

Residential Tenancies Tribunal

Decision 20-0108-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 1:25 pm on 21 July 2020 via teleconference.
2. The applicant, [REDACTED], hereinafter referred to as "the tenant", participated in the hearing. She was represented by [REDACTED] ("[REDACTED]").
3. The respondent, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as "the landlord".

Issues before the Tribunal

4. The tenant is seeking the following:
 - An order for a payment of \$2192.51 in compensation for inconvenience,
 - An order for a refund of rent in the amount of \$2204.16, and
 - An order for a payment of utilities in the amount of \$16.52.

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*.
6. Also relevant and considered in this case is section 16 of the *Residential Tenancies Act, 2018*.

Issue 1: Refund of Rent - \$2204.16

Relevant Submissions

The Tenant's Position

7. The tenant and the landlord entered into a 1-year, fixed-term rental agreement on 01 November 2017 and a copy of that executed lease was submitted with the tenant's application. The current rent is set at \$1625.00 and the tenant had paid a security deposit of \$1200.00.
8. █ stated that in July 2019 the landlord had discovered some structural issues with the apartments below the tenant's and in order to carry out the needed repairs, the tenant's patio had to be removed and she was without use of it for a period of 3 months. The tenant stated that the only reason she had even decided to rent this apartment was because it had a patio.
9. █ stated that that patio measured 48 square feet, and based on the rent that she was paying each month she calculated that the tenant is entitled to a rebate of rent in the amount of \$236.16.
10. She also pointed to her submitted photographs that show that the landlord's contractors also had to utilize a portion of the tenant's apartment while these repairs were being carried out on the patio and the rest of the complex. These photographs show that the area around the patio door was taped off with a vapour barrier and they also show that the tenant's living room furniture was covered in cloths.
11. █ complained that because of the work being carried out at the apartment, the tenant's furniture had to be covered with the cloths shown in the photographs to protect it from being soiled by the dust from the construction work. Because of that dust and the work that was ongoing in her apartment, the living room and dining room area of the apartment was unusable for a period of 3 months. █ stated that the tenant used the second, small bedroom of the apartment as the living room and dining room for that period. She would eat all of her meals in that bedroom and she would watch TV there as well.
12. █ stated that the living room and dining room measured 400 sq ft and she calculated that in addition to the rebate for the loss of the patio, she is also entitled to an additional rebate of rent in the amount of \$1968.00.

The Landlord's Position

13. The landlord acknowledged that the tenant was without use of her patio between 22 July and 05 December 2019, a period of 4.5 months. He calculated that, based on her rent and the square footage of the patio, the tenant is actually entitled to a rebate of rent in the amount of \$347.66.
14. The landlord also acknowledged that the tenant was without the use of a portion of her living room. However, he disagreed with the tenant's claim that the whole room was unusable and he stated that, based on her submitted photographs, it only appears that there is about 100 sq ft cordoned off.

15. He calculated that the tenant is only entitled to \$162.00 in compensation for those 100 sq ft and that the total amount that the landlord should compensate the tenant is \$509.66 (\$347.66 + \$162.00)

Analysis

16. Subsections 16.(5) and (6) of the *Residential Tenancies Act 2018*, states:

(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.

(6) The director may, upon hearing an application under section 42, value a service, privilege, accommodation or benefit discontinued or unavailable for a time under subsection (5).

17. That is, where a landlord is carrying out renovations on a rental unit which would lead to a reduction in the tenant's use and enjoyment of the property, he is required to provide the tenant with a minimum of 6 month's notification and such renovations cannot be carried out within the first 12 months after the tenancy begins. Those are the rental increase notice requirements.
18. Where such notice is not given, the reduction in the tenant's enjoyment of the rented premises is considered to be an improper rental increase and the Director can value that improper rental increase and order an appropriate refund.
19. As indicated above, the landlord did acknowledge that the tenant was without the use of the patio and he stated that she was entitled to compensation in the amount of \$347.66 for that loss. That claim therefore succeeds in that amount.
20. Although I accept the tenant's claim that dust was getting on her furniture and other surfaces in at least 400 sq ft of her apartment, I agree with the landlord that it only appears that about 100 sq ft could not be used by the tenant because of the ongoing renovations. I deal with the cleaning in the next section.
21. Based on the landlord's calculation of compensation for 48 sq ft, I find that the tenant is entitled to the following compensation:

- Loss of patio (48 sq ft) \$347.66
- Loss of 100 sq ft of living space \$724.29

Total \$1071.95

Decision

22. The tenant's claim for a refund of rent succeeds in the amount of \$1071.95.

Issue 3: Utilities – \$16.52

Relevant Submissions

The Tenant's Position

23. █ stated that because of the ongoing renovations to the patio door, when the weather started to get colder, cold drafts could be felt in the apartment and the tenant was required to turn up her heat.
24. █ did a comparison with of the tenant's heating bills from the preceding year and she determined that she had spent an additional \$16.52 in electricity in 2019 than she had in 2018 for that same period.

The Landlord's Position

25. The landlord did not contest this portion of the tenant's claim and he acknowledged that she is entitled to the amount she is seeking here.

