

Residential Tenancies Tribunal

[REDACTED] Decision 19-0461-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:05 pm on 01 August 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. The respondent, [REDACTED], [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".

Issues before the Tribunal

3. The tenant is seeking the following:
 - An order for a refund of rent in the amount of \$425.00; and
 - An order for compensation for "other" expenses totalling \$1000.00.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this decision section 9 of the *Residential Tenancies Act, 2018*, sections 3 and 4 of the *Frustrated Contracts Act* and policy 9-4: Claims for Damage to Tenant's Personal Belongings.

Issue 1: Refund of Rent - \$425.00

Relevant Submissions

The Tenant's Position

6. The tenant stated that she had entered into a verbal rental agreement with the landlord in November 2018. The agreed rent was set at \$850.00 per month and the tenant stated that she had paid a security deposit of \$425.00.
7. The tenant stated that on 15 May 2019, at around 3:00 am, the sprinkler system in the unit directly above hers malfunctioned causing water to flood that apartment and causing water to enter into her apartment through the ceiling.
8. Because of that damage, the electricity was cut to her apartment and there was a large hole in her ceiling. The tenant stated that because there was no electricity in the unit it was uninhabitable and she moved out of the unit on that day and went to stay with her daughter.
9. The tenant stated that she had paid \$850.00 in rent for the month of May 2019, but she argued that as she had to move out halfway through that month, she is therefore entitled to a refund of that half the rent she had paid: \$425.00.

The Landlord's Position

10. The landlord did not contest the tenant's description of what had occurred at her apartment and he agreed that the water damage caused by the sprinkler malfunction had rendered her unit unfit for habitation.
11. The landlord argued, however, that the tenant is not entitled to a refund of rent. He gave 2 reasons.
12. First, he claimed that the tenant had tenant insurance and she was receiving an accommodation expense in the amount of \$50.00 per day after the incident on 15 May 2019. He argued that because the tenant was receiving these expenses from her insurance company he should not have to pay them to her as well.
13. Second, the landlord claimed that although the tenant no longer had use of her apartment, she nevertheless still had access to the various amenities the condominium board had made available to their clients—these included a movie theatre, a gymnasium, a social room, a games room and barbecue pit.
14. The landlord also complained that the tenant did not return her keys until 06 June 2019.

Analysis

15. As I will outline in more detail in Section 2, below, the sprinkler malfunction could not have been reasonably foreseen by either the landlord or the tenant and that malfunction was not the result of any negligent act on the part of the landlord.
16. Subsections (1) and (2) of s. 9 of the *Residential Tenancies Act, 2018* states:

Landlord and tenant relationship

9. (1) A relationship of landlord and tenant takes effect when the tenant is entitled to use or occupy the residential premises whether or not the tenant actually uses or occupies it.

(2) The doctrine of frustration of contract and the Frustrated Contracts Act apply to a rental agreement.

and the relevant sections of the *Frustrated Contracts Act* states:

Act applies

3. (1) This Act applies to a contract governed by the law of the province that has become impossible of performance or been otherwise frustrated and the parties to which for that reason have been discharged.

...

Money payable

4. (1) The sums paid or payable to a party under a contract before the parties were discharged

(a) in the case of sums paid, are recoverable from that party as money received by him or her for the use of the party by whom the sums were paid; and

(b) in the case of sums payable, cease to be payable.

17. As the rental unit had become uninhabitable and as the landlord could no longer provide the tenant with residential premises in which she could reside, the rental contract that they had entered into was therefore frustrated, as contemplated by s. 3.(1) of the *Frustrated Contracts Act*. Both the landlord and the tenant were discharged of the obligations of their rental agreement on 15 May 2019—the landlord no longer had to provide living accommodations to the tenant and the tenant no longer had to pay rent to the landlord.
18. According to section 4.(1)(a) of the *Frustrated Contracts Act*, the tenant is entitled to recover from the landlord any money that she had paid to him for services that

would otherwise have been provided to her had the parties not been discharged of their obligations.

