



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, PSF, OLC, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order that the landlords make repairs to the unit, site or property; for an order that the landlords make emergency repairs for health or safety reasons; for an order that the landlords provide services or facilities required by the tenancy agreement or law; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

Both tenants attended the hearing as well as an agent for the landlords, and all parties gave affirmed testimony.

The landlords' agent provided a package of evidentiary material to the tenants, which was returned unclaimed. The tenants advised that they have been out of the Province, and do not oppose inclusion of the landlords' evidence. The parties were given the opportunity to question each other respecting the testimony and evidence of all parties, all of which has been reviewed and is considered in this Decision. No other issues with respect to service or delivery of documents or evidence were raised.

At the commencement of the hearing the tenants withdrew the following applications:

- for an order that the landlords make repairs to the unit, site or property;
- for an order that the landlords make emergency repairs for health or safety reasons;
- for an order that the landlords provide services or facilities required by the tenancy agreement or law; and
- for an order that the landlords comply with the *Act*, regulation or tenancy agreement.

Issue(s) to be Decided

The issue remaining to be decided is:

- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The first tenant testified that this fixed-term tenancy began on July 1, 2015 and expires on June 30, 2015. A copy of the tenancy agreement has been provided which states that at the end of the fixed term, the tenants must move out of the rental unit. Rent in the amount of \$4,500.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$2,250.00 as well as a pet damage deposit in the amount of \$2,250.00 which are still held in trust by the landlords.

The rental unit is a beautiful apartment-style condominium, and during the move-in condition inspection the refrigerator seemed to be working fine. However on August 6, 2015 the tenants realized that the food in it was warm. The appliance looks new and was running but wasn't cold. The tenant's wife is a cook and has a lot of kitchen gadgets and tested the food with a food thermometer and found the food temperature to be above the safe range for food. The tenant reported it to the landlords' agent and a repairman arrived who made some small repairs and adjustments and said it was okay. The tenants bought more food and again discovered it was warm. The process was repeated about 3 times with different repairmen, and along the way, the landlords' agent provided a small bar fridge.

The refrigerator is a specialty German fridge, and one repairman told the tenants not to open it often. The tenants abided, but the same problem re-occurred. The bar fridge helped a little, but would freeze in some areas but not other areas, was too small, and not meant to be for a primary fridge.

Other residents told the tenants that the fridges in all units weren't working, and the tenant told the landlords' agent that. He also told the landlords' agent that it was taxing on the tenants to have to continue to let in repairmen. A neighbour of the tenants is also on the strata council and told the tenant that all refrigerators were being replaced, even in the vacant units.

The landlords' agent told the tenant that the owner thought the tenants were breaking the fridge and told the landlords' agent that the tenants should cancel the lease. However, the tenants own an apartment building in another Province and are very well aware of a landlord's responsibilities. Also, one repairman thought the tenant's wife was over-reacting.

However, the last repairman who attended in October, 2015 put his hand on the back wall of the inside and said that the fridge needed replacing and that he could tell by the way the back panel moved. The landlords replaced the fridge in late October, 2015. The problem ranged from August 6, 2015 when the landlords' agent was notified until late October, 2015.

The tenants have provided a Monetary Order Worksheet setting out the following claims, which total \$4,839.76:

- \$1,680.41 for loss of spoiled food;
- \$2,637.14 for the cost of eating in restaurants;
- \$453.62 for the cost of take-away meals;
- \$50.00 for recovery of the filing fee; and
- \$18.59 for photocopying charges.

Copies of Visa statements and receipts have been provided. The tenant discussed settling this dispute with the landlords' agent who wrote the tenant a note stating that the tenants should consider the possibility that this would affect the tenancy. A copy has been provided. The tenant doesn't know where the landlord or owner is, and it seems the landlords' agent has had difficulty getting ahold of him or getting him to deal with anything. Waiting 63 days for a repair is ridiculous. The tenants like to entertain and couldn't have the dinner parties, having to deal with several repairmen, and the threat of having to move out is not an acceptable method for a landlord to deal with a tenancy.

The second tenant testified that the tenants were always patient and cooperative and being landlords themselves, understood the frustration of the landlords, but were hoping for a speedy repair. However, the landlords' agent spoke to the landlord or owner, and parts had to be ordered. Because of the costs, the landlords had to decide to repair or replace the fridge. Anything the landlords' agent suggested was speculative and had to be approved by the landlord or owner. It all took extra time. Because the cost was too much for repairing, and the area in the kitchen is too small, a normal fridge would require renovations. Measurements were taken for that. The first repairman was curt and rude saying that not all food needs to be in a safe zone, but the repair wasn't done properly. It was getting frustrating.