Analysis and Decision

26. As the landlord did not contest this portion of the tenant's claim, her claim succeeds in the amount of \$16.52.

Issue 3: Compensation for Inconvenience - \$2192.51

Relevant Submissions

The Tenant's Position

27. In addition to the loss of living space, the tenant is also seeking compensation for the following:

• 14 meetings with other tenants at complex	\$271.60
• Doctor visits and medication.....	\$83.31
• Cleaning	1837.60
Total	<u>\$2192.51</u>

Meetings

28. █ stated that while the renovations were taking place at her apartment and at the complex, the tenant met with other residents at the complex who were likewise affected by the renovations. █ stated that there were 14 of these meetings and the tenant is seeking compensation in the amount of \$19.40 for each meeting, for a total claim of \$271.60.

Doctor Visits

29. █ also claimed that during the period that the renovations were taking place, the tenant developed an allergy. █ stated that she does not know what the tenant is allergic to, but her doctor told her that she may have developed an allergy to the drywall dust or it may be the case that there is just too much drywall dust in the air.

30. █ stated that the tenant was required to purchase medication for her allergies at a cost of \$23.31. No receipt was submitted with her application. The tenant is also seeking \$60.00 in compensation for having to make 2 trips to see her doctor and trip to the pharmacy to collect her medication.

31. █ stated that the tenant has never had any issue with allergies prior to the commencement of the renovations at the complex and she claimed that these allergies had cleared up now that the renovations have been completed.

Cleaning

32. █ claimed that the renovations that were being carried out at the complex and in the tenant's apartment caused there to be a significant amount of dirt and dust on the surfaces in her apartment. She claimed that it was particularly bad during the period from 03 September to 04 November 2019, a period of 44 days.

33. █ stated that the tenant had coverings placed over all of her furniture in the living room and she claimed that at the end of each day these coverings would have been laundered. She also stated that the tenant would have to clean the surfaces in the apartment everyday for about 2 hours during this period to remove the drywall dust. She also stated that the tenant had spent a total of 4 hours cleaning the ducts in the apartment.

34. In compensation for the cleaning, the tenant is seeking \$1760.00 for 88 hours of cleaning (2 hours per day x 44 days x \$20.00 per hour) as well as \$77.60 for duct cleaning (4 hours x \$19.40 per hour).

The Landlord's Position

Meetings

35. The landlord argued that he cannot be held liable for the tenant's decision to meet with other residents at the complex. He acknowledged that there were renovations taking place at the complex from July through to December 2019, but these renovations did not require that the tenant make time to meet with the other residents.

Doctor Visits

36. The landlord declined to comment on this portion of the tenant's application as he stated that he was not a medical professional. He did, though, express relief that the tenant was now feeling better.

Cleaning

37. The landlord made no comment concerning the amount of cleaning that the tenant had carried out.
38. He claimed that the construction workers had done their best to minimize the amount of dust that would enter the tenant's unit by partitioning off the areas where they would be plastering and painting. He also claimed that these workers had used a heavy plaster to minimize the amount of dust that would be in the air.
39. The landlord argued that whenever these sorts of renovations take place, it has to be expected that a certain amount of dust and dirt would be created. He claimed that there was no intention on his part or on the part of the contractors to cause the tenant any inconvenience or stress. He pointed out that the renovations were urgently needed and were done for the safety and well-being of the tenants at the complex.
40. The landlord also pointed out that towards the end of the renovations, he had sent in cleaners himself to clean up after the contractors.

Analysis

41. I agree with the landlord that he cannot be held accountable for the tenant's decision to meet with the other residents at the complex and I find that those meetings were not necessitated by the construction work that had been taking place at the complex.
42. I also find that the landlord is not responsible for the costs the tenant incurred in visiting her doctor and the pharmacist. Insufficient evidence was presented at the hearing to establish that the tenant was allergic to the drywall dust and [REDACTED] even stated that she doesn't know what the tenant is allergic to.

43. Regarding the cleaning, although I accept the landlord's claim that he had taken steps to minimize the amount of dirt and dust that entered the tenant's unit, I nevertheless find that the tenant did have to carry out some intermittent cleaning and I agree with her that she should be compensated for her time.
44. It was acknowledged at the hearing that there were some periods where no work was being carried out on the tenant's unit. And based on the tenant's photographs, I was not convinced that 2 hours of cleaning was required each and every day during that 44 day period. I find that compensation for 25 hours of the tenant's personal labour is reasonable: \$485.00 (\$19.40 per hour x 25 hours).

Decision

45. The tenant's claim for compensation for inconvenience succeeds in the amount of \$485.00.

Issue 4: Hearing Expenses

46. As the tenant's claim has been successful, the landlord shall pay her hearing expense of \$20.00 for the costs of filing this application.

Summary of Decision

47. The tenant is entitled to the following:

• Refund of Rent	\$1071.95
• Utilities	\$16.52
• Compensation for Inconvenience	\$485.00
• Hearing Expenses	\$20.00
Total Owing to Tenant	<u>\$1593.47</u>

16 September 2020

Date

John R. Cook
Residential Tenancies Tribunal

