



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, RR, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that the female tenant (the tenant) handed one of the landlord's representatives a copy of the tenants' dispute resolution hearing package on September 24, 2012. I am satisfied that the tenants served their hearing package and the parties served their written evidence packages to one another in accordance with the *Act*.

At the commencement of the hearing, the tenant testified that a number of the issues identified in the tenants' application for dispute resolution had been resolved prior to this hearing. For example, she said that the landlord had a new oven/range available for installation by approximately October 15, 2012. The new oven/range was installed at a time and date that was convenient on October 22, 2012. The tenant testified that the tenants have not incurred costs to make emergency repairs. For this reason, the tenant withdrew the application for reimbursement of the costs of making emergency repairs. She also withdrew the request that the landlord conduct repairs, as these have now been completed. Both of these aspects of the tenants' application are withdrawn.

The tenant also testified that the landlord has had an electrician inspect the premises and repair the most serious of the wiring problems that concerned the tenants. With respect to this wiring issue, her only request at this time was to obtain a written statement from a licensed electrician to confirm that the wiring in the rental unit has

been inspected and meets all electrical code requirements. The landlord observed that the electrician who inspected the rental premises and undertook minor electrical repairs is a licensed electrician. He testified that he would ensure that this electrician provides the tenant with the confirming letter that she was seeking before November 5, 2012.

With the landlord's agreement to ensure that the tenants receive the above letter, the tenant testified that the sole remaining issue of concern was the tenants' application for a monetary award for expenses that they incurred and for their loss in value of their tenancy resulting from the landlord's delay in providing them with a functioning oven.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses arising out of this tenancy or for repairs, services or facilities agreed upon but not provided by the landlord? Are the tenants entitled to recover their filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, e-mails and receipts, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

This one-year fixed term tenancy commenced on June 20, 2012. Monthly rent is set at \$1,750.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$875.00 security deposit paid on June 15, 2012. The parties agreed that they completed a joint move-in condition inspection report on June 20, 2012. The tenants' application for a monetary award of \$3,288.07 included the following items as set out in the tenants' October 18, 2012 Monetary Order Worksheet entered into written evidence:

Item	Amount
Estimate of Costs Incurred for the Tenants' Family of Four to eat out for September 2012 due to Lack of Oven	\$520.00
Receipts for Eating at Restaurants for October 2012 (Dinners Only)	452.99
Yard Cleanup	674.89
Painting and Repairs	1,475.49
Carpet Cleaning at Beginning of Tenancy	164.64
Total of Above Items	\$3,288.01

The landlord did not dispute the tenant's oral and written evidence that the carpets were not cleaned by the landlord prior to the commencement of this tenancy. The landlord

testified that no one lived in the rental unit for the two month's prior to the tenants' occupation of the rental unit.

The tenant gave undisputed oral and written evidence that she first reported the failure of the oven to operate properly on September 5 or 6, 2012. She testified that the stove continued to work over an almost 7-week period when she and her family had to function without an operable oven. She testified that the landlord sent a representative to check the oven a number of times. She gave undisputed oral and written evidence that the landlord's only solution for much of this period and until after she applied for dispute resolution was to propose that the tenants accept a much smaller counter top oven. On all occasions, the tenants rejected the landlord's proposal to replace the stove and oven that was identified as supplied by the landlord as part of the Residential Tenancy Agreement (the Agreement) between the parties with a countertop oven.

The tenant testified that her family was forced to eat at restaurants for much of September and until October 22, 2012, when the landlord installed a new stove and oven in the rental unit. She provided receipts for restaurant meals for October 2012, noting that her family had to miss their traditional Thanksgiving dinner at home because of the landlord's delay in restoring their oven.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord's response to the tenants' claim for reimbursement for the June 27, 2012 professional carpet cleaning was that the tenants accepted the rental unit "as is" as was noted in section 7(7) of the Agreement. In considering this aspect of the tenants' application, I noted that section 7(2) of the Agreement required the tenant to "shampoo carpets...before moving out." The landlord confirmed that similar provisions would have been in place for the tenants who occupied the rental unit prior to the commencement of this tenancy.

Section 32 of the *Act* reads in part as follows:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Based on the undisputed evidence before me and on a balance of probabilities, I find that the tenants have demonstrated to the extent necessary that they are entitled to a monetary award of \$164.64 for carpet cleaning because the landlord has not complied with the requirements of section 32(1) of the *Act*. The landlord produced little evidence to contradict the tenants' claim that the carpets were in such need of cleaning at the commencement of this tenancy that the tenants are entitled to reimbursement for their undisputed carpet cleaning costs they incurred shortly after they occupied this rental unit.

