



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, RP, FF

Introduction

This hearing was scheduled to deal with the tenant's request for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and orders for compliance and repairs. The tenant testified that she served the landlord with her application via registered mail sent on May 13, 2011. The tenant provided a registered mail tracking number as proof of service.

The application was amended to include a request to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant testified she sent the landlord a copy of the amended application and her evidence via courier on May 25, 2011 and that the landlord signed the waybill.

Pursuant to section 71(2) of the Act I deemed the landlord sufficiently served with the hearing documents and I proceeded to hear from the tenant without the landlord present.

At the beginning of the hearing the tenant confirmed that she has since vacated the rental unit as of May 28, 2011. As the tenant has vacated I determined that it is no longer necessary to consider the tenant's request to cancel a Notice to End Tenancy or the tenant's requests for order for compliance and repairs. Therefore, the remainder of this decision pertains to the tenant's monetary claim against the landlord only.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced December 15, 2009 and the tenant was required to pay rent of \$650.00 on the 1st day of every month. The tenant made an application on May 10,

2011 seeking compensation of \$322.57 due to the fridge and freezer not working starting April 21, 2011.

The tenant testified that the tenant had noticed the fridge and freezer not cooling her food properly before it stopped working completely on April 21, 2011. On April 21, 2011 the tenant emailed the landlord about the problem with the fridge. The landlord did not get the fridge fixed until May 11, 2011. Then the fridge stopped working again on May 26, 2011.

In making this application the tenant is seeking compensation of \$322.57 which is the sum of groceries purchased April 16, 2011 and May 3, 2011 and various restaurant meals purchased between April 22, 2011 and May 9, 2011. The tenant submitted that she is entitled to compensation because the landlord failed to make repairs within a reasonable period of time.

The tenant provided copies of her bank statements and email and text message exchanges between her and the landlord as documentary evidence for this hearing.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under the Act, the landlord is required to repair and maintain a rental unit so that it is suitable for occupation. A landlord is also required to ensure services and facilities are not restricted or terminated.

Where an item requires repair a tenant is expected to notify the landlord of the problem so as to minimize the tenant's loss. The landlord is then provided a reasonable amount of time to make the repair.

Based upon the evidence before me, I am satisfied the tenant notified the landlord that the fridge and freezer were not working starting April 21, 2011 and that the tenant was without a fully functional fridge and freezer until May 11, 2011. I find that loss of the fridge and freezer for approximately three weeks to be unreasonably long and that the landlord did not fulfill his obligation to repair the appliance sooner.

I find the tenant entitled to compensation for the loss of use of the fridge and freezer as I am satisfied the landlord violated the Act. However, I find the tenant's claim based upon cost of restaurant meals and grocery store purchases to be excessive for the following reasons. The tenant's claim equates to approximately one-half of her monthly rent. The tenant is claiming groceries purchased five days before she reported the fridge problem to the landlord. The tenant did not provide a copy of the grocery store receipts and I find it reasonable to expect the tenant had purchased at least some items that did not require refrigeration or freezing. Finally, the cost of restaurant costs should be offset by a reasonable cost associated to eating at home.

Where a tenant is denied a service or facility, it is reasonable to approximate the loss by the devaluation of the tenancy. I find it reasonable that loss of fridge and freezer would devalue a tenancy by approximately a \$150.00 per month. Therefore, I award the tenant $\frac{3}{4}$ of \$150.00 or \$112.50 for the three weeks she suffered a loss of use of the fridge, plus a portion of the filing fee, for a total award of \$150.00.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$150.00 to serve upon the landlord and enforce in Provincial Court (Small Claims) as necessary.

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: June 14, 2011.

Residential Tenancy Branch