



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT OLC PSF RR

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

As the parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application'). The landlord confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. Although the tenant revised her monetary worksheet in her evidentiary materials, no amendments were filed by the tenant. The tenant confirmed that she was proceeding with her original monetary claim as filed. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

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

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in January of 2018. The tenant is currently paying \$1,500.00 in monthly rent.. The tenant paid a \$750.00 security deposit at the beginning of this tenancy, which is still held by the landlord.

The tenant is making a monetary claim for \$6,860.06 as follows:

Item	Amount
\$500.00 rent reduction x 12 months	\$6,000.00
Cost of mini appliances	860.06
Total Monetary Order Requested	\$6,860.06

The tenant testified that when she had signed the tenancy agreement the following items were included as part of this tenancy: 2 refrigerators, 2 stoves, 2 washers, and 2 dryers, for a total of 8 appliances. The tenant testified that the main criterion in her choosing to rent this home was the availability of 2 kitchens to suit her needs. The tenant testified that the landlord changed the terms of the agreement, and she was not given a second stove or refrigerator. The tenant indicated in her application that she had signed the tenancy agreement on December 29, 2017, and on January 10, 2019 the landlord emailed her notifying her that the city bylaws prevented him from including a second stove. The tenant is seeking a rent reduction of 1/3 of the monthly rent as she only received some of the appliances that were included in the tenancy agreement. The tenant feels she lost half the value of the tenancy as she required a second kitchen, which was not provided.

The tenant included a copy of the tenancy agreement which states “washer dryer x 2”. Under “refrigerator”, is handwriting that reads “x 2”. Both boxes for “refrigerators” and “stove and oven” have a handwritten dot beside the checked boxes.

The tenant is also requesting the reimbursement of the cost of the mini appliances she had purchased in lieu of the missing appliances. The tenant included a handwritten list of the items she had purchased and their cost as follows:

Item	Amount
Mini Fridge	167.67
Indoor Grill	104.00
Electric Griddle	59.97
Mini Fridge	159.00
Convection Oven	85.00
Bread maker	129.98
Rice Cooker	59.99
Total Monetary Order Requested	\$767.61+tax =857.48

Although the amount the tenant requested was \$860.06 in her claim, the individual monetary amounts equal \$857.48, as reflected in the above table.

The landlord testified in the hearing that the home was rented out as one residence, and not two. The landlord disputed the tenant’s testimony that the tenant was promised two stoves as part of the tenancy. The landlord testified that the inclusion of the stove was conditional on the approval of the municipality, and the only items included were the appliances present at the viewing, which was 6 appliances, and not 8. The landlord is also disputing the tenant’s request for compensation of the mini appliances as she has not submitted proof of her losses such as receipts. The landlord testified that the tenant has not suffered any losses due to his actions, and therefore the tenant’s losses are her own responsibility. The landlord testified that he had fulfilled all the requirements for this tenancy.

Analysis

In this matter the applicant tenant bears the burden to prove that it is likely, on balance of probabilities, that the listed appliances in the tenant’s application was to be provided as part of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

Section 27 Terminating or restricting services or facilities, states as follows,

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that for the purposes of this matter pursuant to Section 27(2)(b) and 65 that appliances are a qualifying **service or facility** stipulated in the **Definitions** of the *Act*.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

I find the evidence is undisputed that the tenant has access to only one refrigerator and one stove as part of this tenancy. In considering whether the tenant is entitled to the monetary order for a reduction in rent, I must determine whether there has been a reduction in the value of the tenancy agreement. I find it is clear on the written tenancy agreement that the tenant was to be provided two washer dryers, and two refrigerators. I find the evidence is ambiguous as to whether the tenant was to receive two stove and ovens as it is not clearly marked on the written tenancy agreement in the same fashion the other appliances are. I have not been presented reliable evidence the landlord explicitly agreed the tenant would be provided with two stove and ovens. While I may understand the tenant's argument that two of each appliance makes sense in light of her needs, I find the landlord's testimony credible that the stove and oven were to be provided to the tenant on a conditional basis since the city bylaws may prohibit it, which was the case. As such I find, that the tenant was only denied the refrigerator, and not the stove and oven.

I find the *Act* clearly states that on termination of a service or facility the appropriate remedial rent reduction amount should be “equivalent” to *the reduction in the value of the tenancy agreement*. I find that the requisite calculation prescribed in 27(2)(b) is one predicated on the question of, “what is the reduction in the *value* of the tenancy agreement resulting from the absence of the appliance”? Or, “by what amount is the *value* of the tenancy agreement (rent) reduced in absence of appliance”?

I have considered the *Act* definitions of, “rent”, “service or facility”, and “tenancy agreement”, all of which I find comprises the totality of the tenancy agreement. I find that the landlord did not provide a second refrigerator, which was to be included in the tenant’s rent as stated in the written tenancy agreement. I find compensation for past loss of use of a second refrigerator and future reduced rent to be reasonable.

On preponderance of the evidence and the totality of factors comprising a *tenancy agreement* I find that a rent reduction of 1/8th of the rent, which is \$187.50, reasonably represents the reduction in the *value of the tenancy agreement* resulting from the absence of the second stove and oven rather than 1/3. Although the tenant established that the home was divisible into two rentable suites, I find that the agreed rent of \$1,500.00 was not calculated on the basis of two rental units, and therefore the loss of use of a possible second rental unit was not taken in consideration.

As a result of all the above and pursuant to Sections 65(1)(f) I award the tenant compensation for loss of the second refrigerator in the aggregate amount of **\$2,250.00** (\$187.50 x 12 months). I additionally award the tenant a rent reduction of the payable monthly rent under the tenancy agreement of **\$187.50** commencing the rental period of February 2018.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that she is entitled to compensation for the mini appliances that she had purchased.

I find that in the absence of receipts for the listed items in the tenant’s claim, the tenant has failed to provide proof of her actual losses. On this basis, I dismiss this portion of the tenant’s monetary claim without leave to reapply.

Lastly, the tenant requested an order for the landlord to comply with the *Act* and tenancy agreement, and provide services or facilities as agreed upon. I find that the tenant has established that the landlord had agreed to provide a second stove and oven, but was unable to do so due to reasons beyond his control. I find that the municipal bylaws prevent the landlord from providing this agreed upon facility, and I find the rent reduction given covers this loss. On this basis, I decline to make any further orders.

Conclusion

The application of the tenant is granted in the above terms, which are perfected as follows.

I allow the tenant to implement a monetary award of **\$2,250.00** by reducing future monthly rent payments in satisfaction of that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of **\$2,250.00**, and the landlord must be served with **this Order** as soon as possible.

Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I Order that the payable monthly rent commencing **February 2019** is set at **\$1,312.50** until changed in accordance with the *Act*.

The remaining portions of the tenant's application are 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: February 26, 2019

Residential Tenancy Branch