

Residential Tenancies Tribunal

Decision 20-0075-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:15 am on 09 March 2020 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. She was represented by [REDACTED] (“[REDACTED]”).
3. The respondent and landlord, [REDACTED], in care of [REDACTED] [REDACTED], was represented at the hearing by [REDACTED] (“[REDACTED]”), [REDACTED] (“[REDACTED]”) and [REDACTED] (“[REDACTED]”).

Issues before the Tribunal

4. The tenant is seeking a payment of \$420.00 in compensation for inconvenience.

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 14 of the *Residential Tenancies Act, 2018*.

Issue 1: Compensation for Inconvenience - \$420.00

Relevant Submissions

Background

7. The following facts don't seem to be in dispute.

8. The tenant and the landlord entered into a 1-year, fixed-term rental agreement in July 2017. The agreed rent is set at \$795.00 and the tenant had paid a security deposit of \$596.25.
9. On 22 January 2020 the tenant noticed that her ceiling was bubbling and she tried to contact [REDACTED] about the matter but was unable to reach him so she called the landlord and left a message. The landlord did not respond and the tenant called the landlord again on 25 January 2020, with no response.
10. On 27 January 2020 the tenant stated that water was entering her apartment from the ceiling and she had to place 2 buckets on her dresser and 2 pots on her bed to catch the dripping water.
11. On 29 January 2020 the landlord discovered that there was a significant amount of snow in the attic that had soaked the insulation. This is what had caused the leak in the apartment. A total of 9 apartments in the 2 buildings at the complex had suffered water damage as a result.
12. The landlord had contractors repair the attics and her own workers carried out repairs on the tenant's apartment.
13. These repairs included cutting out and replacing the affected drywall on walls and ceilings, installation of new drywall and then plastering and repainting. The carpet in the tenant's son's bedroom also had to be replaced as it was water damaged. The repairs were completed on 07 February 2020.

The Tenant's Position

14. The tenant argued that she is entitled to compensation for the inconvenience she suffered for the period from 25 January to 07 February 2020, a period of 14 days.
15. The tenant stated that her apartment was uninhabitable during those 14 days and she submitted photographs at the hearing showing the condition of the apartment while the repairs were being carried out ([REDACTED] #5).
16. These photographs show that there are various holes in the ceilings and water damage on the walls. The tenant had pots and pans throughout the unit collecting water and there were dehumidifiers placed in the apartment to assist with drying. The photographs also show that carpet in her son's room had been removed. The photographs also show that the tenant's bed and her dresser, and other personal belongings, were covered in plastic sheets to protect them during the renovations.
17. The tenant stated that she was unable to sleep at the unit during this period and she resided with friends in [REDACTED]. Her son stayed with friends in [REDACTED].
18. The tenant submitted a breakdown of expenses she had incurred during this period. She stated that she and her son incurred \$158.40 and \$56.00,

respectively, in extra mileage costs travelling from their friends' residences to their respective places of work. The landlord also claimed that when her husband visited her on 29 January 2020, he was required to stay a hotel and she submitted a receipt showing that he was charged \$70.21 (█ #4). The tenant additionally claimed that she had paid her son's friend \$140.00 as a contribution to the costs of meals that they were providing him during that 2 week period.

19. The tenant stated that the landlord had offered to move her into the other building after she realized that her unit had to be renovated. However, she claimed that she was fearful that the apartment she would be placed in would run into the same problems she encountered at her unit as there was also snow in the attic in that building and she would be moving into an apartment which was below one that had itself suffered water damage. She also complained that the landlord had not offered to cover her costs for moving from her apartment to the one that had been offered to her.

The Landlord's Position

20. █ acknowledged that the tenant was inconvenienced as a result of the water damage caused to her apartment. However, she argued that the landlord had done everything that could reasonably be expected to have the issue addressed as quickly as possible.
21. Regarding the costs the tenant is seeking here, █ argued that these costs should be covered by her tenant's insurance.
22. █ also stated that she had offered the tenant another apartment for her to move into and she claimed that the tenant had not requested that the landlord contribute to the costs of moving to that new apartment. █ claimed that his maintenance workers would have assisted with the move.
23. █ acknowledged that she had received a request from the tenant for an abatement of rent but she complained that the tenant had not indicated to her the amount she was seeking. She nevertheless sent that request on to the landlord and it was denied.
24. █ argued that she had done everything to accommodate the tenant and she had acted quickly to have her apartment repaired. She acknowledged that there were a few delays in having the repairs carried out, but claimed that this was because for several days the landlord did not know the source of the problem.
25. █ argued that although she was sympathetic to the tenant's situation, she pointed out that the landlord was not responsible for the damages caused to her unit and as she had acted swiftly and diligently in having the unit repaired, the tenant is not entitled to any compensation.

Analysis

26. 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).

27. 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, she is required to provide the tenant with a minimum of 6 months' notification and such renovations cannot be carried out within the first 12 months after the tenancy begins. Those are the rental increase notice requirements.

28. 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.

29. I accept ■■■'s claim that the damage caused to the tenant's apartment was not caused deliberately and was not the result of any negligent act on the part of the landlord. I also accept ■■■'s claim that the landlord had the repairs carried out quickly and that they had attempted, as best they could, to accommodate the tenant's needs during that time. I commend the landlord for that.

30. However, the damage caused to the tenant's apartment did cause her significant inconvenience and she did not have use and enjoyment of her unit for 14 days. Based on the above quoted subsections of section 16 of the *Act*, I therefore find that the tenant is entitled to a rebate of rent for that period.

31. Given that the tenant's rent is \$795.00 per month and that she was without use of her apartment during that period, I calculate that she is entitled to compensation in the amount of \$364.92 ($\$795.00 \text{ per month} \times 12 \text{ months} \div 366 \text{ days per year} \times 14 \text{ days}$).

32. That rebate amount could be used by the tenant to set off the costs of additional accommodations and travel, or, had she opted to move to the landlord's offered apartment, her moving costs.

Decision

33. The tenant’s claim for compensation for inconvenience succeeds in the amount of \$364.92.

Issue 2: Hearing Expenses

34. The tenant submitted a hearing expense claim form and a receipt for \$20.00 for the costs of filing this application. As the tenant’s claim has been successful, the landlord shall pay that hearing expense.

Summary of Decision

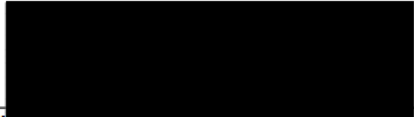
35. The tenant is entitled to the following:

- Compensation for Inconvenience \$364.92
- Hearing Expenses \$20.00

- Total Owing to Tenant \$384.92

05 June 2020

Date



John R. Cook
Residential Tenancies Tribunal