



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlords' agent KG ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was a property manager for the landlord company named in this application and that he had authority to represent it as well as the individual landlord named in this application, as an agent at this hearing (collectively "landlords").

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application.

The landlord testified that he did not have any proof of service for the landlords' written evidence package to the tenant, only to the Residential Tenancy Branch ("RTB"). I had received a copy of the landlords' written evidence package at the RTB, prior to the hearing. The tenant testified that she did not receive a copy of the landlords' written evidence package. I informed both parties that I could not consider the landlords' written evidence package at this hearing or in my decision because it was not served to the tenant as required by Rule 3.1 of the RTB *Rules of Procedure*.

Issues 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?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. The tenancy began on an unknown date and ended on September 25, 2017. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 was paid by the tenant and the landlords returned this deposit to the tenant. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The tenant seeks a monetary order of \$500.00 plus the \$100.00 filing fee paid for this application.

The tenant stated that she did not have use of her oven from August 13, 2017 to some unknown date after September 7, 2017. She said that she telephoned the landlord on August 13, 2017 to report that her oven did not work and she provided a written letter to him on August 29, 2017 to formalize this request. She claimed that she gave the landlord some time from August 13 to 29 to resolve the issue. She reported that although she had use of the stove top cooking elements, she could not use the oven. She explained that there were only so many meals she could make using the stove only, when feeding her family of five, which includes herself, her three children and her husband. The tenant maintained that she did not have a breakdown of the \$500.00 amount claimed, but it was for the loss of use of the stove that she paid rent for, as well as for eating out in restaurants periodically during this time, although she did not know how many times.

The landlords dispute the tenant's claims. The landlord testified that a work order was created on August 22, 2017 for a repair professional to fix the oven in the tenant's rental unit, that the professional attended at the rental unit later that same week but the tenant failed to answer her door and allow him access to the rental unit. The tenant disputes

this stating that she was home and provided her cellular phone number to the professional but he failed to show up. The landlord maintained that the appointment was rescheduled to August 29, 2017, whereby the professional determined the appropriate part to be ordered to fix the oven, he ordered the part, it arrived on September 5, 2017 and he fixed it the same day of arrival. The tenant stated that she was told by the professional that the part was old, it would take time to arrive, and he needed the landlords' permission before ordering it. The landlord stated that he was not told this information by the professional and the landlords received an invoice for \$163.00 on September 7, 2017 from the professional and it was paid by the landlords. The landlord explained that the amount of time to repair the oven was reasonable and quick and that the tenant still had full use of her stove, just not the oven, during this time period.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenant's application for a monetary order of \$500.00, without leave to reapply.

I find that the tenant failed to meet part 2 of the above test to show that the landlords were negligent in repairing the oven. I find that the landlords made reasonable efforts to have the oven repaired as soon as possible after receiving notice from the tenant. I find that the timing of the oven repair was out of the landlords' control as they required a professional, who operated on his own schedule for the repair. I also find that the tenant was unaware of the date that the repair was made, such that the landlord provided clear and specific evidence regarding the date of the work order, the missed appointment by the tenant, the date of the repair and the date of the invoice.

I also find that the tenant failed to meet part 3 of the above test, as she was unable to provide a specific breakdown for the \$500.00 sought. She did not provide a monetary order worksheet. She did not know how many times or how often she ate at restaurants because she was unable to use her oven. The tenant did not provide documentary evidence such as receipts, invoices or other documents, to support the above amount sought. I find that the tenant had ample time to prepare for this hearing and to submit relevant evidence prior to the hearing, as her application was filed on September 14, 2017 and the hearing was held on March 26, 2018, more than 6 months later.

As the tenant was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenant's entire application 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: March 28, 2018

Residential Tenancy Branch