The food would freeze in the back and be too warm in the front, so the tenants had to go out often. The tenant likes to cook, and was hopeful each time a repairman arrived and the tenants did everything they suggested, such as not opening it for 24 hours and to not stock it too full. Once it was repaired, the tenants would buy more food and the fridge wouldn't work again. The temperature was up to 50 or 60 degrees according to the tenant's calibrated professional food thermometer. Food rotted very quickly, and there were 5 repair visits by 3 different repairmen.

The landlord's agent testified that it was a complicated matter. On August 7, 2015 the landlords' agent received the report from the tenant about the fridge by email. The next day the landlords' agent had a company that he often uses attend the rental unit and said it needed a new heater element which would take about a week to obtain and made some adjustments in the meantime. August 11, 2015 the landlords' agent gave the tenants a compact fridge, which was not intended to be long-term. The repair quote arrived which was about \$760.00 or \$780.00, and on August 13, 2015 the repair quote was approved. There were 3 days of back and forth between the landlord and the landlords' agent about repairing or replacing it. The fridge is an awkward size, tall and narrow which also has an ice maker.

On August 24, 2015 the repair was completed but on September 3, 2015 the tenants reported that the freezer temperature alarm was sounding, and again a repairman attended the following day. The previous problem had been with the fridge part, not the freezer portion.

On September 10, 2015 another senior technician was sent out who said it was fine. Things got out of hand with repairmen saying it was okay but the tenants saying it was above normal temperature. After paying for repairs, the landlords didn't want to replace it, so another company was sent in to repair it on September 23. That repairman found the problem, and there seems to be a trick to diagnose it. Some of the Freon or something had leaked out which cannot be visually identified and was covered on extended warranty. The landlords were referred to another company and finally on October 7, 2015 the fridge was replaced.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;

3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, I am satisfied that the tenants contacted the landlords' agent each time there was an issue, and one tenant testified that they did everything instructed, such as to not open the fridge for 24 hours and to not over-stock it. Therefore, I am satisfied that the tenants have done whatever is reasonable to reduce the damage or loss suffered.

I have also reviewed the tenancy agreement, and it states that the refrigerator is included in the rent. A landlord is required under the *Act* to make repairs and maintain rental property in a state of decoration and repair that makes it suitable for occupation by a tenant. It's clear that the landlords had the obligation to repair or replace the fridge. The *Act* also states that a party who fails to comply with the *Act* or the tenancy agreement may be ordered to compensate the other party for any damage or loss that results from that failure. It's not the fault of the tenants that the fridge didn't work or that the back-and-forth discussions between the landlords or owner, the landlords' agent and repairmen took so long. I also must consider the fact that rent is \$4,500.00 per month and there are no rental arrears. In the circumstances, I find that the damage or loss exists and that it exists as a result of the landlords' failure to comply with the *Act* and the tenancy agreement.

With respect to quantum, the tenants testified that it took 63 days to have the issue corrected, and the landlords' agent does not disagree. The tenants have provided numerous Visa bills and receipts showing meals eaten out and take-out which amount to \$3,090.76. I have reviewed the receipts and confirm the dates during which the refrigerator was inoperable. Over the course of 63 days that amounts to about \$49.00 per day, which I find is reasonable for 2 people. I have also reviewed the evidence of the cost of spoiled food, which I find is reasonable, and I find that the tenants have established a monetary claim as against the landlords in the amount of \$4,771.17 ($\$1,680.41 + 2,637.14 + \$453.62 = \$4,771.17$).

The *Residential Tenancy Act* provides for recovery of the filing fee but not for fees for preparation for a hearing, and therefore, the tenants' claim for photocopying charges is dismissed.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee.

I order that the tenants reduce future rent by the amount of \$4,821.17 or may otherwise recover that amount.

Conclusion

For the reasons set out above, the tenants applications for an order that the landlords make repairs to the unit, site or property; and for an order that the landlords make emergency repairs for health or safety reasons; and for an order that the landlords provide services or facilities required by the tenancy agreement or law; and for an order that the landlords comply with the *Act*, regulation or tenancy agreement are hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,821.17.

This amount may be deducted from future rent payable to the landlords, or may otherwise be recovered.

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 29, 2015

Residential Tenancy Branch

