



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Rentals
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, RP, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a repair order and a monetary order. Both parties appeared and had an opportunity to be heard.

The landlord advised that the company had been incorrectly named on the tenant's application for dispute resolution. The correct name of the company is reflected in this decision.

Issue(s) to be Decided

- Should a repair order be made and, if so, on what terms?
- Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced April 1, 2010. The monthly rent, which has remained the same throughout the tenancy, is \$925.00 and is due on the first day of the month.

The tenant is a self-employed licenced plumber and gas fitter. He operates his business from his home.

It is acknowledged by both parties that the refrigerator in his unit is an older model.

On September 5, 2014, the tenant complained to the landlord that the refrigerator in his unit was not working properly; the items in the freezer were melting and the items in the cooler section were freezing. He said it had been malfunctioning for quite a while before he said anything to the landlord.

On September 10 a repairmen came to look at the refrigerator. The repairmen filed a letter describing his visit:

"I was asked by [landlord] to go over and look at the fridge at this location as there was an oil leak in the fridge. As I attended I told [tenant] that oil does not come into the fridge it comes from the compressor in the back. So I looked and put my hand on the oil which turned out to be syrup. It was very sticky and showed [tenant] it was the syrup.

He continued to say he wanted a new fridge and I told him that it is not my department and had a cracked cover of the drawer in the fridge. Nothing was frozen in the fridge. He said his butter was hard and I told him all butter would be hard in the fridge."

The tenant said the repairman took off the cover over the temperature dials and poked something. The repairman did not pull out the refrigerator or look at the back of it. He denied any conversation about syrup.

When the tenant next called the landlord about the refrigerator the landlord told him the repairman had reported there was nothing wrong with it and, accordingly, they were not going to take any further action.

For the next five weeks the tenant called the landlord once or twice almost every day to complain about the refrigerator. The landlord described the calls as time consuming and very annoying.

On October 14 the tenant had a different repairman attend the rental unit. The invoice prepared by that tradesman stated:

"Fridge drawing too high amperage compressor not pumping, Freon causing unit to run through all the time, cooling bottom FF section too much. Cheaper to replace than to repair."

The cost of the service call was \$78.39 which the tenant paid.

As part of its evidence the landlord filed a letter from this repairman that states:

"I wrote on the work order what the customer requested as he was paying the bill."

The tenant said the only thing he told the repairman to include on the invoice was the statement which he had already made verbally to the tenant that it was cheaper to replace the unit than to repair it.

The landlord agreed to replace the refrigerator. He stated that the decision was made just to end the tenant's calls to them.

The landlord ordered a reconditioned refrigerator from the first repairman's shop. The repair shop was also to deliver the refrigerator to the rental unit.

Sue, a staff person for the landlord, told the tenant the refrigerator would be delivered between 10:00 am and 11:00 am on October 16. When it did not arrive the tenant called Sue. She made some inquiries and then advised the tenant that it would be coming between 1:00 pm and 2:00 pm. At 2:00 pm the tenant called to say the refrigerator had not been delivered. He called again at 3:00 and was advised that the refrigerator would be delivered on October 17 at an unknown time. On October 17 the tenant received a call that the refrigerator would be delivered in fifteen minutes. This time it did arrive.

The landlord says the refrigerator was taken directly to another rental unit where it has operated without any problem being reported.

The second repairman, (the one hired by the tenant) submitted a second letter which states:

"I looked over the unit and found it was cooling. Also it was pressed tight against the back wall. With a rear static condenser fridge an inch of clearance for airflow is a must."

The tenant testified that the repairman never said anything about clearance when he was at his unit. He also argues that the refrigerator has been in the same place for over four years and functioned fine until recently.

The tenant asks for \$1200.00 as compensation for two jobs he lost on October 16 while he was waiting for the refrigerator. He testified that he had been called for two emergency jobs that day. One was a blown water heater and the other was a boiler installation. Both jobs were located in the same small community as his home. The tenant said he first told his customers that he would be delayed for a couple of hours and they agreed to wait for him. When the refrigerator was not delivered that morning he had to call them back and say he would be further delayed. Both customers said they would make other arrangements. The tenant estimated his losses in parts and labour as \$600.00 for each job.

When asked why he did not start the jobs that day and just take a break at the scheduled time for the refrigerator delivery the tenant replied that would not be good

customer service. He stated that once he starts a job he does not leave until it is finished.

The landlord argued that the appliance shop could have delivered the refrigerator later in the day if requested to do so.

The landlord also acknowledged that the repairman who was to deliver the refrigerator is not as reliable as he used to be and that not doing what he says he is going to do is typical of him.

The tenant also claims \$125.00 for food lost during the time the refrigerator was not working properly and reimbursement of the \$78.39 paid to the second repairman.

Analysis

As the refrigerator has been replaced the application for a repair order is no longer relevant. That leaves the tenant's claim for a monetary order.

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

Subsection 7(2) of the *Residential Tenancy Act* provides that a landlord or tenant who claims compensation for damage or loss that has resulted from the other's non-compliance with the act, the regulations or the tenancy agreement must do whatever is reasonable to minimize the damage or loss.

There is conflicting evidence about the actual condition of the refrigerator:

- The tenant's oral evidence that the refrigerator was not working properly.
- The note from the first repairman who, as demonstrated by the delay in delivering the replacement refrigerator, is not that reliable and who says there was nothing wrong with the refrigerator.
- Two completely contradictory notes from the second repairman who said the refrigerator had to be replaced and then said that it was working fine.
- The landlord's oral testimony that the refrigerator is working fine, without any repair, at his new location.

The evidence from the two repairmen is clearly neither reliable nor trustworthy. It is just leave the contradictory oral testimony of the two parties.

There is no evidence that tips the balance of probabilities in favour of the tenant. The tenant has not proven the first element of his claim – that the damage or loss exists – on a balance of probabilities and accordingly, his claim must be dismissed.

Conclusion

The tenant's claim is dismissed without leave to re-apply.

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 01, 2014

Residential Tenancy Branch

