Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: ERP RP MNDC FF

Introduction and History:

This new hearing is the result of a Review Consideration granting it. The tenant brought an application against the landlord and obtained a monetary order for compensation for the cost of emergency repairs and compensation for damage or loss under the Act. By Decision dated May 6, 2016, their application for an order that the landlord make repairs to the unit was dismissed and they obtained a monetary order against the landlord in the amount of $884.24 which could be recovered by deducting it from future rent. The landlord applied for review. The Review Consideration Decision dated May 31, 2016 suspended the Decision and Order made on May 6, 2016 until the outcome of the hearing today. The Review Consideration Decision succeeded as the arbitrator found the applicant/landlord had provided sufficient evidence to support the ground of fraud in the original hearing.

Both parties attended and confirmed they received notification of the date and time of hearing today. Both parties gave sworn/affirmed testimony. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) A Monetary order for the cost of emergency repairs and compensation for loss of use of the facility of the stove and resulting losses suffered by the tenants;

b) That the landlord do repairs pursuant to section 32 for health or safety reasons; and

c) To recover the filing fee for this application.

Issue(s) to be Decided:

- Has the tenant proved on the balance of probabilities that the landlord has not maintained the property contrary to sections 32 and 33 of the Act? Are they entitled to orders that the landlord do repairs?
- Have they proved they needed to do emergency repairs and the cost of such repairs?

- Have they proved they suffered loss due to a necessary repair not being completed, more specifically the cost of eating meals in restaurants because of a non functional stove? If so, to how much compensation are they entitled?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced March 5, 2016 on a fixed term lease to March 2017, rent is $1070 a month and a security deposit of $535 was paid in March 2016.

The tenant claims:

- $12.62 for sink and tub stoppers. The landlord agrees to reimburse
- $64.24 for a smoke detector and shower curtain: The landlord agrees to reimburse
- $1493.14 for meal costs while the stove was non functional: The landlord states the top burners on the stove were working so the tenant could cook on it.
- $140 for labour costs for repair and cleaning: The landlord states this was never authorized.

The tenant notes he sent an email on March 7, 2016 advising that he would charge $35 an hour if he had to do the repairs himself. The email on March 7, 2016 notes that the exhaust for the stove and dryer are attached and is hazardous, the smoke detector is defective and the shower curtain is not affixed to the wall and drain plugs for sinks were missing. A further letter dated March 9, 2016 says this is the second notification and he will start repairs himself on March 15, 2016 and expense them to the landlord. He notes the exhaust problem was fixed but states on March 27, 2016, he intends to purchase and lay flagstones to create a safe walkway and to purchase and install a motion sensing LED light to ensure a safe pathway. On March 14, 2016 a further letter was sent as the '3rd letter' from the tenant. It noted the electrician came to repair the stove on March 11, 2016 but the issue was not the burners but the control knob. He said the electrician and he had tried to contact the manager without success and that he intended to start other repairs and he will invoice the company.

On March 14, 2016, the manager requested the tenant to call the office as the tenant's phone was not connecting. On March 15, 2016, the tenant offered to replace the stove for a $25 rent reduction per month but he would keep the new stove; in a follow-up email, the tenant said he would connect their washer and dryer also and store the landlord's and have the rent remain the same. On March 17, the manager said they were waiting on the landlord's response (he was out of the country). The landlord's

email and an invoice indicate a new stove was ordered on March 18, 2016, it was due to be delivered on March 24 but the supplier's truck broke so it was delivered on March 28, 2016.

The landlord states that the stove top at all times was working so the tenant could cook on it. Therefore the landlord is not responsible for their costs connected to their choice to eat out. The tenant states that the electrician on March 11, 2016 said not to use the stove as it was unsafe and he advised the landlord of this on March 14, 2016. He offered to mitigate his losses by purchasing a new stove himself. He contends the landlord did not question why a new stove was needed so this is proof that they knew it was non functional. He is not sure if the electrician was the same as the appliance person hired by the landlord but he only saw one repair person. The parties agree that the tenant turned on the burners during the move-in report and they heated up but the oven was broken. The manager said that when she spoke to the tenant, he told her the stove top worked and he could cook on the top of the stove. The tenant agreed he never told her the stove top did not work but he said it was unsafe and not functional.

