

Residential Tenancies Tribunal

Decision 20-0254-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:11 am on 25 September 2020 via teleconference.
2. The applicants, [REDACTED], [REDACTED], and [REDACTED], hereinafter referred to as “tenant1”, “tenant2” and “tenant3”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the landlord”, also participated.

Issues before the Tribunal

3. The tenants are seeking the following:
 - An order for a refund of the security deposit in the amount of \$945.00,
 - An order for a refund of rent in the amount of \$1260.00,
 - An order for compensation for inconvenience in the amount of \$350.00, and
 - An order for compensation for damages in the amount of \$250.00.
4. The landlord is seeking the following:
 - An order for compensation for damages in the amount of \$400.00, and
 - An order for the costs of cleaning totalling \$160.00.

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 are sections 10 and 16 of the *Residential Tenancies Act, 2018* and policy 9-3: Claims for Damage to Rental Premises.

Preliminary Matters

7. The tenants were not served with the landlord's counterclaim 10 clear days prior to the hearing date. They waived their right to proper notice and requested that both claims be heard, as scheduled.
8. With the consent of the tenants, the landlord amended his application to include a claim for \$130.00 for garbage removal.
9. The tenants also amended their application. They struck their claim for refund of the security deposit and tenant1 also stated that they were no longer seeking any compensation for damages.
10. The tenants called the following witness:
 - [REDACTED] ("[REDACTED]") – former tenant at [REDACTED] (basement)

Issue 1: Rebate of Rent - \$1260.00

Relevant Submissions

The Tenant's Position

11. The tenants submitted a rental agreement with their application showing that they had entered into a 1-year, fixed-term lease with [REDACTED] ("[REDACTED]") commencing 01 December 2018. The agreed rent was set at \$1260.00 per month and it is acknowledged in the lease that the tenants had paid a security deposit of \$945.00.
12. On 22 October 2019, the tenants received a message from [REDACTED] informing them that they were terminating their tenancy and they were required to immediately move out of the unit. The message indicated that because of a presence of black mold in the property, it was deemed to be uninhabitable.
13. On 24 October 2019, the tenants received a second message from [REDACTED] informing them that they will no longer be managing the property and that from that date onwards, [REDACTED], the homeowner, was taking over as landlord.
14. The tenants had all of their possessions moved out of the unit on 07 November 2019 and the landlord returned the security deposit to them on 19 December 2019.
15. Tenant1 stated that on 10 October 2019 a leak was discovered in the plumbing which affected the tenants' unit, as well as the basement apartment, which was occupied by [REDACTED]. Tenant1 stated that he was instructed by the landlord not to use the toilet after that date.

16. On 17 October 2019, the landlord removed the toilet, the sink and the flooring in the bathroom and that room remained in that condition until the tenants vacated on 07 November 2019. Tenant1 complained that for the period from 10 October to 07 November 2019 the 3 tenants had to share the second toilet located in the laundry room. He also complained, however, that they were still required to shower in the bathroom that was undergoing repairs, despite the fact that there was no floor, no sink and no toilet in that room.
17. Tenant1 also stated that black mold and asbestos was discovered at the property after the floor, toilet and sink were removed and he claimed that all of 3 of the tenants developed respiratory symptoms as a result.
18. Because of all of these issues, tenant1 argued that the tenants are entitled to a rebate of the rent that they had paid for October 2019: \$1260.00.

The Landlord's Position

19. The landlord stated that a leak was first discovered by [REDACTED] in her basement apartment. He stated that she had called a plumber about the matter and after the plumber had conducted an investigation and had seen the black mould in the apartment, he had instructed [REDACTED] to vacate the property.
20. He claimed that [REDACTED] had also been in contact with [REDACTED] about the issue with the mould and the leak and the landlord claimed that it was her complaints that prompted [REDACTED] to issue the tenants the termination notice on 22 October 2020. However, the landlord argued that there was, in fact, no black mould discovered at the property and he submitted an inspection report from AmeriSpec to corroborate that claim. He also claimed that there was no asbestos found at the property.
21. The landlord acknowledged that, after 17 October 2019, the tenants did not have use of the toilet and the sink in the main bathroom, and he also acknowledged that he had removed the flooring in that room. However, he argued that he was trying to address the matter and that he was trying to find a solution for the tenants.
22. The landlord argued that the tenants are not entitled to a rebate of rent for October 2019 because they had use and enjoyment of the rental unit for the whole month of October 2019. He also argued that the termination notice that had been issued to them was not valid as no mould or asbestos was discovered in the unit and it was therefore not uninhabitable.

Analysis

23. With respect to the issue of mold and asbestos, I find that there was not enough evidence presented at the hearing to establish that the mold found in the tenants'

bathroom was of a variety that was dangerous to the tenants' health or that the mould was responsible for any respiratory symptoms that they had suffered. I likewise find that there was insufficient evidence presented at the hearing to establish that asbestos had been discovered.

