



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, MNDC, OLC

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is an application for an order cancelling a Notice to End Tenancy, a request for a monetary order for \$695.00, and a request for recovery of the \$50.00 filing fee.

At the beginning of the hearing however and the parties in for me that the tenant has already vacated the rental unit and return possession to the landlord, and therefore there is no need to deal with a request to cancel the Notice to End Tenancy.

I have therefore dealt with a monetary portion of the claim only.

However I will not deal with the tenants claim for loss of enjoyment of the suite in the amount of \$450.00, because the tenant informed me at the hearing that this portion of the claim is also part of a claim she has filed against the landlords through the courts.

Background and Evidence

The applicant testified that:

- In September of 2011 her fridge broke down and as a result she lost approximately \$100.00 of food. She is therefore requesting that the landlords reimburse that \$100.00.
- The landlords failed to ensure that the refrigerator was promptly repaired and therefore she is also asking for loss of use of the refrigerator for seven days at \$10.00 per day for a total of \$70.00.

- In November of 2011 she found that the rental suite was very cold and when she told the landlords the landlords suggested she use the fireplace to supplement the heat.
- When she attempted to use the fireplace she found that the fan did not work and therefore she informed the landlords.
- The landlords sent electrician to repair the fan, however it turned out that the fan was not plugged in and therefore at that time she agreed to pay \$50.00 of the electrician's bill, however she has subsequently found out that repairs to appliances are the responsibility of the landlord and therefore she wants that money returned.
- One of her rent cheques went NSF and the landlords charged her a \$50.00 NSF fee and since she has subsequently found out that the maximum NSF fee is \$25.00 she wants that money returned.

The respondent's testified that:

- The fridge did breakdown in September of 2012 however they had the fridge repaired as promptly as possible.
- The only delay in repairing the fridge was the fact that the tenant was not available to allow the repair person in on a few occasions.
- They also gave the tenant \$20.00 towards the cost of the lost food.
- The reason they requested that the tenant pay a portion of the electrician's bill is because the tenant told them the fan to the fireplace did not work when in fact she had just failed to plug it in, therefore the bill was incurred as a result of the tenant's negligence.
- The tenant agreed at the time to pay the portion of that bill.
- The NSF fee they charged to the tenant was the actual amount they paid to their bank, however they have not been able to access that information to provide evidence of having paid that fee.

Analysis

Refrigerator

I deny the tenants claim for lost food that resulted when the refrigerator broke down. The landlords can only be held liable for lost food if they had some way of knowing the fridge was going to break down, however in this case they had no way of knowing and therefore they are not liable for that lost food.

It is also my decision that I will not allow the claim for loss of use of the refrigerator, as I find that the landlords did repair the fridge in a timely manner. It takes time to arrange repairs to appliances and seven days is not an unreasonable length of time.

Fireplace

I also deny the claim for return of money the tenant agreed to pay when the electrician was called to repair a fireplace fan. It is the landlord's responsibility to maintain and repair appliances, however in this case there was nothing wrong with the appliance, other than it had not been plugged in. This was an unnecessary repair call, instigated by the tenant, and therefore it is reasonable that the tenant agreed to pay for a portion of the repair.

NSF fee

I will order the return of the \$50.00 NSF fee charged by the landlords, because the landlords have provided no evidence to show that they had to pay this amount to their bank. Further although a landlord is able to charge a \$25.00 fee when they receive an NSF Cheque, they may only charge that fee if there is a clause in the tenancy agreement stating a fee will be charged and in this case there is no such clause.

It is my decision however that the applicant must bear the cost of the filing fee, because I have only allowed a small portion of her claim.

Conclusion

I have issued an order for the landlords to pay \$50.00 to the tenant.

As stated above the \$450.00 claim for not being able to fully enjoy the suite, is being pursued by the tenant through the courts and therefore I will not deal with the matter at this hearing.

The remainder of the tenants claim is dismissed without leave to reapply.

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: August 23, 2012.

Residential Tenancy Branch