The landlord also disclaims responsibility for the $140 repair costs claimed by the tenant. The manager said the tenant sent letters but the landlord never consented to him repairing items. They were not emergency repairs and the landlord intended to do necessary repairs himself. In evidence are some emails from the landlord to the manager stating he intended to do certain items himself.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

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 whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with

this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.
Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find the weight of the evidence is that the stove had a non functioning oven but that the burners on the top still worked. The move-in report and the statements of the parties support this. Although the tenant alleged an electrician told him not to use the burners for safety reasons, I find insufficient evidence to support his statement. He provided no copy of a statement by an electrician. I find the landlord's evidence credible that the only issue with the stove was a broken oven thermostat which did not affect the function of the top burners. This evidence is supported by the invoice dated March 11, 2016 and the letter dated March 19, 2016 from the appliance repair company saying that the complaint was the roast/bake in the oven did not work and that the thermostat was defective. The repair person further stated that at no time did the tenant state to him that the stove top did not work. I find the tenant not entitled to their claim for compensation for meals as I find they were able to cook on the stove top during the relevant time. I dismiss this portion of their claim.

In respect to the tenant's claim for cost of labour for repairs and emergency repairs, I find the repairs noted are not defined as emergency repairs pursuant to section 33 of the Act so I find the tenant had no authority to do the repairs and charge the landlord for his labour. I dismiss the tenant's claim for compensation for their labour. The landlord has consented to reimburse them $12.62 for sink and tub stoppers and $64.24 for a smoke detector and shower curtain so I find them entitled to this compensation totalling $76.86.

Regarding the tenants' claim for loss of the use of an oven, I find the tenancy commenced on March 5, 2016 and the move-in report notes this deficiency. I find the landlord acted promptly and diligently to correct the exhaust problem. I find an appliance person attended on March 11, 2016 and found the part required to fix the oven was no longer available. I find the landlord ordered a new stove on March 18, 2016 which was delivered on March 28, 2016 with a delay of 4 days attributable to the supplier's problem. I find the weight of the evidence is that the landlord did not violate the Act or the tenancy agreement as they responded to the tenant's concerns promptly and provided them with a new stove within a month of the commencement of the tenancy. As I find the landlord did not through act or neglect cause the tenant's loss of the use of an oven for a few weeks, I find them not entitled to compensation for this.

I find insufficient evidence to support the tenant's allegations that the unit requires repairs pursuant to sections 32 or 33 of the Act. I find the move-in report noted no major problems except the oven which has been replaced. While the Act states it is the landlord's obligation to repair and maintain the property in a state of decoration and repair that makes it suitable for occupation, I find insufficient evidence that the landlord has failed to do this. I find insufficient evidence also that emergency repairs for health and safety reasons are required. The tenants' application for an order that the landlord make repairs to the property is dismissed.

Conclusion:

I HEREBY ORDER THAT the Decision and Order dated May 6, 2016 is set aside and cancelled.

I find the tenant entitled to compensation of $76.86 for the reasons stated above. I dismiss the rest of the application of the tenant in its entirety without leave to reapply.

As the landlord paid $50 to have the original Decision reviewed and was successful on the grounds of fraud, I find the landlord entitled to recover the $50 they paid for filing fee. Due to their limited success, I find the tenants entitled to recover only $50 of their filing fee. This is offset against the filing fee paid by the landlord so neither party owes the other anything for filing fee.

Pursuant to section 67, of the Act, I HEREBY ORDER THAT the tenants may deduct $76.86 from their future rent to recover the compensation awarded.

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: July 06, 2016

Residential Tenancy Branch