



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, RP, and FF

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The male Tenant stated that on June 20, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord stated that she received these documents in the mail. As the Landlord acknowledged receipt of the documents, I am satisfied that she received proper notice of these proceedings.

On July 08, 2016 the Tenants submitted 2 pages of evidence and a USB device to the Residential Tenancy Branch. The male Tenant stated that this evidence was mailed to the Landlord on July 10, 2016. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On July 19 2016 the Landlord submitted 51 photographs to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenants on July 19, 2016. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Neither party was permitted to discuss issues with the tenancy that were not outlined in the Application for Dispute Resolution.

Issue(s) to be Decided

Is there a need to order the Landlord to make repairs to the rental unit?
Are the Tenants entitled to compensation for deficiencies with the rental unit?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began in 2016;
- the Tenants agreed to pay monthly rent of \$1,500.00; and
- a refrigerator, microwave, and stove were provided to the Tenants with the rental unit.

The Tenants contend that the refrigerator is not working properly in the rental unit.

In support of this submission that male Tenant stated that:

- water leaks from the freezer;
- he does not recall when this problem was reported to the Landlord; and
- a repairman came to the rental unit on June 25, 2016 and June 26, 2016, but the water is still leaking.

In response to this submission the Landlord stated that:

- the leak in the refrigerator was reported in March of 2016;
- the refrigerator was repaired on March of 2016; and
- on two occasions the Tenants told her the leak was repaired.

The Tenants submitted digital images of a plastic tray containing partially frozen water, which the male Tenant stated was removed from the refrigerator. The Landlord speculated this was a “fabricated” photograph.

The Tenants contend that they are unable to use one of the stove elements because the dial is missing.

In support of this submission that male Tenant stated that:

- the dial was missing at the start of the tenancy;
- the Landlord has told them the dial is in the drawer;
- they have told the Landlord they are unable to find the dial;
- they have discussed this issue on several occasions; and
- the problem was reported to the Landlord approximately one year ago.

In response to this submission the Landlord stated that:

- the missing dial was reported approximately one year ago;
- the dial was in the drawer at the start of the tenancy;
- they have discussed this issue on several occasions; and
- the Tenants simply need to replace the dial.

The Tenants contend that the bathroom sink does not drain properly.

The male Tenant stated that it takes approximately 30 seconds for a full sink to completely drain. The Landlord stated that she has inspected the sink and she believes it is functioning properly.

The Tenants contend that the “hooter” is broken, which the male Tenant explained was the fan above the microwave.

In support of this submission that male Tenant stated that:

- the plastic piece at the top of the microwave fell off;
- the problem was reported to the Landlord on May 23, 2016; and
- the problem has not been repaired.

In support of this submission that Landlord stated that:

- the problem was reported in May of 2016;
- she examined the microwave and determined that the Tenants broke the plastic covering at the top of the microwave; and
- the Tenants should repair the microwave as they caused the damage.

Both parties submitted photographs of the damage to the microwave.

The Tenants want the Landlord to replace lightbulbs that burned out during the tenancy.

The Tenants are seeking compensation, of \$200.00, for the inconvenience of living with the aforementioned deficiencies and for the inconvenience of repeatedly asking the Landlord to repair them.

The Tenants are seeking an Order requiring the Landlord to provide them with rent receipts for all rent that has been paid during the tenancy. The Landlord and the Tenants agree:

- the Tenants typically pay their rent in cash;
- the Landlord has never provided them with a receipt for rent; and
- the Tenants have asked for a receipt on several occasions.

Analysis

On the basis of the testimony of the male Tenant, I find that the refrigerator is not working properly. In reaching this conclusion I was influenced, in part, by the digital images of the plastic tray containing partially frozen water, which serves to corroborate the testimony of the male Tenant. I can find no reason why the Tenants would “fabricate” evidence of a problem with the refrigerator, given that their primary aim is simply to have the refrigerator repaired.

I find that the evidence provided by the Tenants is more compelling than the testimony of the Landlord, as they are the parties who use the refrigerator on a regular basis.

As a refrigerator was provided to the Tenants with the tenancy, I find that they are entitled to a fully functional refrigerator. I therefore order the Landlord to have the refrigerator repaired no later than August 15, 2016.

On the basis of the testimony of the male Tenant, I find that he is unable to locate the dial that is missing from the stove. Even if I accepted the Landlord's testimony that the dial was in a drawer at the start of the tenancy, that does not mean the Tenant currently has the ability to access the dial. I find it entirely possible that the dial was discarded at the start of the tenancy because the person discarding it simply did not know it was for the stove.

