



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND FF

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

The tenant had also filed a separate application to cancel two different notices to end tenancy issued by the landlord. The hearing for that application was scheduled for November 19, 2018. The parties advised that the tenant has vacated the rental unit as of October 31, 2018 and both parties agreed that the hearing scheduled for November 19, 2018 could be cancelled. I confirm that the hearing scheduled for November 19, 2018 for File # 31028784 is hereby cancelled and the tenant's application is withdrawn.

Issues

Is the landlord entitled to a monetary award for damage to the rental unit?

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

Background and Evidence

The tenancy began on February 15, 2017 and ended on October 31, 2018. This application was filed prior to the end of the tenancy.

The landlord is seeking compensation in the amount of \$762.50 for the costs associated with replacement of a fridge. The landlord argues the tenant's negligence use of the fridge caused the old fridge to malfunction. The landlord testified that the tenant was advised various times to not stuff the fridge freezer more than $\frac{3}{4}$ full. The landlord submitted a picture taken on September 17, 2018 which allegedly shows the freezer stuffed full. This was the only picture evidence submitted by the landlord. The landlord testified that two technicians had also previously advised the tenant to not fully stuff the freezer. The landlord did not provide any documentary evidence to in support of the technician's findings and any subsequent advice. The landlord testified the old fridge was 10 years old and that it was purchased new at that time for approximately \$800.00-\$900.00.

The tenant testified that since September 2017 he had a number of issues with appliances in the rental unit including the fridge and these concerns were communicated to the landlord. The tenant testified that he only used the fridge to $\frac{3}{4}$ capacity and that this did not help and the fridge would still malfunction.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

The landlord is generally responsible to maintain and repair appliances provided under a tenancy agreement unless the damage was caused by the deliberate actions or neglect by the tenant.

I find the landlord has provided insufficient evidence that the fridge malfunctioned as a result of the deliberate actions or neglect by the tenant. The landlord provided no documentary evidence in support of the findings made by the technicians that the fridge malfunctioned due to being overstuffed. I also find the landlord's request for the tenant to utilize the fridge to only $\frac{3}{4}$ capacity to be unreasonable.

The landlord's application is dismissed without leave to reapply.

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

Conclusion

The landlord's 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: November 05, 2018

Residential Tenancy Branch