



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDCT, MNRT, OLC, PSF, RR, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for monetary compensation, for compensation for money spent on emergency repairs, for an order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreement, for services or facilities to be provided as required by the tenancy agreement or law, for a reduction in rent for services, facilities or repairs agreed upon but not provided, and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Tenant filed the application on January 9, 2019 and filed an amendment on January 31, 2019 to add a claim disputing a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”).

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service. Following the hearing, the Landlord submitted two pages of evidence to the Residential Tenancy Branch. This evidence will not be considered as evidence from the respondent must be received by the Residential Tenancy Branch and a copy served to the applicant at least 7 days prior to the hearing, as stated by rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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 and Procedural Matters

As stated by rule 2.3 of the *Rules of Procedure*, unrelated claims may be dismissed. I dismiss the Tenant's claims for an order for the Landlord to comply, for services or facilities to be provided, and for a reduction in rent. These claims are dismissed with leave to reapply.

At the outset of the hearing, the Landlord confirmed that he obtained an Order of Possession through the Direct Request process, based on a 10 Day Notice served to the Tenant in February 2019. Although the Tenant stated that she has not received the decision or orders from the Direct Request proceeding, I find that this tenancy has been ended through an Order of Possession dated February 19, 2019.

Therefore, I find that the notices in dispute are no longer relevant as the Landlord has received an Order of Possession for the rental unit. The parties were informed that the merits of these notices would not be considered as possession of the rental unit has already been decided on. No findings were made regarding the One Month Notice or the 10 Day Notice. The hearing proceeded based on the monetary claims of the Tenant.

Issues to be Decided

Is the Tenant entitled to monetary compensation?

Is the Tenant entitled to compensation for money spent on emergency repairs?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement regarding the details of the tenancy. The tenancy began on October 1, 2018. Monthly rent is \$950.00 and a security deposit of \$475.00 was paid at the outset of the tenancy.

The Tenant has claimed a total of \$300.00 as compensation which includes \$275.00 due to not having a working fridge for a period of 12 days and \$25.00 for emergency repairs completed in the rental unit.

The Tenant stated that on December 10, 2018 she noticed that the fridge had stopped working and that her perishable items were no longer useable. She notified the Landlord and was told that someone would come the next evening to have a look at the fridge. The Tenant stated that after this the Landlord went away, so she did not hear from him for a period of 5 days. The Tenant testified that 12 days after the issue occurred, the fridge was replaced with a new one.

The Tenant stated that she incurred costs during the 12 days that she did not have a working fridge. This included eating out and throwing out the food that was in the fridge. The Tenant stated that she and the Landlord communicated via text message and she requested a reduction in rent as compensation. The text messages were submitted into evidence. The Tenant stated that she calculated an amount of \$275.00 as fair for the time she was unable to use the fridge at the rental unit.

The Tenant stated that the Landlord agreed to the deduction from rent, including \$25.00 for repairs completed. In an undated text message, the Tenant suggests reducing rent by \$300.00 and states that she will pay the remainder of the rent and the Landlord responds with "send it".

The Landlord stated that he did not have an agreement with the Tenant to reduce her rent due to the issues with the fridge or the repairs. He stated that they communicated regarding the fridge and he agreed to pay a fair amount but did not agree to the amount proposed by the Tenant. He also noted that he advised the Tenant to pay what she could towards rent, but this was not an agreement to have the rent reduced. He testified that he believes that \$275.00 is too much given that there did not seem to be much food in the fridge at the time and the issue was resolved as soon as possible.

The Tenant stated that she is also seeking \$25.00 for repairs, which included replacement of hinges on the toilet seat, and two hinges on kitchen cabinets that were loose or missing. She stated that she did not keep the receipts for the hinges. She stated that the issues were noted during the inspection of the rental unit prior to moving in.

The Landlord stated that the toilet seat was fixed prior to the Tenant moving in and that one hinge in the kitchen was loose. A text message submitted by the Tenant dated

September 27, 2018 states that the plumber was coming to fix the toilet. He stated that he did not provide permission for the Tenant to pay for repairs or deduct this amount from rent.

Analysis

Regarding the Tenant's claim for compensation in the amount of \$275.00 due to the issue with the fridge, I refer to Section 32 of the *Act* which states that a Landlord must maintain and repair the rental unit. While the Landlord responded regarding the concerns with the fridge right away, I find evidence in the text messages that there was a period of a few days following the initial notice that the Landlord did not respond or advise the Tenant as to when the issue would be fixed. I find that the issue could have been dealt with faster than the 12 days that it took.

Upon review of the text messages submitted as evidence, I do not find that the parties had an agreement for a reduction in rent. Instead, I find evidence that the Tenant requested compensation of \$275.00 and the Landlord suggested a lower amount of \$125.00.

I find that I do not have sufficient evidence from the Tenant regarding expenses incurred such as evidence of the food items that were lost or costs for eating out. As such, I am not satisfied that the Tenant has established that her loss is valued at \$275.00. However, as I find that the Tenant was inconvenienced during the 12 days that she did not have a working fridge, she is entitled to compensation. I find the amount of \$125.00 suggested by the Landlord to be reasonable and therefore award this amount to the Tenant.

As for the Tenant's claim for reimbursement for emergency repairs, I note that Section 33 of the *Act* defines emergency repairs as urgent in nature and repairs that pose a serious risk for the occupants or residential property. While replacement of hinges does not fit the definition of an emergency repair, I am also not satisfied that the Tenant provided proof of the money paid towards repairs. There were no photos or receipts submitted into evidence that would establish that the repairs were required and paid for. As such, I am not satisfied that the Tenant is owed money for emergency repairs and decline to award this amount.

As the Tenant was partially successful in her application, pursuant to Section 72 of the *Act*, I award the recovery of half of the filing fee in the amount of \$50.00. The Tenant is awarded a Monetary Order in the amount of \$175.00.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of \$175.00. The Tenant is provided with this Order in the above terms 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.

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 22, 2019

Residential Tenancy Branch