The Agreement specifically noted that the Stove and Oven were included in the package of facilities that the landlord committed to provide to the tenants. I agree with the tenant's assertion that the landlord's attempt to replace the oven supplied in the original Agreement with a much smaller countertop oven would not have been adequate. Although the tenants did not have use of the oven for almost seven weeks, I find that the tenants are not entitled to a monetary award for their loss of use of this facility for all of this period. Their September 6, 2012 notification to the landlord of the malfunctioning of a major appliance would take some time for the landlord to assess. In the tenant's email of that date, the tenant confirmed that the stove top continued to work well and the tenants were also still able to use the barbeque to cook food. I find that 10 days would have been sufficient to enable the landlord to assess the state of the oven in this rental unit and make alternative arrangements to secure a suitable replacement. The landlord provided written evidence of a September 27, 2012 email in which the landlord advised the tenants that the landlord had approved the purchase of a countertop oven for the rental unit. By October 13, 2012, the landlord had agreed to install a new oven that the tenants found acceptable in the rental unit. The tenant confirmed that the tenants were responsible for the additional delay until October 20, 2012 to have the new oven installed in her rental unit. Based on the above evidence, I

find that the landlord was responsible for the tenants' failure to have a functioning oven for approximately one month from mid-September 2012 until mid-October 2012.

Although I have given the tenant's written and oral evidence, including receipts for meals, careful consideration, I do not accept that the loss of value in their tenancy was in the magnitude of the \$972.99 claimed in their application for dispute resolution. While I realize that they were inconvenienced, particularly over the Thanksgiving weekend, by the landlord's failure to provide them with a functioning oven, all of their stove elements remained working as did their barbeque. I find that the bundle of services and facilities provided by the landlord as part of their Agreement includes many items, and not just access to a functioning oven. To grant the tenants the monetary award they are requesting would be to equate their loss of value in this tenancy attributable to the oven alone to over 55% of the overall monthly rent that they pay to the landlord. I find that this is an unreasonable estimate of the tenants' loss of value in their tenancy arising from the landlord's actions. Under the circumstances, I find that the tenants are entitled to a monetary award in the order of \$175.00, representing 10% of one month's rent, a more realistic consideration of the loss in value of their tenancy over this period.

I have also considered the tenants' claim for a monetary award for cleanup of the rental property and to be reimbursed for their repainting and repairs of the rental unit. I first note that some of the receipts submitted by the tenants are for basic yard maintenance equipment (e.g., a lawnmower, a trimmer) that would be necessary in order to fulfill their contractual obligation under the Agreement to perform yard maintenance. The landlord testified that although the landlord allowed the tenants to conduct repainting, repairs and the removal of items from the yard of the rental property, no commitment was made to reimburse the tenants for their expenses for this work. At the hearing, the tenant admitted that she had no written agreement with the landlord whereby the landlord committed to reimburse the tenants their expenses to repaint, repair or remove items from the yard on the rental property. I find that the landlord's granting permission to the tenants to undertake such activities does not equate to an authorization to bill the landlord for the tenants' labour and expenses incurred in performing these tasks. I find that the tenants have not demonstrated that any of these items constituted emergency repairs under the *Act* and the tenants have provided insufficient evidence to show that the landlord has agreed to pay them for these items. I dismiss without leave to reapply the tenants' application for a monetary award for the cleanup of their rental property and for their repainting and repair of the rental unit.

As the tenants have been partially successful in their application, I allow them to recover their filing fee from the landlord.

Conclusion

I issue a monetary award in the tenants' favour in the amount of \$389.64 under the following terms, an amount designed to compensate them for carpet cleaning, for a loss in the value of their tenancy due to the lack of an operating oven in their rental unit for a period of time, and the recovery of their filing fee:

Item	Amount
Carpet Cleaning	\$164.64
Loss in Value of Tenancy for Lack of an Oven	175.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$389.64

The remainder of their application for a monetary award is dismissed without leave to reapply.

To implement this monetary award, I order the tenants to reduce their rent for December 2012 by \$389.64. As of January 1, 2013, the tenants' monthly rent reverts to the regular amount in accordance with their residential tenancy agreement.

The tenants' application for repairs and for a monetary award for emergency repairs conducted by the tenants are withdrawn.

I order the landlord to provide the tenant with a letter from a licensed electrician to confirm that the electrician is licensed and has inspected the rental unit, and has found that all electrical wiring in the rental unit complies with the applicable electrical code. I further order that this action be taken by November 5, 2012.

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: October 29, 2012.

Residential Tenancy Branch