



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenant filed an application for dispute resolution on June 19, 2018, pursuant to section 59 of the *Residential Tenancy Act* (the “Act”). The tenant sought the following relief under sections 67 and 72(1) of the Act:

1. an order of compensation for the loss of food resulting from a failed refrigerator; and,
2. an order of compensation for recovery of the filing fee.

This is my decision in respect of the tenant’s application.

A dispute resolution hearing was held on September 27, 2018, and the tenant and the landlord’s agent attended the hearing, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Preliminary Issue: Named Parties on the Application

At the commencement of the hearing, the second respondent (as named on the application) was not the legal landlord at, or during, the time of the events which lead to the tenant’s application and claim. They were then, and are now, the landlord’s representative, or agent. In confirming this information, I recommended that the application be amended to remove the second respondent from the style of cause, as it

is only the landlord (the first respondent) that is legally liable for any claims related to this matter. The tenant and landlord's agent were amendable to this amendment.

As such, pursuant to Rule 4.2 of the Rules of Procedure, I accordingly amend the application to include only the name of the landlord as it appears on this Decision.

Issues to be Decided

1. Is the tenant entitled to an order of compensation for the loss of food resulting from a failed refrigerator?
2. Is the tenant entitled to an order of compensation for recovery of the filing fee?

Background and Evidence

The tenant testified that she moved into the rental unit on July 1, 2017, and that she and the landlord did a walk-through inspection on June 30, 2017. At that time, the parties acknowledged that the refrigerator was starting to go, and the landlord committed to replacing the refrigerator by the end of September 2017. The fridge was, however, in working order. A copy of a written tenancy agreement was submitted into evidence. On page 2 of the tenancy agreement, it is indicated by way of a checked box that a refrigerator is included in the rent.

What ensued in the following nine months were multiple back-and-forth communications between the parties regarding the refrigerator. At one point, the tenant offered to do some research into finding a suitable replacement refrigerator and even offered to contribute \$400.00 toward the purchase price. In terms of the refrigerator not working, it occasionally was (presumably leaking and) staining the floor. The landlord agreed to purchase a new refrigerator after the tenant found one through her research, but then later cancelled her intention to purchase.

At some point between December 2017 to February 2018, the tenant advised the landlord that "it will go at any moment." The landlord attempted to solve the problem by figuring out whether one of the refrigerators at her other rental unit and properties could be put into the rental unit, but it would not fit.

At the end of March 2018, an appliance company attended to the rental unit and conducted an inspection of the refrigerator and advised that the "compressor was shot" and that it would need to be replaced at a cost of \$1,200.00. The company further

advised that due to the age of the refrigerator (the tenant testified that the refrigerator was at least 12 years old, if not much older) it would not be worth it, and that a new refrigerator was the way to go. The landlord refused to do anything about the refrigerator and commented that "I don't think [there's anything wrong with the fridge," according to the tenant.

On April 6, 2018, the refrigerator failed. The next day, the landlord purchased a new refrigerator, which was delivered and installed on April 11 or April 12, 2018.

The tenant testified that in the intervening 5 or 6 days, \$960.77 worth of food was lost. In addition, the tenant claims for \$1,175.00 for her time in dealing with the matter, at a rate of \$50.00 per hour for 23.5 hours. In support of her claim, the tenant submitted into evidence a document that itemized the food losses, including photographs of various receipts for the food.

The landlord's agent did not dispute that the refrigerator failed, but argued that the landlord acted promptly once the refrigerator failed, and that she fulfilled her obligations under the Act. He submitted that it is likewise unreasonable to reimburse the tenant for her time in dealing with the issue. Finally, the agent testified that they were still offering the tenant \$300.00 (by way of gift cards) in an effort to settle the matter.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, the tenant seeks a monetary order for compensation for the loss of food resulting from the refrigerator failing.

The purpose of compensation is to put the person who suffered the damage or loss into the same position as if the damage or loss had never occurred. The party claiming compensation must provide evidence establishing that they are entitled to compensation.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In deciding whether compensation is due, I must determine the following:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulation, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?
3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage acted reasonably in minimizing the loss or damage?

The tenant's position is that the landlord was aware that the refrigerator was starting to fail, and that due to the landlord's ongoing inattention in doing something about the failing refrigerator, it ultimately failed, and as a result she lost a significant amount of food. However, until the refrigerator failed, the refrigerator was otherwise working: the tenant did not testify, or provide any evidence to suggest, that any food was lost prior to its failure on April 6.

In other words, while it is unfortunate that the refrigerator failed, until then, the landlord was complying with the tenancy agreement. An otherwise working refrigerator was being included in the rent, and the landlord was therefore complying with the tenancy agreement.

When the refrigerator ultimately did fail, the landlord took immediate steps in replacing the appliance. Indeed, the store from which the landlord purchased the refrigerator attempted to do a rush delivery on April 7 but was unable to do so due to the tenant being out of town.

The landlord's agent submitted three previous decisions of the Residential Tenancy Branch, from which one I will cite:

While appliances are subject to break down from time to time, the [landlord] is expected to take reasonable action to repair or replace the appliance, and tenants are generally not entitled to compensation for temporary inconvenience.

In the case before me, the landlord took immediate steps to replace the appliance. Prior to the refrigerator failing, the landlord was under no legal obligation, either under the Act or the tenancy agreement, to replace or repair an otherwise-working refrigerator. And, while the loss of food is undoubtedly an unpleasant experience, and in this case a rather expense one, the landlord was under no legal obligation to take any steps while the refrigerator continued to operate. No loss of food occurred while the refrigerator was

still operating.

Taking into consideration all the oral and documentary evidence, including the submissions of the parties presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not proven or established that the landlord failed to comply with the Act, the regulation, or the tenancy agreement.

Given the above finding, the remainder of the four-part test is moot and I need not consider it further.

Conclusion

I hereby dismiss the tenant's claim in its entirety, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 27, 2018

Residential Tenancy Branch