



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUME INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the hearing while no one called in for the Landlord during the approximately 25 minutes that the phone line was monitored. The Tenant was affirmed to be truthful in her testimony and stated that she served an agent of the Landlord in person with the Notice of Dispute Resolution Proceeding package and a copy of her evidence. The Tenant was unsure of the exact date of service but stated that it was on or around June 21, 2019 when the notice of hearing documents were provided to her from the Residential Tenancy Branch.

I accept the affirmed testimony of the Tenant and find that the Landlord was served in accordance with Section 89 of the *Act* as an agent of the Landlord was served in person.

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

Issues to be Decided

Is the Tenant entitled to monetary compensation?

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

Background and Evidence

The Tenant provided undisputed testimony of the tenancy which was confirmed by the tenancy agreement submitted into evidence. The tenancy began on July 1, 2015. Current rent in the amount of \$966.00 is due on the first day of each month. The Tenant paid a security deposit of \$425.00 and a pet damage deposit of \$425.00 at the start of the tenancy.

The Tenant is seeking total compensation in the amount of \$1,112.69 for the cost of replacing food that was lost due to ongoing issues with the fridge in the rental unit.

The Tenant provided testimony that the first fridge stopped working around 2016 or early 2017. She stated that the Landlord was notified, and the fridge was replaced. However, she stated that the second fridge began having issues in February 2018 and that the issues were ongoing. The Tenant noted that again the Landlord was notified, and a technician attended the rental unit to complete repairs to the fridge.

The Tenant stated that the repairs did not seem to fix the issues with the fridge as it continued to have thawing and re-freezing issues such that she was concerned with food safety and had to continually dispose of the food. The Tenant stated that the freezer would warm up while the fridge would freeze the food causing concerns with bacteria on the food.

The Tenant stated that in January 2019 a technician attended the rental unit again and questioned why the fridge had previously been repaired when it should have been replaced, particularly as it would have been under warranty. In January 2019, the Tenant was provided with a fridge from another rental unit and stated that she has not experienced issues since.

The Tenant submitted copies of letters to the Landlord in which she notified them of the ongoing issues with the fridge and requested compensation for the cost of replacing food. The letters are dated from December 2018 to May 2019. The Tenant stated that she has not had a response from the Landlord, other than an email dated February 28, 2019 which was also included in evidence. In the email, an agent for the Landlord states that they will review the letter of complaint that was received.

The Tenant stated that it was difficult to calculate the monetary value of the food lost during the time that the fridge/freezer was not working. However, she submitted copies of bank statements from July and August 2018, as well as from January and February 2019. She noted that there were more than 4 months when food was thrown out and replaced, but these four months represent when the issue was at its peak. In the bank statements, the Tenant highlighted the purchases that were for food and therefore noted that this is an estimated value of her monetary loss.

Analysis

As the Tenant has applied for monetary compensation, I refer to Section 7 of the *Act* which states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Upon review of the tenancy agreement, I find that it notes that a fridge is included as part of the rent. I accept the testimony of the Tenant that there were periods of time between 2016 and 2019 when the fridge in the rental unit was not functioning properly and therefore find that the Tenant did not have access to an adequate working fridge during these periods, as required by the tenancy agreement.

I also accept the testimony and evidence before me that the Tenant notified the Landlord in writing of the ongoing issues with the fridges and the resulting food loss. Based on the Tenant's testimony regarding communication with the Landlord, it seems that the issue with the fridge went on for longer than necessary.

I also accept the Tenant's testimony that the issues with the warming and re-freezing of the food in the fridge meant that the food was unsafe to eat and thus had to be disposed of. Therefore, I find that the Tenant would have suffered some monetary loss due to not having a working fridge during the periods of time when the fridge was not working and had not been repaired or replaced.

Although the Tenant submitted bank statements showing food purchases, I am not satisfied that the Tenant established the value of the loss. However, I do recognize the difficulty in establishing the cost of the lost food and replacement costs. I am satisfied that the Tenant did not have a working fridge for a few months during the tenancy, although do not find that the Tenant established the value of the loss at \$1,112.69. As the Tenant testified that this amount represents all food purchased over a period of four months, I find that some of the food would be non-perishable items that did not require refrigeration.

I also find that in the absence of further evidence regarding the food that was disposed of, such as photos, I am not satisfied that the Tenant has met the burden of proof to establish the replacement value at over \$1,000.00. However, in recognition of the loss that I find the Tenant has established, I award a nominal amount for food replacement in the amount of \$400.00.

Pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00 for a total monetary award of \$500.00. The Tenant may deduct \$500.00 from the next monthly rent payment as satisfaction of the amount awarded.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I award the Tenant an amount of \$500.00. The Tenant may deduct \$500.00 from the next monthly rent payment as compensation for this amount.

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: October 02, 2019

Residential Tenancy Branch