



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DRIECO PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, landlord TD ("landlord") and "landlord TL," the tenant and the tenant's lawyer 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 she was the owner and office administrator and landlord TL confirmed that she was the resident manager and both confirmed that they had permission to speak on behalf of the landlord company named in this application. The tenant confirmed that her lawyer had permission to speak on her behalf. This hearing lasted approximately 81 minutes. The tenant and her lawyer used most of the hearing time to present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to add the current landlord company and remove the former landlord company "DDD." The tenant filed an amendment with her application. Both parties consented to this amendment during the hearing. The landlord confirmed that the current landlord company was the same as the former landlord company with only a change in the name.

On this basis, the tenant confirmed that she wanted to cancel her future application and hearing scheduled for 9:30 a.m. on September 28, 2018. The file number for that hearing appears on the front page of this decision. The tenant said that she filed the future application with the same relief as this current application but used the current landlord company name because she was not sure whether I would amend this current application to add the current landlord name. Both parties confirmed that they would not attend the future hearing.

Issues to be Decided

Is the tenant entitled to a monetary award for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

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

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 relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on June 1, 2010. Monthly rent in the current amount of \$595.00 is payable on the first day of each month. A security deposit of \$287.50 was paid by the tenant and the landlord continues to retain this deposit.

The tenant seeks a monetary order of \$1,376.20 plus the \$100.00 application filing fee from the landlord. The tenant also requests that the landlord replace the stove and

microwave in the rental unit. The tenant provided documentary evidence, including letters, emails, and photographs to support her claim.

The tenant seeks \$1,290.00 for a loss of quiet enjoyment, which she said includes two months of rent of \$595.00 each, totaling \$1,190.00, plus another \$100.00. The tenant said that she is in ill health and she is vulnerable physically. She claimed that the burners on her stove were on high in the middle of the night one time when the knob was in the "off" position and that the landlord used a cheap brand name of stove in her rental unit, which causes problems. She claimed that she notified the landlord about this and she spoke to a fire safety officer who said that there were similar issues in the area and for the tenant to have the stove removed. She explained that she told the landlord about this and the landlord replaced the stove with one of equal age which also has problems with the burner rings. She stated that the landlord did not use certified technicians to fix the stove, it was the same person who fixed the washing machines in the building and left them in a bad state. She maintained that she bought a fire extinguisher as well as a surveillance camera for her unit, to prove that she is not the cause of any potential fires that may happen in the future.

The tenant testified that the microwave in her rental unit started on its own on high, while she was washing the floors one day. She said that she could not turn it off except when she opened the microwave door. She claimed that leaving the door open would cause radiation which is bad for her health. Therefore, she explained that she has to turn the microwave off by turning the breaker off.

The tenant explained that the landlord failed to do snow removal during the winter months, which made it slippery for her to walk, and when she reported the issue to the landlord, they told her to wear proper shoes. She stated that there is a lack of communication with the landlord because her emails are ignored and she has had to call the landlord's office, when she prefers communication to be in writing. The tenant said that the landlord takes photographs of her without permission and causes her stress and illness. She claimed that the landlord has left notices for her in the doorway and this is a breach of privacy laws.

The tenant claims two hours of cleaning at \$15.00 per hour for a total of \$30.00 and 1.5 hours of cleaning at \$30.00 per hour for a total of \$45.00. She also claims for \$11.20 for a cleaning product and provided a receipt for same. The tenant stated that she had to clean the old stove before the landlord took it back to replace it, as well as the replacement stove that the landlord gave her.

The landlord disputes the tenant's claims and stated that the tenant is not entitled to a loss of quiet enjoyment, nor any amounts for the cleaning. The landlord claimed that the tenant's stove was replaced and the tenant told her it was hotter than before but it worked fine. The landlord said that when she was told about the fire safety officer complaint, she had the stove checked by a certified technician and it was deemed safe to use. She said that the tenant's stove was removed and disposed of, without charging the tenant for the cost, even though there was nothing wrong with it. The landlord said that she has always used licensed electricians to inspect the tenant's stove in the rental unit. The landlord maintained that she was not notified by the tenant about any issues with her microwave until the tenant's application and this hearing. She claimed that she could not do anything without knowing there is a problem in the first place. She stated that the tenant is paranoid and fearful on her own regarding her appliances and that there are 53 other units in the rental building which carry the same brand of appliances that the tenant has and complains about, and there are no problems with the appliances in the other units.

Landlord TL testified that she feels harassed by the tenant because the tenant keeps trying to find things to complain about and seems like she wants to get landlord TL fired. She said that she always answers the tenant's inquiries and complaints, just not right away like the tenant wants. She said that the replacement stove given to the tenant was taken from another unit where those occupants wanted to use their own appliances, they did not use their stove regularly and the stove worked fine.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord 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 find that the tenant did not provide sufficient evidence to substantiate her monetary claim and failed to satisfy the four-part test. She was unable to justify the \$1,376.20

amount being claimed. Therefore, on a balance of probabilities and for the reasons stated below, I dismiss the tenant's claim of \$1,376.20 without leave to reapply.

The tenant did not provide any breakdown for the \$1,290.00 for a loss of quiet enjoyment, except to state that she wanted two months of rent back plus another \$100.00 for the stove and microwave issues. The tenant did not provide sufficient written documentation such as medical records, wage loss records or other such documents, to support her claim. She did not provide work records for missing time from work. She did not provide medical records from her doctors indicating that the landlord caused her stress and illness, as she alleged during the hearing. The tenant said she was charging the landlord for cleaning the old and new stove at the rental unit for \$30.00 and \$45.00. She said that she based the cleaning rates on her previous work as a cleaner more than 40 years prior and cleaning rates now but she provided no documentary proof of same.

I dismiss the tenant's claim for \$11.20 to clean the burn marks off her replacement stove, as the tenant is required to clean her own appliances, not the landlord.

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

The tenant did not apply for the landlord to replace the stove or microwave at the rental unit but her lawyer requested it during the hearing. The landlord testified about it during the hearing. Accordingly, pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to include these claims. I find that the tenant has not proven that replacements of the stove or microwave are required. The landlord did not know about the microwave issues and I find that the landlord replaced the tenant's stove. As noted below, the landlord has agreed to have the appliances inspected.

I order the landlord, at its own cost, to have a certified, licensed professional inspect the stove and microwave at the rental unit by September 14, 2018. The landlord agreed to this during the hearing. The tenant agreed to and is required to provide access to the rental unit for the above purpose by the above date. If the professional recommends that repairs and/or replacements are required to the stove and/or microwave in the rental unit, I order the landlord to comply with same.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I order the landlord, at its own cost, to have a certified, licensed professional inspect the stove and microwave at the rental unit by September 14, 2018. The tenant is required to provide access to the rental unit for the above purpose by the above date. If the professional recommends that repairs and/or replacements are required to the stove and/or microwave in the rental unit, I order the landlord to comply with same.

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 10, 2018

Residential Tenancy Branch