24. However, the landlord did not contest tenant1's claim that he had instructed him to refrain from using the toilet on 10 October 2019 and that on 17 October 2019 he had the toilet, sink and floor removed from the main bathroom.
25. 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).

26. That is, where a landlord is carrying out renovations on a rental unit which would lead to a reduction in the tenants' use and enjoyment of the property, he is required to provide the tenants 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.
27. Where such notice is not given, the reduction in the tenants' 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.
28. I find that the tenants' enjoyment of their unit was reduced because of the loss of the toilet, because of the renovations that were taking place in the main bathroom and because they were required to share that one toilet in the laundry room.
29. I don't agree that the tenants are entitled to a rebate of the full month's rent, though. No issues were noted prior to 10 October 2019 and I find that they are responsible, then, for the full rent for the first 10 days of that month. And although I agree with them that losing the toilet and sink for remaining 21 days of that month was a major inconvenience, they still had use and enjoyment of the other areas of the apartment (kitchen, bedrooms, common living areas, etc.).

30. Accordingly, I find that the tenants are entitled to a rebate of 30% of the rent paid for the period from 11 October to 31 October 2019. I calculate that amount to be \$256.06 (\$1260.00 paid in rent for October 2019 ÷ 31 days x 21 days x 30%).

Decision

31. The tenant's claim for a rebate of rent succeeds in the amount of \$256.06.

Issue 2: Compensation for Inconvenience - \$350.00

Relevant Submissions

The Tenants' Position

32. Tenant1 stated that there were 3 reasons for this claim.
33. First, he pointed out that the landlord was required to return the security deposit to them within 10 days after they had vacated the unit, but the deposit was not returned until 19 December 2019, over a month later. He stated that he and his roommates are students and that they didn't have much money and they needed that deposit so that they could secure a new apartment. Tenant1 stated that the landlord's refusal to release the deposit on time had caused them significant stress.
34. Secondly, tenant1 claimed that moving out on such short notice also caused the tenants unwanted stress. He stated that they received their termination notice and had to move during their midterm exams and he pointed out that this lease was not set to expire until the end of November 2019.
35. Finally, tenant1 stated that because they were required to move out of their apartment, they had to hire a U-Haul truck to move their personal possessions to a new apartment. With their application, the tenants submitted a receipt showing that they had paid \$49.23 for that rental.
36. The tenants are seeking a payment of \$350.00 in compensation for the inconvenience they had suffered as a result of having to wait for the return of their security deposit, as a result of the stress they had suffered as a result of having to move early, and in compensation for the costs of hiring a moving truck.

The Landlord's Position

37. The landlord argued that the unit was not uninhabitable and that the termination notice issued to the tenants was not valid. He claimed that [REDACTED] had issued the notice to the tenants as a result of false complaints made by [REDACTED].

38. Regarding the security deposit, the landlord claimed that that matter was out of his hands as the deposit was held, in trust, by [REDACTED], not him.
39. With respect to the costs of hiring a moving truck, the landlord pointed out that as a condition of their lease, the tenants were required to purchase tenants' insurance and he claimed that the costs of moving should have been covered through their policy.

Analysis

40. Regarding the costs of hiring a moving truck, I find that that portion of the tenants' claim succeeds. The evidence presented at the hearing was that there was a plumbing issue at the apartment and that they were issued a termination notice by [REDACTED] and required to vacate the premises on short notice. As the lease was not set to expire until the end of November 2019, and as no prior termination notice had been issued by the landlord or the tenants, I find that this move was not planned for and that the tenants had incurred costs for moving that they had not foreseen. As such, their claim succeeds in the amount of \$49.23. No evidence was presented at the hearing to establish that these costs were covered by the tenants' insurance policy.
41. Regarding the remaining costs the tenants are seeking here, I find that that claim does not succeed.
42. It was not disputed that the security deposit was not returned to the tenants within 10 days after they had vacated, as required under section 14.(9) of the *Residential Tenancies Act, 2018*, and I also agree with the tenants that moving on such short notice, during their midterms, must have been stressful. However, the tenants presented no evidence showing that they had incurred any costs as a result of the failure of the landlord to return that deposit or as a result of any stress they had endured.

Decision

43. The tenants' claim for compensation for inconvenience succeeds in the amount of \$49.23.

Issue 3: Compensation for Damages - \$400.00

Issue 4: Cleaning - \$160.00

Issue 5: Garbage Removal - \$130.00

Relevant Submissions

The Landlord's Position

44. The landlord stated that after the tenants moved out he was required to repair some damages caused to the apartment and he submitted the following breakdown of the costs he is seeking here:

• Replace electric range.....	\$200.00
• Repair door frame.....	\$100.00
• Purchase new window screen	\$50.00
• Replace window blinds	\$50.00
• Cleaning	\$160.00
• Garbage removal.....	\$130.00
• Total	<u>\$690.00</u>

45. The landlord stated that the tenants were supplied with an electric range when they moved into the unit and he complained that this appliance was so dirty after the tenants vacated that he was required to dispose of it and he now has to purchase a new one. No photographs were submitted at the hearing showing the condition of the range. That range has not been replaced and no receipts or quotes were submitted to corroborate the costs the landlord is seeking here.

