



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. "Witness RG" testified on behalf of the landlord at this hearing. This hearing lasted approximately 142 minutes in order to allow both parties to fully present their submissions at this hearing, particularly as the landlord complained that he was not being fully heard.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). The tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application and the tenant was duly served with the landlord's written evidence package.

The landlord confirmed that he received the tenant's written evidence late, less than 14 days before this hearing, and contrary to Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. However, the landlord testified that he had reviewed all of the evidence and was prepared to proceed with this hearing on the basis of me considering all of the tenant's written evidence at this hearing and in my decision. Accordingly, I proceeded with the hearing on the basis of the landlord's consent and I considered all of the tenant's written evidence at this hearing and in my decision.

At the outset of the hearing, the tenant confirmed that she no longer required the relief for an order to allow her to reduce rent for repairs, services or facilities agreed upon but not provided by the landlord. Accordingly, this portion of the tenant's Application is withdrawn.

The tenant testified that she wished to amend her Application to reduce her monetary claim from \$1,000.00 to \$957.05. The tenant provided a monetary worksheet indicating this amount with her Application. As the tenant is reducing her monetary claim rather than increasing it, I find no prejudice to the landlord in amending the tenant's monetary claim to \$957.05, pursuant to my authority to do so under section 64(3)(c) of the *Act*.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties and witness RG, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

The landlord confirmed that this tenancy began on December 6, 2013 for a fixed term until August 31, 2014, after which it transitioned to a month-to-month tenancy. Monthly rent in the amount of \$750.00 is payable on the first day of each month. A security deposit of \$375.00 and a pet damage deposit of \$375.00 were paid by the tenant and the landlord continues to retain these deposits. A written tenancy agreement governs this tenancy. The tenant continues to reside in the rental unit. The tenant occupies the basement unit of a house, while the landlord occupies the main floor of the same house.

The tenant stated that she discovered that the refrigerator in her rental unit was broken on February 18, 2015. She indicated that she noticed a puddle below the refrigerator and the food in her freezer was thawed. She explained that she threw the thawed food away and decided to let the entire refrigerator defrost on February 19, 2015, in the event that there was an ice buildup. The landlord testified that the tenant is not a refrigerator technician and is not qualified to determine that the refrigerator should be defrosted without technical knowledge. The tenant indicated that she attempted to freeze ice in the freezer and when this did not work, she notified the landlord on February 20, 2015, that there was an issue with the refrigerator. The landlord testified

that he asked the tenant about the refrigerator first on February 20, 2015, after which she informed him of a problem. Both parties agreed that the landlord inspected the refrigerator on February 21, 2015. The landlord indicated that he wanted to inspect the refrigerator immediately on February 20, 2015, but the tenant refused.

Both parties confirmed that the landlord agreed to provide a new replacement refrigerator in the tenant's rental unit. The landlord maintained that the tenant insisted on a new refrigerator and he agreed to provide it because he wanted to continue his positive landlord-tenant relationship with the tenant. The landlord stated that the tenant expressed her willingness to wait because she wanted a new refrigerator. The tenant denied this, stating that she would have been agreeable to any refrigerator to store her food and minimize her losses.

The tenant explained that the landlord advised her on February 22, 2015, that the new refrigerator would be arriving shortly and that February 28, 2015 was the agreed-upon date for the replacement of the refrigerator. The tenant testified that on February 28, 2015, the landlord advised her that it would take another week for the new refrigerator because he did not want to purchase the display model from the store. The landlord stated that he did not want to purchase the display model because it was only being sold "as is" and there was no warranty to cover it. The landlord indicated that he wanted to purchase a white refrigerator, not a black one, as the black one was stainless steel and more expensive, the white one matched the other appliances in the kitchen, and the white one from a certain store fit the kitchen dimensions. The landlord indicated that he went to a few different stores to find the refrigerator.

The landlord stated that he offered the tenant a mini bar-size refrigerator and a full size refrigerator, available at the house, to use while she waited for her new refrigerator to arrive. The landlord stated that his verbal conversations with the tenant on February 21 and 24, 2015, and his notes of conversations between the parties indicated these offers. The tenant stated that the landlord did not offer her any other refrigerators to use while she waited for the new refrigerator. The tenant indicated that none of the text messages between the parties indicated these offers. Copies of text messages and written notes of conversations between the parties were provided for this hearing.

Witness RG testified that she is a friend of the landlord. She verified providing a witness statement, which she says she wrote on July 29, 2015. A copy of the statement was provided for this hearing. She confirmed that she witnessed a conversation between the landlord and tenant on February 24, 2015, wherein the tenant requested a new refrigerator and stated that she was agreeable to waiting for it. The tenant confirmed that she did not recall this conversation with the landlord.

The tenant agreed that the landlord offered to store her food at his rental unit, which is in the same house. The tenant stated that she had already lost most of her food by then. The tenant indicated that she refused the landlord's offer because it was inconvenient for her to travel back and forth between the two units, as she works late hours and would have to attend at the landlord's unit late around midnight after grocery shopping in order to store or retrieve her food.

The tenant stated that she sent photographs of potential refrigerators to the landlord that cost around \$400.00 and advised him that she was willing to pay that cost for a replacement but that she wanted to deduct it from rent. She indicated that the landlord refused her offer. The tenant noted that the landlord advised her that he had already purchased the new refrigerator.

The tenant stated that she provided a letter, dated March 4, 2015, to the landlord regarding the refrigerator problems and asking for rent deductions. The landlord acknowledged receipt of this letter. The landlord stated that he heard nothing from the tenant between February 18 and March 4, 2015, regarding rent deductions.

