he left his possessions in the unit at the commencement of the tenancy. Based on the testimony, I accept that the removal of furniture and personal belongings and the cleaning of the unit by the tenants was not part of the rental agreement. I find that the cost of \$240 for self-labor by two individuals, at rate of \$20.00 per hour for 6 hours, plus \$60.00 for half of tank of gas, is reasonable and fair. Therefore, I find that the landlord is responsible for compensating the tenants for the inconvenience in total amount of \$300.00.
- **Rent reduction \$800.00** – the tenants stated that they agree to rent a house with 2 bedrooms and basement for \$650.00 per month, and that upon moving in, they found the basement was filled with respondent's belongings. The tenants are seeking to reduce their rent by \$200.00 per month for 4 months, amounting to a

total rent reduction of \$800.00, as they were inconvenienced by having to use the second bedroom as a storage room instead of the basement, which was unavailable due to the respondent's belongings. Section 13-2 of the *Residential Tenancies Policy* states that where an accommodation becomes unavailable, that value of accommodation may be considered a rental increase. According to this section, a tenant who believes they are entitled to a rebate of rent should first discuss the situation with their landlord to determine if both parties can mutually work out the particular situation amongst themselves. If this is not possible or does not end in a mutually satisfactory agreement, then a tenant may file a claim with the Residential Tenancies Section. I asked the tenants if they communicate about their issue with landlord's belongings remaining in the basement with the landlord and they responded that they discussed their willingness to use the basement few times during the tenancy and asked the landlord to take his belongings away, however the landlord ignored each of these messages. The landlord disputed that the rent should be reduced due to this issue, as the tenants had access to the basement. I asked the landlord if the basement was ready for the tenants to use it when they moved in, and he stated that it was not. Pursuant to the Section 16 of *The Residential Tenancies Act*, as stated above, I find that the landlord interfered with rental space, and as a result, the tenants were unable to fully use and enjoy the rental premises. According to the section 13-2 of the *Residential Tenancies Policy*, I find that since the tenants made efforts to discuss the situation with the landlord regarding their inability to use the basement due to the landlord's belongings, the tenants are entitled to a rent reduction, as they were inconvenienced by using the second bedroom as a storage room, instead of using the basement for those purposes. Given that the tenants were forced to use the second bedroom as a storage room, approximately 30% of the space was used in a manner that was not entitled, and this inconvenience lasted for the entire tenancy, for four months, I determine that the reduction of \$200.00 per month is reasonable and fair. For those reasons, I find that the landlord is responsible for reduction of rent in the amount of \$800.00.

Decision

14. The tenant's claim for inconveniences succeeds in the amount of \$1100.00.

Issue # 2: Hearing expenses \$20.00

Analysis

15. Section 12-1 of the *Residential Tenancies Policy* states that in general, claimable costs may include the filing fee. The tenants paid \$20.00 for the application and are seeking reimbursement. As the tenant's claim has been successful, the landlords shall pay the hearing expenses.

Decision

16. The tenant's claim for hearing expenses succeeds in the amount of \$20.00.

Summary of Decision

17. The landlords shall pay the tenants \$1120.00 as follows:

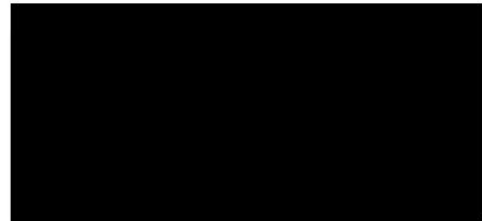
Compensation for inconvenience .. \$1100.00

Hearing expenses\$20.00

Total \$1120.00

September 20, 2024

Date



Oksana Tkachuk
Residential Tenancies Office