# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, RP, RR

Introduction

The tenant applies for a monetary award, repair order and rent reduction claiming he is entitled to a better refrigerator, a full stove and the addition of protective strips on the floors under the doors where different flooring meets.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is entitled to any of the relief requested?

Background and Evidence

The rental unit is claimed to be the lower portion of a residential home. The tenant and the "upper" tenant, the witness Ms. D., moved to the home together with Ms. D.'s three children, from Victoria at the end of June.

The tenant says his rent is $600.00 per month. The landlord's representative, his wife Ms. F., claims there is no "lower" suite and that the entire house was rented to the applicant and Ms. D. at a $1250.00 per month. She agrees that a portion of lower house has the look of a separate suite.

The landlord holds a $625.00 security deposit. The tenant says $300.00 of it is his portion.

The tenant provided a copy of the first two pages of a standard tenancy agreement dated June 2, 2014, attached to a welfare office "Shelter Information" sheet. That tenancy agreement lists Mr. J. as the sole tenant of the "lower." The signature page is not attached. It appears the landlord put his initials and perhaps his signature at various locations on page 2 of the standard agreement. That document indicates that the tenancy includes a "stove and oven" and a refrigerator.

Mr. J. relates that the fridge in the lower portion is too small and frosts over. He says it leaves a bad taste in any food left in it, even bottled water. He says that the landlord promised him a stove but he only given a hotplate.

The tenant testified that at three, possibly four locations in the lower suited there is no finishing piece across the bottom of the doorways to span and transition between the intersection of different floorings. He considers it a safety hazard.

Ms. D. testified about a variety of problems in the home generally and not related to the three items particularized by the applicant Mr. J. in his application. The landlord had just purchased the house through a foreclosure sale and they were his first tenants. They moved in at virtually the same time he took possession under the sale. She says the landlord was told the tenants would need separate appliances. She says the landlord agreed to get separate appliances in the premises by the end of June. She says the June 29th agreement was forced on her while she was moving in. She says that the applicant Mr. J.'s initials on the document were forged. Both tenants pay proportionate rent directly from the welfare office; he $600.00, she $650.00.

The landlord's representative testified that the tenancy is a single tenancy under the June 29 h agreement, though the landlord was aware that Mr. J. intended to occupy the lower portion with his girlfriend, Ms. D.'s daughter. She refers to a "ROMA" form of tenancy agreement dated June 29th for a tenancy commencing July 1, 2014. That agreement lists Ms. D. and Mr. J. as the tenants of the whole rental unit at a rent of $1250.00. It notes a security deposit of $625.00 was paid June 2, 2014. The agreement has been signed by Ms. D. and the landlord. It has not been signed by the applicant Mr. J. though it appears he has initialled various portions. On its signature page there is a handwritten addition saying "House is rented as a single unit." That addition appears to have been initialled by the landlord, by Ms. D. and by Mr. J.

The June 29th agreement specifies that a fridge, stove and "hot plate" are included in the rent.

While Ms. D. acknowledged her signature on this agreement, she testified that she felt pressured to immediately sign it on the evening of June 29 and she did not have time to consider it before being required to initial and sign it. She says the applicant Mr. J.'s initials on the document were forged.

Ms. F. denies there was any pressure to sign the June 29th agreement and says the agreement was given to Ms. D. on the evening of June 29th and returned by Ms. D. the next day initialled and signed to the extent in the form filed as evidence. She notes that a handwritten notation has been made on the back of one of the pages, giving the telephone number for the Salvation Army soup kitchen and says one of the tenants made that notation while they had the agreement. She says that's indicative of the document being in the tenants' possession for an extended period.

Ms. F. testified that there was no agreement to install a fridge or stove. She says the fridge in the lower area is a good size, five feet by three feet, an "apartment fridge." There is a full size fridge upstairs. She says the home is zoned as a single family residence, indicative that a second suite is not permitted by the zoning authority. She says that the lower area is not electrically wired to allow for a regular stove.

Ms. F. testified that the flooring, where it joins other flooring at the doors is adequate and poses no safety threat; there are no large gaps or ridges between the flooring types.

Analysis

It is necessary to determine whether the lower area was agreed to be a separate rental unit. If so, then it is reasonable to conclude that it would contain the regular appliances like a fridge and stove, as specified in the portion of the June 2nd agreement submitted as evidence.

I find it most likely that the June 2nd agreement, if it was actually signed by the landlord, was a document prepared after Mr. J. and Ms. D. attended to view the home and to demonstrate to the welfare office that the its client Mr. J. was moving into the house and what the rent was to be.

It may have been a binding agreement on June 2nd, but I find it was replaced by the tenancy agreement of June 29th made at the time of move in. The two documents cannot survive together and without some definitive evidence to the contrary, the most recent agreement made between the parties would govern.

On the competing evidence of Ms. D. and Ms. F., Ms. D. has not proved that she was pressured into signing the June 29th document.

That agreement indicates it is for the rental of the entire house. Indeed, it says the house is rented to both Mr. J. and Ms. D. "as a single unit." It appears that the rent for the premises is being paid by two distinct payments from the welfare office on behalf of each of Mr. J. and Ms. D. I do not consider that to be particularly indicative. I find that the rental unit is the entire house and there was not separate tenancy with Mr. J. for the lower portion.

Whether or not Mr. J. applied his initials to various parts of the June 29th tenancy agreement, he did not sign it. That agreement is not enforceable against him as a tenant. Equally, he does not have the status of a tenant to maintain an application for dispute resolution. His standing is that of a mere occupant.

Notwithstanding that finding, it would be open to the sole legal tenant, Ms. D., to make the application Mr. J. has made. She was at the hearing throughout and so I think it fair to address the issues raised as though she was the applicant tenant.

In regard to the flooring, it is as it was on move in. It was apparently accepted by the tenant Ms. D. at that time with no condition or requirement included in the tenancy agreement or any related document that it be repaired. Despite that, if the tenant shows it is somehow a safety risk a repair order may be appropriate. In this case, Mr. J. has not shown the floor to be a safety risk and so I dismiss that item or the claim.

In regard to the fridge and stove, I find that there was no obligation on the landlord to provide a better fridge. It may be a "service or facility" provided at the start of the tenancy and therefore required to be maintained by the landlord. However, it is not clear that the existing fridge in the lower area is defective. The one now in the lower portion is shown by the applicant's photos to need cleaning and to be in bad need of defrosting, but that is usually a regular maintenance issue left to the tenant and particularly in this case, where the June 29th agreement provides "[t]enants agree to prepare unit for rental in exchange for early move-in."

In regard to the stove, if find that there is no requirement at law that the landlord provide a second stove for the lower part of the rental unit and that it has not been proved that the landlord agreed to do so.

Conclusion

In result, the tenant's application must be dismissed.

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 24, 2014

Residential Tenancy Branch