19. As the rent of \$850.00 covered the whole month of May 2019, I agree with the tenant that she is entitled to recover half of that amount, \$425.00, as she was discharged from her duty to pay rent halfway through the month.
20. I cannot accept the landlord's argument that he should not have to refund the rent as that rent is being covered by the tenant's insurance policy. Section 4.(6) of the *Frustrated Contracts Act* states:

(6) In considering whether a sum ought to be recovered or retained under this section by a party to the contract, the court shall not take into account a sum that by reason of the circumstances giving rise to the frustration of the contract has become payable to that party under a contract of insurance, unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under an enactment.

The landlord and the tenant had not entered into a written agreement and no testimony was given at the hearing indicating that the tenant was required to have tenant's insurance as part of the rental agreement.

21. I also don't accept the landlord's argument that he should not have to refund the rent as the tenant still had use of the other amenities at the complex. It was her testimony, which I accept, that after 15 May 2019 she only returned to the complex to retrieve her personal items and move them to her daughter's home, where she was staying. She testified that she did not take advantage of any of the amenities listed by the landlord at the hearing.

Decision

22. The tenant's claim for a rebate of rent succeeds in the amount of \$425.00.

Issue 2: "Other" Expenses – \$1000.00

Relevant Submissions

The Tenant's Position

23. The tenant stated that an insurance adjuster inspected her unit after the incident with the malfunctioning sprinkler. Her insurance company then hired a contractor to move her possessions from the rental unit and she was also issued a cheque for "additional living expenses" in the amount of \$1400.00 (■ #3) to cover the period from 15 May to 15 June 2019.

24. The tenant stated that as she had made an insurance claim for moving and living expenses, she had to pay an insurance deductible of \$1000.00. A copy of the invoice and the receipt for that deductible was submitted at the hearing (█ #2).
25. The tenant stated that none of her personal possessions were damaged as a result of the flood, but she was nonetheless inconvenienced as she had to move in with her daughter for a month and had to eventually find a new apartment to live in.
26. The tenant argued that as she was not responsible for the damage to her unit and as it was caused by a defect in the complex, which is maintained by the landlord, the landlord ought to reimburse her for the \$1000.00 deductible she had to pay.

The Landlord's Position

27. The landlord stated that the complex, and hence the sprinkler system, is only a few years old and he argued that he had done his "due diligence" by having the sprinkler system inspected annually. In support of that claim he submitted 2 inspection certificates showing that the sprinkler system had been tested and had passed inspection on 06 June 2018 (█ #1) and 06 June 2019 (█ #2).
28. The landlord also argued that everyone should carry insurance precisely for these sorts of unfortunate encounters. He argued that he is not responsible for the sprinkler malfunction and he feels no obligation to reimburse the tenant for the deductible she had to pay.

Analysis

29. Policy with this Section is that a tenant could only claim compensation for damages if she can establish that the landlord had caused the damages either deliberately or through his negligence. There was no suggestion that the sprinkler system was damaged deliberately and I find that the tenant has presented no evidence to establish that the landlord had been negligent.
30. I accept the landlord's claim that he had the sprinkler system annually inspected and that it had passed those inspections each year. In that respect, I find that the landlord could not have reasonably foreseen that there would have been a malfunction. For that reason, the tenant's claim does not succeed.

Decision

31. The tenant's claim for "other expenses" does not succeed.

Issue 3 – Hearing Expenses

32. The tenant submitted a receipt showing that she had paid a fee of \$20.00 to file this application and a receipt showing that she had paid \$11.93 to make photocopies and print photographs.
33. As the tenant's claim has been partly successful, the landlord shall pay the tenant's hearing expenses.

Summary of Decision

34. The tenant is entitled to the following:

a) Refund of rent.....	\$425.00
b) Hearing expenses.....	\$31.93
Total Owing to Tenant	
<u>\$456.93</u>	

23 December 2019

Date

John R. Cook
Residential Tenancies Tribunal

