

Residential Tenancies Tribunal

Decision 20-0337-05

Michael Greene
Adjudicator

Introduction

1. The hearing was called at **9:30 am** on **20 October 2020** at Residential Tenancies Hearing Room, 84 Mt. Bernard Avenue, Lower Level, The Sir Richard Squires Building, Corner Brook, Newfoundland and Labrador via Bell Teleconferencing System.
2. The applicant, [REDACTED], ([REDACTED]) hereafter referred to as the tenant, participated in the hearing. (*Affirmed*)
3. The respondent, [REDACTED], ([REDACTED]) hereafter referred to as landlord1, participated in the hearing. (*Affirmed*)
4. The respondent, [REDACTED], ([REDACTED]) hereafter referred to as landlord2, did not participate in the hearing. (*Absent and Not Represented*)
5. The details of the claim were presented as a verbal monthly agreement with rent set at \$900.00 per month and due on the 1st of each month and a security deposit in the amount of \$675.00 was collected on the tenancy on 09 March 2018.
6. In a proceeding under the *Residential Tenancies Act, 2018*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Preliminary Matters

7. The affidavit submitted by the tenant shows that the landlords [REDACTED] and [REDACTED] was served with the notice of this hearing on the **05 October 2020** by serving the application for dispute resolution document to the landlord to the email address: [REDACTED]
8. The tenant removed a claim for prescriptions in the amount of \$16.83.

Issues before the Tribunal

9. The tenant is seeking the following:
 - a) Compensation for Inconvenience **\$2040.00**;
 - b) Hearing Expenses;

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in the *Residential Tenancies Act, 2018 (the Act)*, Section 47.
11. Also relevant and considered in this case are:
 - a. Policy 12-1: *Recovery of Fees: Filing, Costs, Hearing Expense, Interest, Late Payment and NSF*, and;
 - b. *Policy 9-4 Claims for Damages to a Tenants Personal Belongings*.

Issue 1: Compensation for Inconvenience - \$2040.30

Relevant Submissions

Tenant Position

12. The tenant testified that they are seeking **\$2040.30** as compensation for inconvenience due to the damage to their personal property.
13. The tenant referred to the itemized list of items lost as a result of mold in the rented premises (**Exhibit T # 3**) along with photos of the damaged items (**Exhibit T # 1**) and the mold in the property.

14. The tenant testified to the chronological series of events related to this claim as follows:
 - a. **25 Apr 2020:** Tenant moved into the property
 - b. **09 June 2020:** Tenant noticed mold in the bedroom
 - c. **11 June 2020:** Landlord attended the property with a dehumidifier and cleaned the Air Exchanger.
 - d. **13 June 2020:** Tenant discovered more mold in a separate area of the bedroom.
 - e. **15 June 2020:** Tenant provided a termination notice to the landlord.
 - f. **16 June 2020:** Insurance contractor attends to the property for inspection.
 - g. **19 June 2020:** Tenant notices excessive mold in the closet of the tenant's bedroom.
 - h. **28 June 2020:** Tenant has vacated the property.
 - i. **29 June 2020:** Tenant returned to clean and noticed a puddle of water in front of the heater.
15. The tenant submitted a series of text messages between herself and the landlord (**Exhibit T # 2**) supporting the chronological events above.
16. The tenant did not provide any receipts and stated that the values were costed from online sources. She added that the mattress was cleaned and re-used. The tenant is claiming for 4 days of cleaning @ 12-14 hours per day for a total of \$400.00.

Landlord Position

17. The landlord disputes the claim stating that he acted as quickly as he could and done what he could to investigate and rectify the situation. The landlord stated that he had the insurance contractor (**Exhibit L # 1**) into the property who indicated that the mold was not coming from the walls and that the moisture readings were within normal limits. The landlord further testified that the HRV unit was working normally but it was dirty so he cleaned it while he was there. The landlord testified that the tenant's items were packed tightly against the wall which likely contributed to the mold. He does not feel responsible and fails to see where he has been negligent.

Analysis

18. I have reviewed the testimony and evidence of the landlord and tenant in this portion of the claim. Compensation for the damage to personal property is awarded when a landlord has been negligent in their duties or actions.
19. The statutory conditions of the Residential Tenancies Act, 2018 states that the landlord shall maintain the property in a good state of repair during the tenancy. A landlord cannot correct an issue if they are not aware of a potential issue.

20. The key determination factor in this claim is has the landlord been negligent in their actions. From the chronological list presented by the tenant, I can determine that once the landlord was made aware of the issue, he acted to visit the property and secure other resources (dehumidifiers, personnel and contractors) to deal with a potential problem. There may have been a delay of a couple days, but this is not seen as a significant or negligent delay. A landlord can only rely on the best information provided by the professionals, and in this case would have been the restoration specialist from [REDACTED]. This company determined that the moisture was not coming from the walls at the time of their inspection.
21. The tenant is the applicant in this claim and therefore the burden of proof rests with the tenant. There is no doubt that there was mold in the property, both parties will attest to this as factual. However, I am at a loss to see from the evidence, that the landlord was aware of the situation prior to the event and did not act, or that once they were made aware of the event failed to act and/or the lack of action caused damage to the tenant's belongings. I find that the actions of the landlord were not negligent and therefore the landlord cannot be held to compensate the tenant for the loss.
22. The tenant did not have any tenant's insurance package, which would likely have covered her in this situation.

Decision

23. The tenant's claim for compensation for inconvenience fails.

Summary of Decision

24. The tenant's claim fails

21 December 2020

Date

[REDACTED]

Michael Greene
Residential Tenancies Tribunal