



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RR, O, FF

Introduction

This hearing was convened to address an application by the tenants for an order compelling the landlord to perform emergency repairs, allowing the tenants to reduce rent for repairs not completed and compensation for loss of services. The tenants also seek to recover the filing fee paid to bring their application. Both parties participated in the conference call hearing.

At the hearing, the landlord agreed to perform repairs so the only issues remaining to be adjudicated were whether the tenants are entitled to compensation and a rent reduction.

At the hearing, the landlord who attended the hearing representing both respondent landlords advised that the surname of the other landlord was misspelled on the tenant's application for dispute resolution. I have corrected that name and the style of cause in this decision reflects that correction.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?

Should the tenants be authorized to reduce their rent until repairs are effected?

Background and Evidence

The parties agreed at the hearing that the landlord would replace the tenants' refrigerator with one which had previously been in the rental unit but had been removed in order to clean it and remove debris from the vents. They further agreed that the landlord would repair the drawer on the tenants' oven. The tenants read the model number of the oven to the landlord at the hearing and he agreed that he would purchase replacement rollers and install them when he came with the refrigerator.

The tenants testified that on July 31, 2014, they advised the landlord that the refrigerator and stove were not working. They provided a copy of the letter mailed to the landlord on that date which states the following:

Just a note to let you know stove & fridge are not working. Stove and oven keep turning its self on at intervals, top of stove is fine & working but oven

comes on by itself every so often. It is unplugged, one can cure the oven by unplugging stove for one week & leaving it unplugged, this stops it for awhile but as soon as stove is plugged in again oven comes on by self again. This is scarey, hard on hydro bill & in the hot weather, uncomfortable.

Fridge acts much like a starter on a vehicle does when on its way out. It makes a number of cracks and false starts before comming on. And does not keep cold on bottom shelf. Turning it up makes top shelf freeze while items like milk on bottom shelf sours well before expiry date.

Please see to fixing or replacing these appliances ASAP. I will look forward to hearing from you in writing when you will be comming to do this. [*reproduced as written*]

The tenants testified that they did not hear from the landlord for several weeks and on August 13 they sent another letter which provided in part as follows:

Concerning the Refrigerator,
I put some milk in the refrigerator and 2 days later (August 5) it was sour and the expiry date was August 14, 2014 and I hated to waste it but could not use it.

The temperature was turned up and the top shelf freezes food including the eggs but won't keep even the milk cold on the bottom shelf.

Concerning the stove,
The top of the stove works BUT the oven comes ON – all by itself and at odd hours and at 400 degrees F, it is a fire hazard. I unplugged it and use only the top of the stove for meals. But, how do you cook a roast or bread or cookies on the top of the stove?

Solution,
I would like both the refrigerator and the stove replaced with possibly second-hand appliances in good working condition.

I expect to receive a letter from you in a reasonable amount of time (2 weeks).

On August 18, the landlord responded to the August 13 letter with a letter stating that the problems with the refrigerator were likely caused by ice buildup or a plugged drain line. The landlord suggested that the tenants unplug and defrost the refrigerator and ensure that when they started the refrigerator again, they ensure that they not block the vents in the freezer compartment. The landlord also advised that he would be bringing a replacement stove in early September. The tenants filed their application for dispute resolution on August 19, presumably before they received this letter.

The parties agreed that the landlord replaced the stove on September 6. The landlord testified that because the tenants said that the stove top was operational and did not say that the oven was completely unusable, he did not believe the replacement to be urgent as he believed the tenants could still use the appliance. He further testified that he did not replace the refrigerator because he believed that if the tenants followed his instructions to defrost the refrigerator and not over fill the freezer compartment, the issues would be resolved.

The parties agreed that the tenants told the landlords not to communicate via telephone or email. The tenants testified that they preferred to communicate in writing in order to ensure that the landlord did not forget repair requests. The landlord testified that he lives some 2 hours away from the rental unit and is not able to immediately attend to repair issues. Further, he said that there were no repair persons for hire in the small town in which the rental unit is located. The landlord expressed some frustration that the tenants would only communicate with him in writing and would not take his calls. He attributed the delay in his response to the fact that he had to ask questions and give instructions via mail rather than over the phone and stated that the tenants would see a much speedier resolution to their problems if they would speak to him rather than write to him.

The tenants seek to recover the equivalent of 6 months of rent in compensation for the 2 months in which they experienced problems with the stove and the 3 months in which they experienced problems with the refrigerator.

Analysis

The tenants have the burden of proving their claim. In order to be successful in their claim, they must prove that the landlord breached his obligations under the Act or the tenancy agreement.

The tenants refused to communicate with the landlord on the telephone and instead chose to communicate via mail. They sent their first letter of complaint on July 31. The landlord is deemed to have received that letter 5 days later on August 5. They mailed their second complaint on August 13 and the landlord responded 5 days later, on the day in which he was presumed to have received it, by advising the tenants how they should address the problem with the refrigerator as he believed it possible to correct the problem. There is no evidence as to whether the tenants attempted to follow the landlord's instructions to defrost the refrigerator. I note that in their letter of August 13, the tenants advised the landlord that they expected to hear from him within 2 weeks but they filed their application for dispute resolution just 6 days later.

I accept that there was a delay between the time the tenants first reported the problem with the appliances and the time when the landlord delivered the replacement stove. However, some of that delay may be attributed to the tenants' refusal to interact with the landlord on the telephone. Had the tenants telephoned the landlord, they could have received his instructions regarding the refrigerator, attempted the suggested course of action and immediately reported back to him as to whether they were successful. They also could have advised the landlord that the issue with the stove was serious.

In both of the tenants' letters, they indicated that the stove was turning on randomly when it was left plugged in. It seems to me that the logical course of action to take would be to leave the stove unplugged unless it was being used. While this is not the manner in which a stove is meant to be used and presents an inconvenience, there is no indication in either letter that the stove and oven were unusable. I find that the landlord acted reasonably in advising that he would bring a replacement stove in September as he did not have any reason to believe that the stove could not be used at all. I further find that he acted reasonably in instructing the tenants on how to defrost and clean the refrigerator in an attempt to determine whether the problems would persist when the tenants had ensured that the vents were cleared. I find that the landlord could not have known that the tenants did not follow his instructions and was reasonable in assuming that they had.

For these reasons, I find that the tenants have not proven that the landlord breached his obligations under the Act or tenancy agreement and I dismiss their claim for compensation and for a rent reduction.

Conclusion

The landlord will replace the tenants' refrigerator with a used refrigerator and will repair the drawer on the tenants' oven. The tenants' claims for compensation and a rent reduction are 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 20, 2014

Residential Tenancy Branch

