



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, PSF, RP, RR

Introduction

On July 20, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking an Order for the Landlord to Comply pursuant to Section 62 of the *Act*, seeking that the Landlord Provide Services or Facilities pursuant to Section 62 of the *Act*, seeking a Repair Order pursuant to Sections 32 and 62 of the *Act*, and seeking a Rent Reduction pursuant to Section 65 of the *Act*.

I.F. and E.C. attended the hearing, as agents for the Landlord, at the designated start time; however, the Tenant did not appear. After ten minutes, the Tenant had not announced his presence into the Dispute Resolution proceeding and I advised I.F. and E.C. that as the Applicant has not attended his own hearing, I would be dismissing the Application. While advising I.F. and E.C. of some closing comments, a male’s voice was detected and when I inquired who was on the phone line, the Tenant announced his presence at 11:13 AM. As the Tenant had now attended the hearing, and as the hearing was still open, the hearing commenced at 11:15 AM. All parties provided a solemn affirmation.

The Tenant could not confirm that he served the Landlord with the Notice of Hearing package; however, I.F. confirmed receipt of this package by hand on July 23, 2018. In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant advised that his evidence was not served to the Landlord. As such, I have not considered the Tenant’s evidence when rendering this decision; however, he was allowed to provide testimony with respect to these issues.

I.F. advised that their evidence was served to the Tenant' by hand on August 28, 2018. The Tenant confirmed receiving this and advised that he was prepared to respond to it. As such, I have accepted the Landlord's evidence and will consider it in this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to an Order for the Landlord to comply?
- Is the Tenant entitled to an Order for the Landlord to Provide Services or Facilities?
- Is the Tenant entitled to a Repair Order?
- Is the Tenant entitled to a Rent Reduction?

Background and Evidence

Both parties agreed that the tenancy started on September 1, 2013, that the current rent was established at \$984.00 per month due on the first of each month, and that a \$425.00 security deposit was paid.

The Tenant advised that a new property management company took over the premises and he had shown the Landlord the condition of his carpets and walls. He requested that they replace the carpet and paint the walls as they were old and in a state of disrepair. However, the Landlord would not correct the problem. He stated that he has lived there for five years, that the walls have not been painted since he has moved in, that the walls were dirty, and that the paint colour was not bright. He also advised that the carpet is very old and lots of hair comes off the carpet when he vacuums.

The Tenant also advised that his refrigerator stopped working on July 16, 2018 and he reported this to E.C. He stated that E.C. provided a replacement fridge some hours later; however, he did not believe that the replacement fridge was functioning so he went to E.C. later that evening to advise her of this. She advised him that as it was after hours, she was not able to rectify the situation so he contacted the building's emergency line. A refrigerator repair person came the next day and fixed his refrigerator; however, he was "scared" to use it as he was not sure it would work so he went without a

refrigerator for a week. On July 24, 2018, the Landlord provided him with a brand, new refrigerator.

The Tenant is seeking compensation in the amount of \$500.00, and during the hearing, he advised that this amount was broken into separate claims for “around \$200.00 to \$300.00 for spoiled food” and approximately \$200.00 for lost wages as he had to miss some work time to deal with the refrigerator issue.

I.F. advised that an inspection of the rental unit was conducted in September 2017, and the Tenant did not advise her that he believed the walls needed repainting. However, during this inspection, she detected a strong smell of smoke in the rental unit and she cautioned the Tenant of smoking in the rental unit and that it might affect the paint. As well, during this inspection, she observed that the carpet was dirty and she suggested to the Tenant that cleaning of the carpet once or twice a year was good practice. She confirmed that plans have been made to replace the carpet likely in the spring of 2019.

With respect to the refrigerator, I.F. submitted that the Tenant advised E.C. on July 16, 2018 that his fridge had stopped working. Four hours later, E.C. was able to find someone to assist her with delivering a spare fridge for the Tenant; however, he approached her angrily a few hours later as this fridge was not functioning. As this was after business hours and E.C. could not assist him at that time, she assured him that the situation would be rectified as soon as possible. The Tenant called the company’s emergency line; however, nothing could be done at that time, but he was assured that a refrigerator technician would be called in the next day. On the morning of July 17, 2018, E.C. went to check on the refrigerator; however, the Tenant was angry and aggressive so she left and reported this behaviour to I.F. Regardless, I.F. called the Tenant to advise him that a refrigerator technician was called, but he was still abusive. A refrigerator technician fixed both refrigerators and the Tenant was provided with his repaired refrigerator by 5:30 PM on July 17, 2018. As well, the Landlord provided the Tenant with a brand-new refrigerator on July 24, 2018.

I.F. submitted that the Tenant must prove that a loss exists, that this loss occurred as a result of neglect by the Landlord, that the amount is established by the Tenant, and that the Tenant mitigated his loss. However, in this case, the Tenant did not submit proof of his loss, there was no proof of neglect on the Landlord’s part as they took the necessary steps to rectify this issue in an expedient manner, and the Tenant did not minimize his loss.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 32 of the *Act* requires that the Landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, make it suitable for occupation by the Tenant.

With respect to the Tenant's request for a Repair Order for painting of the premises and replacement of the carpet, as he has not provided any evidence to support his allegations, I dismiss this portion of the claim.

With respect to the Tenant's request for compensation, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that when the Tenant advised the Landlord that his refrigerator was broken, steps were taken within hours to provide a replacement refrigerator. However, while this replacement appliance did not function either, the Landlord had a repair technician fix his existing refrigerator the very next day. As such, I am satisfied that the Landlord acted swiftly to correct this issue as expediently as possible.

While I understand that the Tenant believes he suffered a loss in spoiled food, he acknowledged that even though he was provided with a repaired refrigerator, he did not use it because he was "scared". As well, he stated that he did not attempt to minimize his loss for the day that he was without a refrigerator and that he simply disposed of his food. Furthermore, the Tenant did not provide any evidence to substantiate his specific claims for loss as he only provided an estimate of value at \$200.00 to \$300.00.

Ultimately, I am satisfied that the Landlord complied with their responsibilities under the *Act*. Conversely, I do not find that the Tenant has substantiated that a claim for a Monetary Order in an approximate value of \$200.00 to \$300.00 is justified, nor do I find that he is entitled to a rent reduction. As a result, I dismiss his claim with respect to this issue.

When questioned during the hearing as to the breakdown of his monetary claim, he stated that he was additionally seeking approximately \$200.00 for lost wages as he missed work due to the issues surrounding the refrigerator. The Tenant was advised that there is no provision in the *Act* to compensate for lost wages. As such, I dismiss this claim in its entirety.

Conclusion

I dismiss the Tenant's Application 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: September 14, 2018

Residential Tenancy Branch