



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

At the hearing both parties acknowledged that this tenancy had been the subject of a dispute resolution hearing on December 15, 2009. At the outset of the hearing the Agent for the Landlord #1 stated that the Landlord will withdraw the Notice to End Tenancy for Cause, as the tenancy will be ending pursuant to an Order of Possession, which had an effective date of December 31, 2009, that was granted to the Landlord pursuant to the hearing on December 15, 2009.

The Agent for the Landlord #1 stated that all of the matters in dispute at this hearing had been resolved at the hearing on December 15, 2009. Neither party submitted a copy of the decision from the hearing on December 15, 2009 and both parties were advised that I would be reviewing that decision to ensure the issues in dispute during this proceeding were not resolved at the previous hearing.

I have reviewed the decision from the hearing on December 15, 2009 and have determined that the issues in dispute are different than the issues that are in dispute today. In the hearing on December 15, 2009 the Tenant was seeking an Order requiring the Landlord to make repairs and in this hearing the Tenant is seeking financial compensation for deficiencies with the rental unit, some of which relate to the

repair orders that was requested. As the first application relates to a repair Order and this application relates to a financial claim, I find that I have jurisdiction in this matter.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to a monetary Order as a result of deficiencies with the rental unit and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2008; that the Tenant is required to pay monthly rent of \$750.00; and that the Tenant is still occupying the rental unit.

The Tenant is seeking compensation, in the amount of \$100.00, for groceries that spoiled when the fridge in the rental unit stopped working. The male Tenant stated that the fridge stopped working in the Spring of 2008; that he advised the Landlord that the fridge had stopped working; that an agent for the Landlord advised him that he needed to consult with the Landlord, who was in India, prior to replacing the fridge; that he offered to find a replacement fridge because the Landlord was not resolving the matter in a timely manner; that it took approximately one month to come to the agreement that the Tenant would find a replacement fridge; and that the fridge was delivered to the rental three days after the Tenant located a replacement fridge.

The Agent for the Landlord#1 stated that when the Tenant advised the Landlord that his fridge was not working he specifically asked for the opportunity to find a replacement fridge so that he could find one that suited his purposes; that she did not need to obtain the Landlord's approval for an expenditure of this nature; that the Tenant was given permission to locate a new fridge; and that the fridge was delivered shortly after the Tenant located the new fridge.

The Tenant is seeking compensation, in the amount of \$410.00, for excessive gas bills that resulted from a faulty furnace and hot water heater. The Tenant contends that the gas bills in the rental unit were significantly reduced after the furnace and hot water heater were replaced in the early part of 2009. The Landlord acknowledged that the furnace in the rental unit was old at the beginning of this tenancy and that it was replaced in February of 2009 and that the hot water tank was replaced in January of 2009. The Landlord submitted a copy of a letter from a heating contractor, in which the contractor stated that he replaced the furnace in the rental unit in February of 2009; that the furnace was old but was still in good working order prior to the replacement; and that the new furnace is more efficient than the old furnace.

The Tenant is claiming compensation, in the amount of \$700.00, for being without a fully functional stove. The male Tenant stated that the oven and three elements on the stove did not work; that he advised the Landlord of the problem in May of 2009; and that the stove was not replaced until November of 2009.

The Agent for the Landlord #3 stated that sometime in May of 2009 the Tenant advised him that one element on the stove was not working; that they had difficulty locating a replacement stove because it was not a standard size; that the Tenant advised him that he believed he could find a replacement stove; that they agree that the Tenant would locate a stove; that in August of 2009 he learned that a replacement stove had not been located; and that the stove was replaced in November of 2009.

The Tenant is claiming compensation, in the amount of \$360.00, for being unable to use a portion of his carport. The Tenant stated that the roof of his carport is leaking which prevents him from storing personal belongings in approximately twenty-five percent of the carport. The Tenant stated that he tarped the area of the roof that is leaking shortly after this tenancy began, which has significantly reduced the amount of water that is entering the carport area.

The Agent for the Landlord #3 acknowledged that the roof is leaking where the carport meets the main portion of the house; that it would be too expensive to fix the leak at this point in time so the Landlord has elected not to repair the leak until the entire roof needs to be replaced; that the leak is minor and does not prevent the Tenant from using the carport; and that the Tenant currently uses the carport to store his vehicle and a large amount of personal items. She stated that she has never observed a significant water problem in the carport nor has she been given evidence of a significant accumulation of water that would render the carport unusable.

The Tenant stated that he served the Landlord with several photographs in support of his financial claim, via registered mail. He was unable to state when the documents were served to the Landlord and he could not locate a copy of a receipt that corroborates his statement that the photographs were sent by registered mail. The Agent for the Landlord #3 stated that the Landlord did not receive photographs in relation to this dispute resolution proceeding. The Tenant did submit several photographs to the Residential Tenancy Branch, but not until January 19, 2010. I find that these photographs have not been served on the Landlord in accordance with the Residential Tenancy Branch Rules of Procedure and I decline to consider them when determining the merits of this Application for Dispute Resolution.

The Tenant stated that he had submitted photographs that show water leaking into the ceiling of the carport but that he had submitted no photographs to show water accumulating on the floor of the carport or in any usable portion of the carport.