46. The landlord also complained that the tenants had damaged a door frame to one of the rooms at the unit and he submitted a photograph with his application showing that there was a crack in that door frame near the latch plate. That door frame has not yet been repaired but the landlord figured it would take about 2 hours to carry out that work. No quotes or estimates were submitted at the hearing to corroborate the costs the landlord is seeking here.

47. The landlord also submitted photographs showing that a window screen and a set of plastic mini-blinds were damaged. These items have not been repaired or replaced and no quotes or receipts were submitted at the hearing.

48. The landlord also stated that he was required to hire a professional cleaner after the tenants had moved out. He claimed that the kitchen and the bathroom had not been properly cleaned by the tenants had he had his cleaner come to the unit on 3 different occasions. The landlord is seeking \$160.00 for the costs of hiring a cleaner. No photographs were submitted at the hearing showing the condition of the unit when tenants moved out and no receipt from the landlord's cleaner was submitted either.

49. The landlord also claimed that the tenants are responsible for the costs of garbage removal. He stated that they had left behind some mattresses and bed springs and he hired someone to bring those items to the dump. He testified that it took 2 trips to remove the mattresses and bed spring and the landlord is seeking a payment of \$130.00. No receipt or invoice was submitted at the hearing.

The Tenants' Position

50. Tenant1 stated that on 05 December 2019 he had contacted the landlord seeking a refund of the security deposit and he questioned him then about whether there were any issues with the apartment that would prevent them from receiving the full deposit. He pointed out that the landlord did not identify any issues at that time and the full amount of the security deposit was returned to the tenants on 19 December 2019.
51. Regarding the cleaning, tenant1 stated that they had carried out some cleaning before they moved, but he stated that there was black mold coming from every where. With respect to the bathroom, he argued that it was not only the mold in that room which prevented them from cleaning, but also the fact that the floor, toilet and sink had been removed.
52. Regarding the mattresses, tenant1 claimed that they were contaminated with black mould and they could not bring them to their new apartment as that unit would become contaminated as well. In support of that claim, tenant1 pointed to a quote the landlord had received from a restoration company for the costs of cleaning the black mould and the detailed quote identifies the type of loss at the unit as "Mold / Asbestos". The tenants' witness, [REDACTED], corroborated tenant1's claim that black mold was discovered at the unit.

Analysis

53. Under Section 10.(1)2. of the *Residential Tenancies Act, 2018* the tenant is responsible to keep the premises clean and to repair any damage caused by a willful or negligent act.

2. *Obligation of the Tenant* - The tenant shall keep the residential premises clean, and shall repair damage caused by a wilful or negligent act of the tenant or of a person whom the tenant permits on the residential premises.

Accordingly, in any damage claim, the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- The value to repair or replace the damaged item(s)

In accordance with Residential Tenancies policy 9-3, the adjudicator must consider depreciation when determining the value of damaged property. Life expectancy of property is covered in Residential tenancies policy 9-6.

Under Section 47 of the Act, the director has the authority to require the tenant to compensate the landlord for loss suffered or expense incurred as a result of a contravention or breach of the Act or the rental agreement.

Order of director

47. (1) After hearing an application the director may make an order

- (a) determining the rights and obligations of a landlord and tenant;*
- (b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;*
- (c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;*
- (d) requiring a landlord to compensate a tenant or a tenant to compensate a landlord for loss suffered or expense incurred as a result of a contravention of this Act or the rental agreement*

54. I agree with tenant1's argument that if the landlord believed that the tenants were responsible for the damages identified in this portion of his claim that he ought to have addresses that matter in November 2019 when they were seeking return of their security deposit.
55. In any case, no repairs have been made to the unit and the landlord had not purchased a replaced range, window screen or blinds. Furthermore, no evidence was submitted at the hearing (e.g., quotes, estimates, receipts, invoices, etc.) to justify the costs he is seeking here.
56. I reach the same conclusion with the issue of cleaning and garbage removal. No photographs were submitted by the landlord and no receipt or invoice showing that he was charged \$160.00 by a professional cleaner or \$130.00 for garbage removal.

Decision

57. The landlord's claim for compensation for damages does not succeed.

Summary of Decision

58. The tenants are entitled to the following:

- Rebate of Rent \$256.06
- Compensation for Inconvenience \$49.23
- Total Owing to Tenants \$305.29

08 December 2020

Date

[REDACTED]
John R. Cook
Residential Tenancies Tribunal