

Residential Tenancies Tribunal

Decision 20-0040-03

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:08 am on 10 November 2020 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as "tenant1" and "tenant2", respectively, participated in the hearing. The respondents, [REDACTED] and [REDACTED], hereinafter referred to as "landlord1" and "landlord2", respectively, also participated.

Issues before the Tribunal

3. The tenants are seeking an order for a refund of the security deposit in the amount of \$500.00.
4. The landlords are seeking the following:
 - An order for compensation for damages in the amount of \$1690.50,
 - An order for the costs of cleaning in the amount of \$200.00, and
 - Authorization to retain the \$500.00 security deposit.

Legislation and Policy

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

Issue 1: Compensation for Damages - \$1690.50

Relevant Submissions

The Landlord's Position

6. Landlord1 stated that he had entered into a 1-year, fixed-term lease with the tenants in December 2018. That agreement was renewed in 2019 for another year and was not set to expire until December 2020. The agreed rent was set at \$1000.00 per month and the tenants paid a security deposit of \$500.00 on 02 November 2018.
7. Landlord1 stated that he had an agreement with the tenants that they could break their lease at the end of April 2020 if he found someone else to move into the apartment. He stated that he secured new renters for 01 May 2020 and the tenants vacated on 30 April 2020.
8. Landlord1 stated that the rental unit, a cottage, is 1 half of a duplex building. This unit was brand new when the tenancy began. The 2 units in this duplex share a single septic system.
9. Landlord1 stated that in March 2020 he received 3 calls from the tenants informing him that their toilet was backing up. On all 3 occasions he sent a plumber to the unit to snake the line, but no issues were discovered.
10. Landlord1 stated that his plumber surmised that the problem must be with the septic tank and he therefore called Pardy's Waste Management to investigate. They dug up the septic tank, removed the top and the landlord stated that they had reported to him that they were able to smell cleaning products in the tank. He also submitted a report from Pardy's in which they write that in the tank they had discovered cloths, Swiffer cloths, cups and fast food containers.
11. Landlord1 argued that the tenants were responsible for these items in the septic tank as the unit was new when they moved in and because their neighbour, who shared the duplex with them, was living out of town during most of his tenancy. He acknowledged that there was a new occupant living in the adjoining apartment after January 2020, but landlord1 stated that this new neighbour informed him that he was used to using septic systems and knew what could and could not be flushed down the toilet.
12. As the tenant's were responsible for the septic backup, he argued that they are therefore responsible for the costs he had incurred calling a plumber on those 3 occasions and hiring Pardy's to excavate the tank. With his application, landlord1 submitted an invoice from Pardy's showing that they had charged him \$448.50 and an invoice from his plumber showing that he was charged a total of \$1242.00 for those 3 service calls.

The Tenants' Position

13. Tenant1 stated that when she moved in she was not informed by the landlord that the unit was operating on a septic system. She also stated that she was new to [REDACTED] and did not have any general knowledge about the town's waste management system.
14. In any case, tenant1 denied that she had put anything in her toilet besides regular toilet paper. She denied that she had been flushing cloths down her toilet and she was incredulous that the landlord would think that she was flushing cups or fast-food packaging down her toilet. She also claimed that after Pardy's had discovered those items in the tank, the landlord had told tenant1 that he did not believe that the tenants were responsible and instead blamed it on the contractors who had installed the tank.
15. Tenant1 also pointed out that she had no issues with the plumbing for the first year that she resided at the property and the problems only arose after the person in the adjoining unit moved in in January 2020. She suggested that that person may have been putting cloths or wipes into his toilet, hence causing the backup issues in her unit.

Analysis

16. I accept landlord1's claim that there were cloths, cups and other items in the septic tank and that these items were likely responsible for backup which occurred in the tenants' unit. His evidence also shows that he had spent \$1690.50 to hire a plumber and an excavator.
17. However, I was not persuaded that the landlords had established, on the balance of probabilities, that the tenants had put those items in their toilet. The tenants vehemently denied that they had put those items in their toilet and the landlord presented no evidence to the Board to directly establish that those items had come from their unit. Given that there were 2 apartments sharing the same septic tank, it is just as probable that the problems were caused by the occupant of the other apartment. In fact, given that the issues did not arise until after he had moved in, I find that explanation to be more likely.
18. As the landlords have not established, on the balance of probabilities, that the tenants were responsible for septic backup, their claim for the costs of addressing that matter does not succeed.

Decision

19. The landlords' claim for compensation for damages does not succeed.

Issue 2: Cleaning Costs - \$200.00

Relevant Submissions

The Landlord's Position

20. In March 2020, because of the septic issue, the tenants had requested that the landlords reduce their rent by \$200.00 because of the cleaning that they to undertake each time the toilet backed up. The landlords agreed and landlord1 stated that the tenants had only paid \$800.00 for that month.
21. Landlord1 stated that he has since changed his mind and he figured that he could have hired a cleaner for cheaper than \$200.00. He is seeking to have the tenants return to him the \$200.00 rebate he had originally agreed to.

The Tenants' Position

22. Tenant1 stated that she cleaned up the water and sewage that entered her bathroom on 4 different occasions. She stated that the landlord had informed her that he was unable to find someone to clean their apartment so she had offered to do the cleaning in exchange for a \$200.00 reduction in rent. The landlord agreed to that offer.

Analysis

23. The facts are not disputed by the parties here—they had entered into an agreement whereby, in exchange for cleaning, the landlord would reduce the rent by \$200.00.
24. No evidence was presented to the Board to suggest that that agreement had not been freely entered into by the parties or that that agreement was somehow in contravention of the *Residential Tenancies Act, 2018*. Given that the parties had freely struck this agreement, and given that they both had lived up to their side of the agreement, I don't see why the landlords think this Board should intervene now that landlord1 had changed his mind.

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25. The landlords' claim for cleaning costs does not succeed.

Issue 3: Security Deposit

26. There was no dispute that the tenants had paid a security deposit of \$500.00 on 02 November 2018. As the landlords' claim for damages and cleaning has not succeeded, they shall refund the full amount of that deposit to the tenants.

Summary of Decision

27. The tenants' claim for refund of the security deposit succeeds in the amount of \$500.00.

01 March 2021

Date



John R. Cook
Residential Tenancies Tribunal