Both parties agreed that a new refrigerator was installed in the tenant's rental unit on March 7, 2015. The landlord indicated that the refrigerator could have been delivered as early as March 4, 2015, but the tenant refused and insisted on March 7, 2015. The tenant stated that because the new refrigerator was installed late at night on March 7, 2015, she had to wait 24 hours before using the refrigerator as she had to store ice in the freezer first, so she did not have full operational use of her refrigerator until March 9, 2015. The tenant stated that she is entitled to 19 days of loss from February 18, when the refrigerator stopped working, until March 8, 2015, when she was able to use her new refrigerator.

The tenant seeks a monetary order totalling \$957.05 for the following items:

- \$60.80 for ice (\$3.20/day x 19 days);
- \$52.25 for transit bus costs (\$2.75/day for 19 days);
- \$190.00 for eating outside of the home (\$10.00/day for 19 days);
- \$150.00 for loss of the use of the kitchen as compared to the total rent paid (\$50.00/week for 3 weeks);
- \$314.00 for food that had to be disposed when the refrigerator stopped working;
- \$190.00 for the inconvenience of the loss of the use of the refrigerator (\$10.00/day for 19 days).

The tenant provided photographs of the food that she had to throw away. The landlord disputes these photographs, stating that they do not match the tenant's written inventory of food provided with her Application and the large amount of food would not fit in the tenant's freezer. The tenant also provided a photograph of a turkey in the freezer. The landlord stated that the photograph provided by the tenant is not the tenant's freezer but another freezer. The tenant insisted that the photograph was of her freezer and that she had a frozen turkey from work stored inside the freezer.

The tenant provided receipts of food bought from restaurants. The landlord disputed the receipts, stating that the purchases were made after March 7, 2015, when the tenant had already received a new refrigerator. The tenant stated that she did not retain all her receipts for groceries and restaurant food purchased because she did not think that the landlord would dispute her claims. The landlord stated that the tenant works at a store that sells groceries and she would have easy access to all the receipts for purchases made. The tenant also provided photographs and receipts for ice purchased on March 3 and 4, 2015, stating that she had to buy ice every day but that she did not retain all of her receipts because she did not think that the landlord would dispute this cost. The tenant stated that she is entitled to reimbursement for bus fare because she had to make extra bus trips to get groceries and bring them home after work. The landlord also stated that the tenant is not entitled to travel costs because she buys monthly bus passes anyway to get around, rather than individual bus tickets, and the tenant is claiming for individual bus ticket costs in this Application.

The landlord testified that the tenant failed to mitigate her losses. The landlord explained that the tenant was offered two alternative refrigerators to use while waiting for a new one to arrive and she did not use them. He stated that because the tenant insisted on a new refrigerator, there was a wait time in finding an appropriate refrigerator. The landlord explained that the tenant confirmed that she was agreeable to waiting for a new refrigerator. The landlord confirmed that there is no requirement under the *Act* to provide a new appliance when one has malfunctioned, only to repair the appliance. The landlord maintained that the tenant was not prevented from performing her daily activities because of the loss of the use of the refrigerator.

Analysis

As per section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a

loss, the tenant must satisfy the following four elements in order to obtain compensation for the loss of the use of her refrigerator:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch (“RTB”) Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

On a balance of probabilities and for the reasons stated below, I find that the tenant proved that she is entitled to compensation for the loss of the use of her refrigerator. I find that the landlord delayed the installment of a working refrigerator in the rental unit. The landlord did not have to purchase a new refrigerator, regardless of whether the tenant insisted on wanting a new one. The tenant did not force the landlord to do anything and there is no requirement for the landlord to purchase a brand new refrigerator. The landlord could have asked a technician to look at the refrigerator and fix it rather than purchasing another one. The landlord could have bought a used refrigerator in good working condition. The landlord could have allowed the tenant to purchase a used refrigerator, which was cheaper, and deduct the amount from rent, as she offered.

I find that the tenant is entitled compensation for having to buy outside food and ice, having to use public transit to get food and the loss of food from the refrigerator. The tenant provided photographs, receipts, a detailed inventory of food, and letters to substantiate her claim. Although the tenant did not have many receipts for ice and food purchased, and the food receipts are from after she had the new refrigerator installed as they were provided as samples, I accept the tenant’s testimony that she suffered losses.

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenant nominal damages of \$250.00.

I have taken into account the fact that the tenant failed to fully mitigate her losses. I find that the tenant refused to store items in the landlord's refrigerator, which would have minimized her costs of eating out and traveling to purchase food. Although the tenant works late hours, she could have bought a number of groceries at once and stored them in the landlord's refrigerator, without having to go grocery shopping every day. The landlord testified that he verbally offered the tenant two other refrigerator alternatives. The tenant stated that this did not occur or she would have accepted the offer rather than pay extra out-of-pocket expenses for food and other items. The landlord stated that one of these options was a bar-size refrigerator. This would have only fit a small amount of food in any event. The landlord indicated that one of these was a full size refrigerator. However, the landlord did not have this full size refrigerator installed into the tenant's rental unit to replace the broken refrigerator. This was obviously not a long term option for the landlord, since he decided to purchase a new refrigerator anyway.

Conclusion

I order the tenant to deduct \$250.00 from a future rent payment at the rental unit, in full satisfaction of the monetary order awarded to the tenant against the landlord.

The tenant's Application for an order to allow her to reduce rent for repairs, services or facilities agreed upon but not provided by the landlord, is withdrawn.

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 2, 2015

Residential Tenancy Branch