As a stove was provided to the Tenants with the tenancy, I find that they are entitled to a fully functional stove. I therefore order the Landlord to have the dial replaced on the stove no later than August 15, 2016.

I find that the Tenants have submitted insufficient evidence to show that their bathroom sink does not drain properly. In reaching this conclusion I was influenced, in part, by the absence of evidence, such as a video, to show that the sink does not drain properly and the Landlord's testimony that it drains properly. In reaching this conclusion I was also influenced by the male Tenant's testimony that it takes approximately 30 seconds to drain a full sink, which I do not find to be excessively long. As the Tenants have not established that their sink does not function reasonably well, I dismiss their application to have it repaired.

Section 32(3) of the *Act* requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Section 32(4) of the *Act* stipulates that a tenant is not required to make repairs for reasonable wear and tear.

In the absence of evidence to show that the microwave was not damaged prior to the start of the tenancy and in the absence of evidence that convinces me it was damaged by external force or neglect during the tenancy, I cannot conclude that the Tenants are obligated to repair the microwave. I find it entirely possible that the microwave broke through normal wear or tear and/or as a result of pre-existing damage.

As a microwave was provided to the Tenants with the tenancy, I find that they are entitled to a fully functional, aesthetically pleasing microwave. I therefore order the Landlord to have the microwave repaired no later than August 15, 2016.

Residential Tenancy Branch Policy Guideline #1, with which I concur, suggests that landlords are required to ensure all light bulbs in a rental unit are working at the start of the tenancy and that tenants are required to replace light bulbs inside the rental unit if they burn out during the tenancy. On the basis of the male Tenant's testimony that the light bulbs he wants replaced burned out during the tenancy, I find that the Tenants are responsible for replacing these light bulbs. I therefore dismiss the Tenants' application for an order required the Landlord to replace light bulbs in the rental unit.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the inconvenience of living with malfunctioning appliances or repeatedly asking for repairs would impact a tenant's comfort and the ability to use the unit as it was intended.

The undisputed evidence is that the Tenants reported the problem with the microwave to the Landlord in May of 2016. As I expect the microwave to be repaired by August 15, 2016, I find the problem with the microwave did not significantly impair the quiet enjoyment of the rental unit for any extended period of time and I find that the Tenants are not entitled to compensation for this deficiency.

The undisputed evidence is that the Tenants reported the problem with the stove dial approximately one year ago. I find that the delay in repairing the stove was unreasonable and the inconvenience of asking for the repair and living with a partially functional stove breached the Tenants' right to the quiet enjoyment of the rental unit. Although the inconvenience was minimal, given that they had other functioning stove elements, I find they are entitled to compensation of \$25.00 for the year.

On the basis of the Landlord's testimony that the leaking refrigerator was reported in March of 2016; my finding that the refrigerator has still not been fully repaired; and my expectation that the refrigerator will be repaired by August 15, 2016, I find that the Tenants are also entitled to compensation for the inconvenience of living with a faulty fridge for approximately 5 months. I find this to be a slightly greater inconvenience than the issue with the stove and that they are entitled to compensation of \$25.00 for those five months.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash.

On the basis of the undisputed evidence I find that the Landlord has not complied with section 26(2) of the *Act* when she did not provide the Tenants with receipts for all of the rent payments that were made in cash. To remedy this breach I order the Landlord to provide the Tenant with at least one receipt for all of the rent payments the Tenants have made in cash up to this point in the tenancy. I order this receipt(s) to be provided to the Tenants prior to August 15, 2016. I further order the Landlord to provide the Tenants with a receipt for all future rent payments that are made in cash and to provide

that receipt immediately upon receipt of the cash.

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to compensation, in the amount of \$100.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlord is required to make the aforementioned repairs by August 15, 2016. In the event the Landlord does not repair the refrigerator, the microwave, and the stove by August 15, 2016, I authorize the Tenants to reduce the rent by \$25.00 on September 01, 2016, and to reduce the rent each subsequent month until all three appliances have been repaired.

The Tenants have established a monetary Order for \$150.00, which includes \$50.00 in compensation for the stove/refrigerator and \$100.00 for the fee to file this Application for Dispute Resolution. I authorize the Tenants to reduce one monthly rent payment by \$150.00 in full satisfaction of this monetary claim.

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 30, 2016

Residential Tenancy Branch