



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Northern Health Authority and Alward Place Seniors Residence
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC

Introduction

This is an application brought by the tenant requesting a monetary order in the amount of \$1762.35

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondents, and if so in what amount.

Background and Evidence

The applicant is requesting a monetary order as follows:

Cost of replacing air conditioner	\$650.00
Spoiled food	\$106.00
Computer Ink.	\$95.40
Computer paper	\$10.95
Tenants time, 30 hours X \$30.00 an hour	\$900.00
Total	\$1762.35

The tenant testified that the windows in her rental unit only open a small amount and there was not enough airflow for the air conditioner she installed in the window, and as a result the motor enter air conditioner died and therefore she believes the landlords should reimburse her the cost of replacing the air conditioner.

The tenant also states that she does not believe she should be held responsible for the cost of replacing the window in her rental unit that she had removed to install an air conditioning unit because she had attempted to get the landlords assistance in installing an air conditioning unit but got no response from the landlords and therefore had it done herself. When the landlords found out she had removed the window they had it replaced and have billed her for the cost of replacing.

The tenant also testified that the refrigerator in her unit quit working and the landlords brought her two refrigerators over a five-day period, neither of which worked and although they brought a third refrigerator that does work, it is a very poor design, requiring her to get down on her hands and knees to access anything on the lower part of the refrigerator. She is therefore requesting reimbursement for spoiled food and is requesting a new refrigerator.

The tenant is also requesting that the landlords pay for the cost of computer ink and computer paper that she is had to purchase to produce documents to deal with the landlord and with this hearing, and she is also requesting to be reimbursed for her time at \$30.00 an hour for a total of 30 hours for dealing with the landlord and dealing with this hearing.

The tenant is further requesting that the stove in her rental unit also be replaced, claiming that the elements do not regulate properly when using the temperature adjustment knobs, and therefore it's impossible to properly cook items on the stove.

The tenant is also requesting that something be done about the smoking in the rental property, claiming that the smoke from other rental units is getting into her unit, and she finds it very distressing. She stated that although there is no smoking for new tenants to the building, some tenants are still allowed to smoke as they were grandfathered in before the change in the smoking rule came into effect.

The tenant it is also requesting that something be done about the noise from the tenant who lives above her stating that the tenant above her is deaf and doesn't realize how much noise is being made, especially when she is looking after children in her suite.

The landlords testified that the windows in the rental property are designed to open a certain amount, and other people have installed air-conditioning units that work just fine in those windows without having had to remove the window frames. They therefore do not believe they should be held liable for the cost of replacing the tenants air conditioner as there is no proof that it broke down as a result of any negligence on their part, and since the tenant had no authority to make any alterations to the windows in the property they do not believe they should have to withdraw their charges for having to repair the damage caused by the tenant.

The landlords further testified that they also spoke numerous times with the tenant with regards to air-conditioning and worked with her on an ongoing basis and therefore believe that they took reasonable steps to assist the tenant with her air-conditioning needs.

The landlords further stated that they are fully willing to pay the \$106.00 requested by the tenant for the replacement of food that was lost when the refrigerator failed; however they are not willing to replace the refrigerator as the one that's in place works perfectly fine.

Landlords further testified that they have had the stove in the tenant's rental unit replaced numerous times, and the present stove has been tested by a professional, and is deemed to be working properly, and therefore they do not believe they should be required to replace the stove yet again.

The landlords further testified that there are some smoking units in the rental property, however they've attempted to resolve the issue with this tenant, even offering her a rental unit on a different floor however she has refused that unit and also refuse their attempts to adjust the door sweep to stop any possible smoke from entering her rental unit. The landlords further testified that the hallway to the rental property is pressurized and therefore is very difficult for any smoke to escape the rental suites so they find it very unlikely that there is any great amount of smoke entering the tenant suite.

Landlords further testified that the tenant in the rental unit above the applicants has agreed to vacate to a new unit on the ground floor once one becomes vacant and they fail to see that there's anything further they can do as this tenant has made attempts to try and be as quiet as possible, and has stated that she's even afraid to try crocheting in case she drops one of her needles for fear that the applicant/tenant below will come banging on her door.

In response to the landlord's testimony the tenant testified that she did not want to move to the ground floor unit that was offered because the window did not open in that unit and therefore the only way she could get fresh air would be to open the door to the exterior.

The tenant further stated that she did not allow the landlords to adjust the sweep on her door as she felt that would affect the amount of airflow into her rental unit.

The tenant further stated that she was unaware that the tenant above her had agreed to move to the ground floor once the suite becomes available and she is satisfied with that solution; however she wishes the landlords had made her aware of the situation.

Analysis

It is my finding that the tenant has not met the burden of proving that her failed air conditioner was the result of any willful or negligent actions on the part of the landlords. The windows in this rental unit are designed to open a certain distance and therefore if the tenant wishes to use an air conditioning unit, it's the tenants responsibility to ensure that the unit she purchases is able to function within the parameters allowed by the opening of that window.

I therefore deny the tenants claim for the cost of replacing her air conditioner.

Further, it's also my decision that the tenant altered the windows in the rental unit without any authority to do so and therefore the tenant is liable for the landlord's cost of replacing the windows back to their normal state.

The landlord has not disputed the tenants claim for \$106.00 for spoiled food and therefore I allow that portion of the tenants claim.

I will not allow the tenants claim for computer Ink, computer paper, or her time for dealing with the landlords or for dealing with dispute resolution. It is not the landlord's responsibility to supply the tenant with computer Ink or computer paper, nor has the tenant shown that the landlords were negligent in their actions with her, resulting in her having to spend an excessive amount of time to deal with issues with the landlord and with this dispute resolution process.

Although the tenant claims that the refrigerator and the stove in a rental unit are not working properly, it is my finding that she is not met the burden of proving those claims and since the landlords have made numerous attempts to ensure the refrigerator and the stove in the rental unit are functioning properly I will make no order for the replacement of those units.

With regards to the tenants request to have something done about the smoke in the rental property, it is my finding that the landlords have made reasonable attempts to resolve the smoke problem with the tenant, and I fail to see what else could be ordered. The landlords have offered to move the tenant, and the landlords have offered to adjust the tenants door sweep so as to restrict any smoke from entering the rental unit however it the tenant did not accept either of these solutions. This building originally allowed smokers, and when the rules changed for new tenants the previous smokers were allowed to continue smoking as they already had existing tenancy agreements that allowed smoking, and therefore there is little the landlords could do other than not allow new smokers in when a smoking unit becomes vacant.

I therefore will not issue any orders with regards to the issue of smoke in the rental property.

With regards to the tenants claim of a noisy tenant above her, the tenant has stated she is satisfied with the landlords proposed solution of moving the tenant above her once the suite becomes vacant on the ground floor, and therefore this portion of the claim has been resolved and I issued no order.

Conclusion

The only portion of the claim that I have allowed is the \$106.00 for food that spoiled when the refrigerator failed and the remainder of this claim is dismissed without leave to reapply.

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: May 09, 2016

Residential Tenancy Branch