



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRANS PACIFIC REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, ERP, MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act*, (the “*Act*”), to cancel 10-Day Month Notice to End Tenancy for Unpaid Rent, (the “*Notice*”) issued August 2, 2018, for an order for emergency repairs, for a monetary order for damage or compensation under the *Act* and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter

At the outset of the hearing, the parties agreed that the Tenant had moved out of the rental unit and that the Landlord currently has possession of the rental unit.

As the tenancy has ended, I find that there is no requirement in this hearing to make a determination regarding the validity of the Notice or whether emergency repairs are required in the rental unit.

I will proceed with the Tenant’s application in regard to his request for a monetary order for damage or compensation under the *Act*.

Issues to be Decided

- Is the Tenant entitled to a monetary order for damage or compensation under the *Act*?
- Is the Tenant entitled to recover the filing fee for this application?

Background and Evidence

The undisputed evidence is that the tenancy commenced on October 1, 2017, as a one-year fixed. Rent in the amount of \$1295 a month is due by the first day of the month, and the Tenant paid a \$647.50 security deposit. The parties also agreed that the tenancy had ended and that the Tenant had moved out of the rental unit in accordance with an order issued during a previous hearing with this office.

The Tenant testified that during her tenancy the fridge had broken down and it had taken the Landlord four days attempt to repair, and then replace the fridge. The Tenant claims that she lost \$400.00 in food and her job due to the fridge not working for those four days. The Tenant testified that she works as a nutritionist and that she had food for her job stored in the fridge that spoiled when it broke down. The Tenant testified that she did not prepare the food in her rental unit but that she would store it there. The Tenant testified that due to not having a fridge she lost her job preparing meals, the Tenant is requesting \$3,600.00 in lost wages and \$400.00 in food spoilage.

The Tenant testified that she notified the Landlord normal repair person that the fridge had stopped working on the evening of May 13, 2018. The repair person called her the next day to advise her that a fridge technician had been called and would be by to fix the fridge. The Tenant testified that she had requested the repair person bring her some ice for her cooler, so her food would not spoil. The Tenant testified that the repair person never brought her any ice and her food spoiled while waiting for the fridge to be repaired. The Tenant also testified that the fridge technician was not able to repair the fridge and that a new fridge was delivered on May 17, 2018.

The Landlord testified that they were advised by the Tenant that the fridge was not working at 11: 00 p.m. on May 13, 2018. Their normal repair person contacted the Tenant at 8:00 a.m. on May 14, 2018, and advised her that he had set up a service appointment to have a technician repair the fridge for 11:00 a.m. the next day. The Landlord testified that their normal repair person did attempt to bring the Tenant some

ice for her cooler, on May 14, 2018, but that the Tenant had advised him that she had gone out and to just put the ice inside the unit. The Landlord testified that the repair person was not comfortable going into the unit when the Tenant was not home, so he did not attend the rental unit.

The Landlord also testified that when they found out that the fridge could not be repaired they bought a new fridge for the rental unit, that was delivered and installed at 4:00 p.m. on May 16, 2018.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

After careful review of the Tenant’s testimony and documentary evidence, and I find that the Tenant has not provided sufficient documentary evidence, to prove that the Landlord was not in compliance with the *Act*. I find the Landlords actions to repair and then rep[lace to the malfunctioning fridge to be reasonable.

Additionally, I find that the Tenant has not proven that the loss of her job was a direct result of not having a functioning fridge for four days. I also find that the Tenant did not act reasonably to minimize her damages or losses due the malfunction fridge by not

going out to get her own ice to use in a cooler to keep her food fresh, but instead insisting that the Landlord bring her ice, and then not arranging to have someone there to receive the ice delivery when the Landlord did attempt to provide it.

For these reasons, I find that the Tenant has not provided sufficient evidence to support her claim for compensation under the *Act*, and therefore, I dismiss the Tenant's application.

As the Tenant was not successful in her application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for her application.

Conclusion

I dismiss the Tenant's application, for compensation under the *Act*.

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 24, 2018

Residential Tenancy Branch