



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC ERP

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and for an order to make emergency repairs for health or safety reasons.

The tenant, a tenant advocate, the landlord and a maintenance person for the landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant agreed that his fridge was replaced on January 29, 2016, which was nine days after he filed his application for dispute resolution against the landlord. As a result, I find there is no need to consider any other portion of the tenant’s application other than the tenant’s monetary claim as the tenant confirmed under oath that he has received a functioning fridge from the landlord by the date of the hearing.

Issue to be Decided

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and if so, in what amount?

Background and Evidence

The tenancy began on August 1, 2005. Monthly rent was originally \$565.00 per month and over the course of the tenancy was increased to the current monthly amount of \$625.00 per month.

The tenant is claiming \$17,100.00 comprised of \$3,600.00 for not having a fridge for 18 months, and \$13,500.00 for food, gas and inconvenience of not having a fridge. The tenant claims that the \$3,600.00 is comprised of \$200.00 per month for 18 months with \$150.00 of the \$200.00 being for loss of use of the fridge, and \$50.00 for the impact on his quality of life. The tenant claims the amount of \$13,500.00 is comprised of \$25.00 daily multiplied by 31 days in a month approximately, multiplied by 18 months and that the \$25.00 daily amount is comprised of \$5.00 for gas, and \$20.00 for food and inconvenience of having to leave his home to go and eat due to not having a fridge. The tenant filed his application on January 20, 2016 and confirmed that he had a working fridge installed on January 29, 2016, which is nine days after he filed his application.

The tenant was unable to provide a date of when he spoke to the manager's husband for the first time about the fridge. The landlord's maintenance person G.D. testified that the tenant was offered a fridge of total of five times, the first four without success and with the fifth attempt being successful on January 29, 2016. The first two attempts, according to the landlord's maintenance person were in the summer of 2014 by Mr. W, both of which attempts the tenant was not at home. The two other attempts were after February 2015, when G.D. started to work in the building. G.D. testified that his first attempt was in March 2015 and that the tenant was not at home to accept the replacement fridge and that the second attempt a week or two later and that the tenant was not at home again but the tenant asked for it to be placed in the hallway, which G.D. stated he was not willing to do. The parties disagreed with what was meant by "hallway" which G.D. assumed the tenant meant to place it in the hallway outside the tenant's door which the G.D. would not agree to do as it could be damaged or stolen, while the tenant claims he meant to place the fridge in the hallway inside the rental unit. The tenant denies that he was ever offered a fridge by Mr. W.

The tenant made reference to a witness K.S. who the tenant testified was not available and had not provided any written statements that were submitted in evidence. The tenant then referred to a written statement from M.J. and when several attempts were made to call M.J. as a witness during the hearing, all attempts were unsuccessful. As a result, the written statement of M.J. which reads in part that the maintenance man told the tenant that he would get her old fridge is of limited weight as M.J. could not be cross-examined by the landlord and G.D. advised that the fridge of M.J. that was

removed was not only leaking but too big to put into the tenant's rental unit so that was not an option.

The tenant also submitted a signed statement from the father of the tenant which reads in part that he has been helping his son with gas money and food and that his soon has been without a fridge for 18 months. The father of the tenant was not available to provide testimony or to be cross-examined during the hearing.

The landlord took the position that the tenant did little to remedy his situation by not receiving the fridge at any of the first four opportunities.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable under the *Act* to minimize the damage or loss.

In the matter before me, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable under the *Act* to minimize the damage or losses that were incurred.

Section 7 of the *Act* applies and states in part that a tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the

regulations or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

In the matter before me, I find the tenant has failed to comply with section 7 of the *Act* by waiting over 18 months before submitting an application on January 20, 2016 for dispute resolution regarding this matter. Instead, the tenant has allowed his monetary claim to increase to what would be well over the cost of several brand new fridges. Furthermore, with monthly rent being \$625.00 per month, I find the tenant has failed to meet all four parts of the test for damages or loss described above. The tenant failed to provide any receipts, bills or other documents in support of the amount being claimed and the tenant's version of events is disputed by the landlord and the maintenance person of the landlord.

I afford little weight to the statements submitted in evidence and find that if the tenant wanted a replacement fridge, it would have been reasonable for the tenant to have made himself available to accept delivery of the replacement fridge and not sit idly by as the claim increased. I find that the tenant failed to exercise reasonable due diligence to receive a replacement fridge which is supported by the comment the tenant made to G.D. by saying to leave it in the hallway and that instead, the tenant waited until January 20, 2016 to file his application, resulting in his monetary claim to increase significantly versus applying for dispute resolution 18 months earlier.

There is no dispute that the tenant's fridge was replaced on January 29, 2016. As a result, while I find no breach of the *Act* on the part of the landlord, I do find that between January 20, 2016 and January 29, 2016 the landlord was advised by the tenant's claim that the tenant was seeking compensation for loss of use of his fridge and I award a nominal award of **\$18.18** to reflect the loss of the use of the fridge from the moment the tenant finally submitted his application for dispute resolution and complied with section 7 of the *Act*. The amount of \$18.18 was determined by applying the value of the fridge in the tenancy which I find to be 10% of the value of the tenancy and taking 10% of the monthly rent of \$625.00, which is \$62.50, and dividing that by 31 days in January, which is \$2.02, and then multiplying that amount by nine, as it took nine days for the landlord to replace the fridge once the tenant's application was filed. The remainder of the tenant's application is dismissed without leave to reapply due to insufficient evidence.

Conclusion

The tenant's application is largely unsuccessful. The tenant has been granted \$18.18 as a nominal amount to acknowledge the loss of the use of his fridge once he complied with section 7 of the *Act* by submitting an application for dispute resolution.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 5, 2016

Residential Tenancy Branch

