



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Green Team Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, PSF, MNDC, FF

Introduction

This hearing dealt with an application by the tenant seeking an order to have the landlord make emergency repairs for health and safety reasons, an order to have the landlord make repairs to the unit, site or property, an order to have the landlord provide services or facilities required by law, a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation or tenancy agreement and an order for the recovery of the filing fee. Both parties participated in the teleconference. The parties agreed that they exchanged evidence in accordance with Section 89 of the Act. The landlord confirmed that they were properly served of the tenants claim and the Notice of Hearing documents. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence and Analysis

The tenancy began on or about January 1, 2013. Rent in the amount of \$3800.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1500.00 and a pet deposit of \$1000.00.

As the tenant is the single applicant I address the tenants' claims and my findings as follows

Provide Services or Facilities- The tenant was seeking an order to have the landlord provide services or facilities required by law. After discussing the matter with the tenant it became clear she made an error in "checking off that box" on the application and no longer wished to pursue it. Based on the above I dismiss this portion of the tenants' application.

Emergency Repair - The tenant was seeking an emergency repair to the refrigerator. The landlord agreed to have the refrigerator repaired or replaced with a similar size working refrigerator by April 11, 2015. The tenant stated that was acceptable. Based on the above no further action is required from the Branch.

Leaky Roof Repair - The tenant is seeking to have the leak in the roof repaired. The landlord agreed to have the contractor commence work on April 8, 2015. The tenant stated that was acceptable. Based on the above no further action is required from the Branch.

Monetary Claim – Although the parties agreed to a repair schedule for the two items above, the tenant is still seeking a monetary order as compensation for having to live with a leaky roof and without a proper refrigerator. The tenant stated that the refrigerator "broke on February 9, 2015". The tenant stated that on that same day a leak in the dining room ceiling developed. The tenant stated that the leak cracked the drywall and left holes. The tenant stated that the landlord provided a small replacement fridge but it is not sufficient for the family of four.

The tenant stated that she has incurred a cost of \$140.00 per day since February 9, 2015 to order takeout food as they have insufficient refrigerator space. The tenant is seeking \$140.00 a day X 51 days as part of her compensation claim. The tenant stated that she incurred a loss of \$68.50 of food and \$95.70 of medications that were required to be kept refrigerated and seeks to recover those costs as well. The tenant is also seeking a return of 20% of the rent since February 9, 2015 for having to deal with a

small refrigerator and leaky roof. All tallied, the tenant is seeking a monetary order of \$8596.20.

The landlord disputes this claim. The landlord stated that the tenant was given a replacement refrigerator as a temporary measure and that the large freezer portion of the existing fridge is still functional. The landlord stated that due to the refrigerator being a very high end expensive model, parts were more difficult to come by and that there has been a delay in receiving them. The landlord stated that she had her contractor install a waterproof tarp to cover the area to stop the leak as soon as she was informed by the tenant. . The landlord stated that she would have repaired the roof immediately but the tenants were not cooperative and did not wish to have any impact on their space whatsoever. The landlord stated that she has responded quickly to the tenants requests.

When a party makes a claim for damage or loss **the burden of proof lies with the applicant** to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant provided a detailed account of how she came to the amount sought yet did not provide one receipt or bill for the \$7140.00 of takeout that she states was purchased since February 9, 2015. In addition, the tenant has not satisfied me that the landlord has been negligent in their actions and is the cause of the issues. The landlord was

forthcoming in their testimony and stated that they have tried to mitigate their actions and that they responded to the refrigerator issue and the leaky roof issue immediately.

The tenant has not provided sufficient evidence to satisfy all four of the grounds listed above as required nor has she substantiated the amount she is seeking. I find that a nominal amount is appropriate under the circumstances. I find that the tenant is entitled to a nominal award of \$500.00 as compensation for the leaky roof and the loss of the full size refrigerator.

As the tenant has not been completely successful in her application I decline to make a finding in regards to the filing fee and the tenant must bear that cost.

As for the monetary order, I find that the tenant has established a claim for \$500.00.

Conclusion

The tenant is entitled to a one time rent reduction of \$500.00 from the rent due on May 1, 2015.

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: April 01, 2015

Residential Tenancy Branch

