



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RP RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 04, 2014, by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to have the Landlord Ordered to make repairs to the unit, site or property; to allow the Tenant reduced rent for services or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord for this application.

The Tenant provided affirmed testimony which indicated the Landlord was served with copies of the Tenant's application for dispute resolution and Notice of dispute resolution hearing on April 4, 2014, by registered mail. The Tenant's evidence was sent registered mail on May 20, 2014. Canada Post tracking numbers were provided during the Tenant's testimony. Based on the submissions of the Tenant I find the Landlord is deemed served notice of this proceeding on April 9, 2014, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the Landlord's absence.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order?
2. Should the Landlord be ordered to make repairs?
3. Is the Tenant entitled to reduced rent?

Background and Evidence

The Tenant submitted evidence that the parties executed a written tenancy agreement for a one year fixed term tenancy that commenced on December 1, 2013. The Tenant(s) are required to pay rent of \$1,600.00 on the first of each month plus utilities and on October 24, 2013, the Tenant paid \$800.00 as the security deposit.

The Tenant testified that approximately ten days into the tenancy she realized that the dishwasher was not working. Then as time progressed she noticed that the refrigerator was not keeping the food cold enough. She called the Landlord and he told her that he

would look after the repairs. She stated that she continued to ask the Landlord for repairs and first put her requests in writing, in an e-mail, on March 4, 2014.

The Tenant pointed to the e-mail she provided in evidence and argued that the Landlord has avoided conducting any repairs as he has always told them he is too busy or he will attend to the issues later. Her e-mail lists the following seven items needing repairs: dishwasher; electricity in the kitchen; refrigerator; security lens and light at the front the door; curtains; and water taps.

The Tenant submitted that since filing her application for dispute resolution on April 4, 2014, they have conducted some of the repairs themselves; purchased a new dishwasher; and hired contractors to complete the remaining items. She completed her application seeking compensation which was estimated at \$1,500.00 because at the time she filed her application she had not paid to cover the costs of the dishwasher and repairs. Receipts of \$935.93 were submitted in evidence for work performed as follows:

- (1) April 18, 2014 Appliance repairs to the refrigerator at a cost of \$80.00 plus \$110.00 for work done on the dishwasher and drain pipes. She submitted that she had to keep the food outside as the refrigerator did not keep the food cold enough.
- (2) April 14, 2014 Electrical work of \$80.85 which included assessing the bathroom electrical outlet that had water behind it; turning on the breaker for the kitchen outlet; and repairs to the exterior motion sensor light
- (3) \$469.38 for the purchase of a new dishwasher
- (4) \$195.70 for the removal of the old dishwasher and installation of the new dishwasher

The Tenant gave evidence that the bathroom taps do not shut off properly and are constantly dripping water. Their tenancy agreement requires that they pay for utilities so the delay in getting the water taps fixed will cost more for utilities. There were some other minor issues, such as the curtains, which her husband has repaired.

In closing the Tenant stated that she and her husband told the Landlord that it would cost approximately \$200.00 to purchase a new motor for the dishwasher and that it would be better just to purchase a new dishwasher. When the Landlord failed to take action they told the Landlord that they would be going ahead with getting the repairs done and purchasing the new dishwasher. The Landlord never responded to her e-mails or telephone text messages.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her evidence.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 33(3) of the *Act* provides that a tenant may have emergency repairs made only when all of the following conditions are met: (a) emergency repairs are needed; (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(1) of the *Act* defines emergency repairs as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) **the electrical systems**, or
- (vi) in prescribed circumstances, a rental unit or residential property [emphasis added].

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Tenants have sought to recover \$935.93 for repairs which included work done on the existing dishwasher and drain, removal of existing dishwasher, purchase and installation of a new dishwasher, electrical work to two outlets (kitchen and bathroom), and repairs to the refrigerator.

Based on the foregoing, I find that there is only one repair item claimed which meets the aforementioned definition of an emergency repair and that is the electrical work that was completed on April 14, 2014. Accordingly, I award the Tenant monetary compensation for electrical work, of **\$80.85**.

I accept the undisputed evidence that the Tenant was told at the outset of this tenancy that all the appliances, including the refrigerator and dishwasher, were in working order.

However, that was not the case and when the Landlord failed to have these items repaired the Tenant filed an Application for Dispute Resolution on April 4, 2014.

Once filing her application, the Tenant took action to initiate repairs prior to the May 26, 2014 hearing, without the Landlord's written permission or an Order from the Residential Tenancy Branch (RTB) authorizing her to recover costs to have the refrigerator and dishwasher repaired or to purchase a new dishwasher and have the Landlord's dishwasher removed. Based on the foregoing, in the absence of written permission or an Order from the RTB, I find the Tenant must bear the costs of the refrigerator and dishwasher repairs; the removal, purchase and installation of the new dishwasher, as these do not meet the definition of emergency repairs. The Tenant's claims for these costs are hereby dismissed, without leave to reapply.

Based on the above, the Tenant owns the newly purchased dishwasher and may remove it when this tenancy comes to an end unless the parties wish to negotiate a written agreement for the Landlord to purchase the dishwasher from the Tenant. If the parties do not agree to the sale of the dishwasher, in writing, the Tenant will be responsible for re-installing the original broken dishwasher at the end of her tenancy.

Section (1)(a) of the Act stipulates that a "**service or facility**" includes appliances and furnishings that are provided or agreed to be provided by the landlord to the tenant of a rental unit.

Section 27 of the Act stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates, restricts, or fails to repair an appliance, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

The evidence supports that the Tenant was not provided with a properly working refrigerator during the first four and one half months of this tenancy (December 2013 to mid April 2014); which caused the Tenant to keep her food outside to prevent it from spoiling. Accordingly, I find that the value of this tenancy was reduced by a value of \$50.00 per month and I award the Tenant monetary compensation in the amount of **\$225.00** (4.5 months x \$50.00).

As noted above, the Tenant was told that the dishwasher was in working condition at the time she entered into the tenancy agreement. As that was not the case, I find the value of the tenancy has been reduced by \$25.00 per month until such time as the Landlord has provided the Tenant with a working dishwasher (either by purchasing the dishwasher installed by the Tenant or by supplying a different fully functioning dishwasher).

For clarity, I hereby Order that due to the broken dishwasher, the Tenant is entitled to reduced rent of \$25.00 per month from December 1, 2013 to June 30, 2014 (7 months x \$25.00) for a total amount of **\$175.00; plus** a further rent reduction of \$25.00 per month (\$1,600.00 - \$25.00) for all future months commencing July 1, 2014, for which the Landlord does not provide a fully functioning dishwasher.

As noted above, section 32 of the Act requires that the Landlord repair and maintain the rental unit. Accordingly, I hereby order that the Landlord have the leaking water taps repaired no later than **June 20, 2014**.

The Tenant has primarily been successful with her application; therefore I award recovery of the **\$50.00** filing fee

Conclusion

The Tenant has been ordered to reduce her future rent payments to \$1,575.00 (\$1,600.00 - \$25.00) effective July 1, 2014. The rent reduction will stay in effect until such time as the Landlord provides the Tenant with a working dishwasher.

The Tenant has also been awarded Monetary Awards totalling **\$450.00** (\$225.00 + \$175.00 + \$50.00). This one time award of \$450.00 may be deducted from the Tenant's next rent payment.

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: May 30, 2014

Residential Tenancy Branch