The Tenant is claiming compensation, in the amount of \$360.00, for being unable to use the deck in the rental unit. The Tenant stated that the deck is not usable because it is unsafe; that the decking has several areas where the 2X4 planks are beginning to rot;

and that a former agent for the Landlord promised to replace the deck at the beginning of the tenancy. The Tenant submitted photographs of the deck to the Residential Tenancy Branch on January 19, 2010, however these photographs were not served on the Landlord in accordance with the Residential Tenancy Branch Rules of Procedure and I decline to consider them when determining the merits of this Application for Dispute Resolution.

The Agent for the Landlord #3 acknowledged that the deck is not in pristine condition but she denies that it is unsafe; she contends that it is in relatively the same condition as it was at the beginning of the tenancy; and she denies that the Landlord told the Tenant that the deck would be replaced.

The Tenant is claiming compensation, in the amount of \$160.00, for being unable to use a portion of the basement. The Tenant stated that water leaked into the basement as a result of a leak in the roof in April of 2009 and that he informed the Agent for the Landlord #3 of the leak at that time.

The Agent for the Landlord #1 acknowledged that the roof had leaked but stated that the Landlord was not advised of the leak until November of 2009 and that the leak was repaired shortly after the Landlord received notification of the problem. The Agent for the Landlord #3 denied being advised of the leak in April of 2009. The Landlord submitted an invoice that shows the roof was repaired on November 20, 2009.

Analysis

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Tenant.

I find that the Tenant submitted insufficient evidence to show that he is entitled to compensation for being without a fridge for approximately one month. In reaching this conclusion, I find that the Tenant was responsible for the delay in locating a fridge the Tenant because he offered to locate a new fridge on behalf of the Landlord. Although the Tenant contends that he only offered to locate a fridge because the Agent for the Landlord would not immediately agree to replace the fridge, I find that his evidence in this regard is not credible. Rather, I find the Agent for the Landlord's statement that the Tenant asked to find a replacement fridge so that he could find one that he liked was more credible.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject

his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find the version of events provided by the Tenant to be highly improbable. In reaching this conclusion I find it unlikely that the Agent for the Landlord would have advised the Tenant that they could not replace the fridge until they had permission from the Landlord but then give the Tenant permission to replace the fridge on behalf of the Landlord.

In light of the contradictory verbal testimony and in the absence of any independent evidence that corroborates the Tenant's testimony that the Landlord was responsible for the delay in replacing the fridge, I dismiss the Tenant's application for compensation for spoiled groceries.

I accept that the new furnace and water heater that were installed in the early portion of 2009 are more fuel efficient than the older models that were in the rental unit during the first portion of this tenancy. I find that this is typical of old appliances and increased operating costs are to be expected when renting a home that is equipped with older appliances. I do not find that these increased operating costs were due to negligence on the part of the Landlord and I do not, therefore, find that the Tenant is entitled to compensation for the increased expenses. On this basis, I dismiss the Tenant's application for compensation, in the amount of \$410.00, for excessive gas bills.

Based on the undisputed evidence, I accept that the Tenant advised the Landlord that one element on his stove was not working in May of 2009 and that the stove was not replaced until November of 2009. I find that the Tenant bears the burden of proving that the other two stove elements and the oven were also not working, and I find that the Tenant has submitted no evidence to corroborate his statement that three stove elements and the oven were not working. I therefore decline to consider awarding compensation for anything other than the one malfunctioning element that the Landlord has acknowledged did not work. Upon considering the matter of compensation, I find that the Tenant is not entitled to compensation because one element on his stove was not working for a period of seven months. In reaching this conclusion, I determined that the inconvenience of one malfunctioning stove element is so trivial that it does not warrant financial compensation.

Based on the undisputed evidence, I accept that some water is leaking into the ceiling of the carport. I find that the Tenant bears the burden of proving that the leaking has rendered a portion of his carport unusable and I find that the Tenant has submitted no evidence to corroborate his statement that he is unable to use a portion of his carport as a result of the leak. In reaching this conclusion, I was strongly influenced by the Agent for the Landlord #1's statement that the Tenant has many personal items in the carport; by the Tenant's testimony that the tarp has significantly reduced the amount of water

entering the carport; and the absence of documentary evidence, such as photographs that were submitted in accordance with the Rules of Procedure, that shows a portion of the carport is unusable. On this basis, I dismiss the Tenant's claim for compensation for the loss of use of a portion of the carport.

I find that the Tenant bears the burden of proving that the deck at this rental unit is unsafe and I find that the Tenant has submitted no evidence to corroborate his statement that the deck is unsafe. In reaching this conclusion, I was strongly influenced by the absence of documentary evidence, such as photographs that were submitted in accordance with the Rules of Procedure, or other independent evidence that shows the deck was not usable. On this basis, I dismiss the Tenant's claim for compensation for the loss of use of the deck.

I find that the Tenant bears the burden of proving that the leak in the roof that allegedly contributed to flooding in the basement was not repaired by the Landlord in a timely manner and I find that the Tenant has submitted no evidence to corroborate his statement that the problem was reported to the Landlord in April of 2009. In reaching this conclusion, I was strongly influenced by the Agent for the Landlord #3's denial that he was advised of the problem in April and by the absence of evidence that corroborates the Tenant's statement that he advised the Landlord of the problem in April. In determining this matter I found that it is unlikely that a Landlord would not repair a leak in a roof in a timely manner, when the leak places the Landlord's property at significant risk. On this basis, I dismiss the Tenant's claim for compensation for damages that relate to an alleged delay in repairing the roof.

Conclusion

I find that the Tenant's claim for compensation have been without merit and I decline to award him compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 22, 2010.

Dispute Resolution Officer