



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORINTIA DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

The tenant applies for a monetary award for damages suffered as a result of the failure of a refrigerator, a malfunctioning toilet and a failure to repair water damage. He also seeks an order that the landlord conduct repairs and rent reduction.

Issue(s) to be Decided

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

Background and Evidence

The rental unit is a three bedroom house. The rental unit also contains a separate suite in the lower portion. The tenancy started in April 2004. The current rent is \$2186.61, due on the first of each month, in advance. The landlord holds a \$1000.00 security deposit and an \$890.00 pet damage deposit.

The tenant testifies that during the last winter, perhaps January 2015, one of the two fridges in the premises failed. He says its contents were ruined because he didn't notice it for a time. He says the fridge had been replaced by the landlord about four years earlier.

The tenant says that his dietary preferences call for a lot of fruits and vegetables, which he keeps in the lower fridge. He says that without that fridge he must travel to the store more often. He has not acquired a replacement fridge himself.

The landlord says that only one fridge is included in the tenancy agreement, that the tenant has a working fridge upstairs and that she need not replace the "second" fridge.

She also says that she cannot now find a replacement fridge to fit in the alcove occupied by the failed fridge.

The tenant testifies that there was a water leak in the home during the winter of 2011-2012 and the next winter too. The leak was satisfactorily repaired by the landlord but she failed to address the wall and ceiling damage caused by the water. He adduced photos which show that the ceiling is stained brown in two locations and that a portion of the wall in kitchen and a small area in the laundry room has drywall torn away.

The landlord says she has offered to paint and repair the areas but the tenant was always putting it off, saying he “could live with it.” She says that since February of this year her relationship with the tenant has become acrimonious. She feels unsafe entering the premises.

The tenant testifies that for years the toilet on the main level has not flushed fully. Often two flushes are required. He says the toilet continues running and the noise disturbs him. He says that he has repeatedly had to fix the handle on the toilet.

The landlord says that she was notified about the toilet problem in 2012 and that her husband went and fixed it. She says that last week she sent in a plumber who replaced the toilet and confirmed the new one was in good working order.

The tenant says it isn't; that it still does not completely flush.

Analysis

Through cross examination of the tenant by Mr. L.M. it was determined that for years the tenant ran a massage therapy business out of the home. Despite Mr. L.M.'s able questioning, it does not appear that either the fridge in question or the toilet in issue were used in connection with that business.

The tenancy agreement provides an area for the parties to “check” the furnishings, equipment, facilities, services or utilities provided by the landlord. The bracket beside the word “Fridge” is checked off. I do not accept the landlord's submission that this means only one fridge was included in the tenancy. The inventory list the parties prepared at the start of the tenancy clearly shows two fridges and there were two fridges in the rental unit when possession was given over to the tenant.

I find that the tenancy included two fridges and that the landlord is obliged to continue to provide two working fridges.

The landlord has breached her obligation in this regard and the tenant is entitled to damages.

There is no reasonable evidence upon which to determine how much tenant was out of pocket for the contents of the fridge when it failed. There is no description of what was in it or the cost of the contents. I make no award for loss of contents of the fridge but for a nominal amount of \$25.00.

I find that the tenant has been inconvenienced since the fridge failure in or around January 2015 but, again, there is no evidence upon which to form a basis to quantify that loss. I award the tenant nominal damages of \$25.00 for the inconvenience.

The fridge has not been fixed or replaced. Despite the landlord's problem with the alcove size, she is responsible to the tenant to provide a fridge. The tenant indicated at hearing that any similar sized fridge, whether it fit in the alcove or not, would be satisfactory.

I direct that the landlord either repair this fridge or provide the tenant with another fridge of approximately the same size. I direct that the tenant's rent be reduced by \$10.00 per month commencing October 1, 2015 and continuing until the first of the month following the date the fridge is either repaired or replaced. If the landlord repairs or replaces the fridge during the month of September 2015 there will be no reduction of October rent.

In regard to water damage, the tenant's photos make it clear that there is obvious and unsightly water damage to the ceiling and the wall in two places. I accept that this has not been a priority item with the tenant and that the matter only became a significant issue between the parties in the last few months. The landlord has stood ready to conduct repairs at the tenant's convenience.

Nevertheless, the water damage is something the landlord is obliged to repair in order to restore the premises to its previous condition. I decline to grant any monetary award to the tenant for having to live with the damage, but I order and direct that the landlord attend to the repair of the water damage shown in the two photographs submitted by the tenant and that she do so no later than October 31, 2015. If she fails to comply with this order, the tenant may apply for authorization to have the repairs carried out and rent to be directed for that purpose.

If the landlord cannot negotiate with the tenant for an agreeable time, she is free to issue a statutory notice to enter to conduct the repair. She and/or her workmen may

enter in the absence of the tenant pursuant to such a notice. She long as the repairs are conducted in a workmanlike and timely fashion, the tenant is not entitled to compensation for the inconvenience.

In regard to the toilet, the evidence satisfies me that if it was a problem for the tenant it was at best a minor one. The toilet in question is one of three in the home. I decline to grant any award of damages for problems with the toilet.

There is no dispute but that a plumber has recently replaced the toilet. If the tenant feels it is not working properly he should confirm that with a qualified tradesperson. He is free to re-apply if the toilet fails to function properly.

Conclusion

The tenant is entitled to a monetary award of \$50.00. I grant him recovery of the \$50.00 filing fee for this application. I authorize the tenant to reduce his next rent due by \$100.00 in full satisfaction of this award.

The landlord is directed to conduct repairs to the water damage and to repair or replace the fridge on the terms outlined above.

The tenant is entitled to a rent reduction in the event and on the terms outlined above.

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: September 01, 2015

Residential Tenancy Branch

