



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICES (BC) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

The tenant applies for a monetary award for the loss of use of the refrigerator supplied as part of her tenancy and for a compliance order.

By the first hearing date November 25, the tenant had vacated the property and so the question of the need for a compliance order was redundant.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that a refrigerator supplied with the rental unit failed? If so, what was the loss and what damages might the tenant be entitled to?

Background and Evidence

The rental unit is a one bedroom apartment in a conventional, 38 unit apartment building. The tenancy started in January 2014 and ended October 15. The rent was \$850.00 per month. The tenant's security deposit has been settled between the parties.

There was a previous dispute hearing regarding among other things, the refrigerator in the suite. The file number of that dispute is noted on the front page of this decision. At that hearing held June 10, 2014, the tenant claimed amongst other things, that she had to wait six weeks to have her fridge changed. It was admitted by the landlord's representative at that hearing that repairs to the fridge had been required on an unspecified date. The arbitrator found that the landlord was not in breach of its duty to provide the fridge and did not award the tenant any compensation for fridge problems.

At this hearing the tenant testified that she had suffered 18 days without a functioning fridge; between July 11 and 30, 2014. She says she was required to eat out at a cost of

about \$20.00 per day. She testified that without a functioning fridge she was required to buy milk everyday, rather than every few days, because her medical condition requires that she take medication with milk.

The tenant referred to a number of text messages with the landlord's building manager Ms. K.M. They show that on the morning of July 11 the tenant reported that her fridge had failed and that its contents had gone bad. Ms. K.M. was prepared to attend that evening. On July 12 it appears Ms. K.M. offered the tenant the fridge from another unit, 313.

It is unclear whether the 313 fridge was delivered, however, on July 14 the tenant reported to the landlord that the fridge "went down to -1" the previous night. As a result it appears the landlord arranged for the attendance of a serviceman to diagnose and repair the fridge.

It appears that shortly after the fridge failure of July 11, the landlord offered the tenant either the fridge from apartment 209 or perhaps access to the use of that fridge as it was located in a vacant suite. It appears the tenant determined for herself that the fridge in 209 was not working and declined to use it.

There was some difficulty arranging for the serviceman's attendance. In her emails to the landlord the tenant indicated that she worked until 3:00 pm everyday and so the serviceman could come after that. Later in her evidence she indicated she worked two days per week.

The landlord's representative Mr. J.G. responded on July 14,

(Ms. K.M.) will get someone in to check your fridge and make sure you get one that works properly. All three fridges that have been in your unit were working fine before they were put in, and (Ms. K.M.) has tested the power and found it working properly.

Please make sure you are available when the repair man can schedule his appointment. If this is as urgent as you say it is, then we have to repair the fridge or replace it as soon as possible whether you are there or not.

Ms. K.M. wrote on the 14th that next day she would arrange for the serviceman and would like to enter the tenant's suite (on short notice) if the serviceman could come the same day or the next. The tenant declined and directed Ms. K.M. to have the appliance people call her to arrange a time. The landlord provided the serviceman particular, asking that the tenant arrange a convenient time with the serviceman directly. The tenant reported to the landlord on July 16 that she had tried to reach the serviceman

numerous times that day without success and that she was available to “do the fridge” right after work that day.

It does not appear the serviceman ever attended to inspect the tenant’s fridge. The service company and the tenant were in contact on Thursday, July 17 and the company indicated it could attend on the Monday. The tenant refused, saying that it was too long to wait.

Throughout this time and until at least July 21, the landlord was offering the tenant the 209 fridge. Ms. K.M. had been monitoring that fridge’s temperature daily and had determined it was working properly.

The tenant was not persuaded. She had been informed by local government officials that once an old fridge had been leaned on its side it become unsafe to use. She declined the replacement fridge.

It’s the tenant’s position that the landlord repeatedly delayed or avoided providing a working fridge. It was her view that Ms. K.M. by threatening to “take steps against you” was threatening her and so she was justified in refusing Ms. K.M. entry to the rental unit. The tenant indicated that earlier in the tenancy workers sent in by the landlord in her absence had gone through her personal belongings.

The tenant provided a list of items she claims to have lost as a result of the July 11 fridge failure. She calculated each item’s cost for a total of \$199.35 (by my calculation). She has not replaced the items nor obtained receipts for the replacement items because, she says, she had not the money.

It appears the tenant’s fridge had been replaced other times since the June. Once, because it was out of balance. These occurrences do not form part of her claim; at least they are not set out in the particulars of that claim.

The tenant summoned the witness Mr. O.M., a former tenant of the building, who testified that he helped Ms. K.M. move fridges into or out of the tenant’s apartment on two occasions. He could not remember when. He remembers that one fridge was not working properly. He also helped Ms. K.M. replace a wall outlet for the fridge. He disagreed with the tenant’s suggestion that there was anything wrong with the fridge in his apartment while he lived there. He testified that the tenant used his fridge for two to four days.

Mr. O.M. also stated that the tenant's application was a "money grab." In response to this assertion the tenant indicated Mr. O.M. was a reluctant witness and had attempted to extort sexual services from her for his testimony.

In result, the tenant claims loss of fridge contents and eighteen days without a fridge.

In response to the tenant's claim the landlord's representative Mr. J.G. presented the statement of Ms. K.M. to indicate that the fridges offered or provided to the tenant after July 11 were all working properly. Mr. J.G. testified that the delay in providing a replacement fridge after July 11 was caused by the tenant's requirement to be present when the landlord or its agents entered the suite. He says that over the brief history of this tenancy the landlord offered or provided five fridges to the tenant. He says the landlord acceded numerous times to providing replacement fridges to the tenant because the building itself is scheduled for demolition and, with a number of suites coming vacant there were many conveniently available fridges from the other suites. It was easier to replace the tenant's fridge than to argue. He acknowledges the landlord is responsible for the food loss incurred by the July 11 fridge failure.

Analysis

I find that the tenant's fridge failed on or about July 11, 2014 and as a result she lost the value of the perishables inside it. The landlord does not appear to take issue with items of perhaps questionable perishability. I award the tenant \$199.35 for those contents, as per her list and valuation.

I dismiss the balance of the tenant's claim for loss of use of a fridge. The tenant should have accepted the landlord's immediate offer of the replacement fridge, which, I find, was working acceptably well.

The previous arbitration decision made it plain that the tenant had no ground to suspend or set conditions on the landlord's right of entry and I find that there was no later event that would change that. The tenant should have permitted the landlord to enter and attend to the fridge problem whether she was there or not. By failing to do so, the tenant was herself responsible for the delay.

The tenant should have permitted a serviceman to attend on the Monday, July 21. That attendance likely would put to rest any argument about fridges, with either a repair or replacement with a working fridge.

Conclusion

The tenant is entitled to a monetary order against the landlord in the amount of \$199.35.

I decline to award recovery of the tenant's filing fee because, well prior to hearing, indeed prior to this application being made, the landlord offered an amount in excess of the amount awarded.

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: December 21, 2014

Residential Tenancy Branch

