



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested \$4,000.00 in compensation from the Landlord and to recover the filing fee.

The hearing was conducted by teleconference on March 28, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The owner of the apartment building, D.M., confirmed that R.S. is the property manager, not the Landlord and should not have been named as Landlord on the Tenant's Application for Dispute Resolution. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the Tenant's Application to remove R.S. as Landlord.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

2. Should the Tenant recover the filing fee?

Background and Evidence

In her Application for Dispute Resolution the Tenant indicated she sought \$4,000.00 in compensation from the Landlord. In written submissions provided by the Tenant she confirmed she sought the following:

- “ ...
- \$2400 for back rent which I believe at \$200 per month for 1 year as the stove and other work was never done.
 - \$1600.00 for time and money spent filing and refilling lawsuit and unnecessary emotional and mental abuse from management regarding repairs and safety issues within the premises.
- ...”

The Tenant was informed that the \$1600.00 claimed for her time related to these proceedings, as well as alleged emotional and mental abuse was not recoverable under the *Residential Tenancy Act*. Accordingly, the hearing focused on the Tenant's claim for monetary compensation related to “the stove and other work that was never done.”

The Tenant stated that the tenancy began April 1, 2014 and ended April 1, 2015. She confirmed that she paid rent in the amount of \$850.00 per month.

The Tenant claimed that the stove did not work during her tenancy. She stated that she discovered that three of the four top elements did not work properly when she first moved in, clarifying that one worked well and three worked “on occasion”.

She stated that she did not initially know about the oven, or the oven door because she didn't use it as she “wasn't there much”. She stated that a few months after the tenancy began she discovered that the oven was not working properly.

The Tenant testified that she spoke to the building manager, R.S., and asked if he had any fuses and when he responded that he didn't have any fuses she purchased her own. She stated that the replacement of the fuses solved the problem “somewhat” as after which two of the elements worked, and the fourth never worked.

The Tenant stated that in July of 2014 the Landlord sent a serviceman who cleaned the elements and fixed the elements. She stated that the elements worked for a while after

this and then approximately a month later “went again”. She stated that they would come on but would heat up and then cool off and heat up and cool off.

She further stated that the oven was 100 degrees higher than that which was indicated on the dial. She confirmed that she could not bake because the oven door did not fit.

She confirmed that she told the property manager, and the owner, about these problems, and then sent a letter to them offering to buy her own stove.

The Tenant confirmed that the Landlord sent in a repairperson and claimed that she was told by the repairperson that the stove needed to be replaced.

At the conclusion of her testimony the Tenant stated that she was also seeking restitution for dinners she had to purchase out when she was entertaining guests. The Tenant failed to provide any evidence to support such a claim.

D.M. testified on behalf of the Landlord. He confirmed that he is the owner of B.A. which is a limited company. He confirmed that he lives in a different community.

D.M. stated that he bought the rental building April 1, 2014. He confirmed that the subject tenancy actually started April 1, 2015 (not 2014 as the Tenant testified) and she signed a 1 year lease which was to end April 30, 2016. He further confirmed that the previous tenants did not complain about the stove during their tenancy or when they moved out.

D.M. also stated that he attended to clean and prepare the rental unit for re-renting and at that time he tested the elements and the stove and confirmed they were working.

D.M. stated that he left in June, July and August 2015 for Europe. He said that when he returned in September of 2015, the Tenant stated that she wanted a new stove. She did not identify what was wrong with the stove, only that it was old.

D.M. stated that he then came to the rental unit in late October or early November 2015. He tested the elements again and noted that one was slow to turn on. D.M. then gave the Tenant notice that the repairperson would attend the rental unit on November 9, 2015. He further stated that they fixed the top right element and adjusted the thermostat for the oven by 100 degrees. Also provided in evidence was a copy of an invoice dated November 30, 2015 for these repairs to the stove.

D.M. stated that approximately 1 week later (November 23) the Tenant confronted him in the parking lot and complained that the stove was still not working. He asked to go into the suite to inspect the stove and the Tenant refused his request. D.M. then called another appliance company who confirmed that they could come on November 27, 2015. D.M. did not have his computer with him so he gave her a hand written note informing her that another repairperson would attend.

D.M. stated that when the appliance company went to the unit they stated that there was nothing wrong with the stove and nothing they could repair. D.M. stated that the Tenant then became abusive to the repairman. Introduced in evidence was an email dated March 13, 2017 wherein the writer, B.S., notes that the Tenant was verbally abusive (screaming) at the repairmen, R. and D.

D.M. stated that was the last time the stove was "repaired". He confirmed the Tenant vacated April 30, 2016.

R.S. also testified on behalf of the Landlord and stated that the stove worked. He confirmed that the appliance people had been there three times. He confirmed that he also personally inspected the stove after the Tenant moved out and confirmed that he checked out all the elements and the oven as well as the door, which he said fit perfectly. He also stated that the person who came with him had owned an appliance store previously and also could not see anything wrong with the stove. He also stated that the current tenants have not made any complaints about the stove.

R.S. also stated he stopped working for B.A. in November of 2015, although people still come to him when they need help at the rental building as he continues to reside there.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove her claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 32 of the *Act*, provides as follows:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find the Tenant's claim for compensation in the amount of \$2,400.00 for losses related to her stove should be dismissed.

I am unable, on the evidence before me, to find that that the stove was not operating for the 12 months claimed by the Tenant and therefore find that the Tenant has failed to prove that the damage or loss exists.

Furthermore, I am unable to find that the alleged damage or loss occurred due to the actions or neglect of the Landlord. While the Tenant testified the stove was not at times operating optimally during the tenancy, I find the Landlord responded promptly and appropriately to her concerns and in doing so fulfilled their obligations pursuant to section 32 of the *Act*. I also accept the Landlord's evidence that the initial repairs were made in a timely fashion and the second repairperson hired by the Landlord could not

find anything wrong with the stove. This is confirmed by an email provided in evidence by the Landlord.

I also find the amount claimed by the Tenant, \$200.00 per month, to be excessive in the circumstances as it represents 24% of the monthly rent payment of \$850.00.

Accordingly, I dismiss the Tenant's monetary claim. As she has been unsuccessful, I also dismiss her claim for recovery of the filing fee.

Conclusion

The Tenant's claim is dismissed.

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: April 7, 2017

Residential Tenancy Branch