

Residential Tenancies Tribunal

Decision 20-0204-05

John R. Cook
Adjudicator

Introduction

1. The hearing was called at 9:05 am on 24 August 2020 via teleconference.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “tenant1” and “tenant2”, respectively, participated in the hearing. The respondent, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”.

Issues before the Tribunal

3. The tenants are seeking an order for a refund of the security deposit in the amount of \$663.75.
4. The landlord is seeking an order for a payment of rent in the amount of \$663.75 and authorization to retain the 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*.
6. Also relevant and considered in this case is sections 9, 14 and 21 of the *Residential Tenancies Act, 2018* and the *Frustrated Contracts Act*.

Issue 1: Security Deposit - \$663.75

Issue 2: Rent Owning - \$663.75

Relevant Submissions

The Tenant's Position

7. Tenant1 stated that they had entered into a 1-year, fixed-term lease with the landlord on 01 August 2016 and a copy of the executed lease was submitted with their application. The rent in 2016 was set at \$885.00 and by 2020 it had increased to \$930.00. It is acknowledged in the lease that the tenants had paid a security deposit of \$663.75.
8. Tenant1 stated that on 16 February 2020 a pipe broke at the residential complex causing water to enter their apartment. She stated that they were unable to reside at the unit after that date, as the landlord had deemed it uninhabitable, and they had all of their possessions removed from the property by 19 February 2020. Initially, The Red Cross assisted them with emergency housing and afterwards the tenants availed of their insurance policy to deal with their damaged property and to cover the costs of moving.
9. On 28 February 2020, the tenants issued the landlord a termination notice. That termination notice was issued under section 21 of the *Residential Tenancies Act, 2018* (notice where premises uninhabitable) and it had immediate effect.
10. After they had issued this termination notice, the landlord informed them in an e-mail that he would not be returning their security deposit to them as they had not provided him with a proper, 1-month notice.
11. Tenant2 argued that their notice was indeed valid as they could no longer reside at the property and he argued that, under these circumstances, they were entitled to issue a short notice under section 21 of the *Act*.
12. Tenant1 also pointed out that as the landlord was no longer able to provide them with housing at the apartment specified in their contract, the agreement was therefore frustrated. She acknowledged that the landlord had offered to put them up in a selection of different apartments, but she pointed out that the apartment that they had contracted to rent from them in the lease was no longer available. She also argued that the apartments the landlord had offered were either too small or, as they were adjacent to their flooded apartment, the tenants would be disturbed by the sounds of renovations which would be taking place over the coming months.
13. The tenants stated that the landlord has not returned the security deposit to them after they had vacated and they testified that they had not entered into any written agreement on its disposition.

The Landlord's Position

14. The landlord argued that he had done everything in his power to accommodate the tenants during this period and he reiterated tenant's claim that he had offered to provide them with an alternate apartment.
15. He also pointed out that because of the inconvenience suffered by the tenants during this period and because of the fact that they could no longer live in their apartment, he refunded a portion of February's rent to them: \$448.97.
16. However, the landlord nevertheless claimed that a notice under section 21 of the *Residential Tenancies Act, 2018* (notice where premises uninhabitable) can only be issued in cases where it can be established that the landlord was in violation of statutory condition 1, set out in section 10 of the *Act*, which states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

1. Obligation of the Landlord -

(a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.

(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.

17. The landlord argued that as this was an emergency situation, and as he had, up to 16 February 2020, maintained the property in a good state of repair and had addressed any maintenance issues as they arose, the tenants have failed to establish that he was in violation of statutory condition 1, quoted above. He argued that he had not expected or foreseen that a pipe would burst at the complex and he claimed that the damage caused to the tenants' unit was not the result of any negligence on his part or caused by any failure to maintain the complex in a good state of repair. Accordingly, the timeframe requirements of a termination notice set out in this section do not apply to the situation at hand and he was entitled to receive a 1-month notice, as contemplated under section 18 of the *Residential Tenancies Act, 2018*.

18. The landlord argued that as he had not received a proper, 1-month notice that the tenants were terminating their agreement he is therefore entitled to rent in lieu of notice for the month of March 2020. The landlord is not seeking the full rent of \$930.00 for March 2020, though, but just the equivalent amount of the security deposit: \$663.75.
19. When I inquired about what efforts the landlord had been taking to mitigate his lost rental income for that rental unit, he stated that the unit is not yet posted for rent as there are still ongoing renovations taking place, 6 months after the flooding had initially occurred. He further stated that he was unable to put new tenants in the unit for March 2020, the month for which he is seeking rent, as the unit was “uninhabitable” at that time.

Analysis

20. There is no dispute that on 16 February 2020 there was a flood at the rental unit and there was also no disagreement between the parties that the tenants could no longer reside there. Or to put this in other, but synonymous words, the rental unit was, after 16 February 2020, “unfit for habitation” and was not in “a good state of repair”.
21. I agree with the tenants, then, that they were entitled to issue the landlord a notice under section 21 of the *Residential Tenancies Act, 2018*, which states:

Notice where premises uninhabitable

21. (1) *Notwithstanding subsection 18(1) and paragraph 18(3)(a), where a landlord contravenes statutory condition 1 set out in subsection 10(1), the tenant may give the landlord notice that the rental agreement is terminated and the tenant intends to vacate the residential premises effective immediately.*

22. Accordingly, on this analysis, this tenancy ended on 28 February 2020.
23. I also agree with tenant1 that even before the issuance of this termination notice, it had become impossible for the landlord to live up to his contractual obligations outlined in the lease, and their contract was therefore frustrated. As the rental contract was frustrated on 16 February 2020, on a different analysis, the tenancy ended on that date. And based on the fact that the landlord had returned the remaining rent for February 2020, those actions imply that he had believed the contract was frustrated as well.
24. “Rent” is defined in the *Act* as “money or other value paid ... for the use or occupation of the residential premises” (cf. s. 2.(g)). Given that the tenants could no longer reside at the unit between 16 February and August 2020, I am perplexed as to why the landlord believes he is entitled to rent for March 2020.

Even the landlord stated at the hearing that the unit was “uninhabitable” during March 2020.

25. I find that the termination notice issued to the landlord in February 2020 was a valid notice and the landlord is therefore not entitled to rent for March.
26. As the landlord’s claim for rent has not succeeded and as the tenancy ended in February 2020, the landlord shall refund the full amount of the security deposit to the tenants.

Decision

27. The landlord’s claim for a payment of rent for March 2020 does not succeed.
28. The tenants’ claim for refund of the security deposit succeeds in the amount of \$663.75.

27 October 2020

Date



John R. Cook
Residential Tenancies Tribunal