



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHARTWELL CONSTRUCTION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RP, OLC

Introduction

On November 23, 2019, the Tenants applied for dispute resolution under the *Residential Tenancy Act* ("the Act") seeking the following:

- for an order that the Landlord make repairs to the rental unit.
- for money owed or compensation for damage or loss.
- for the Landlord to comply with the Act, regulation or tenancy agreement.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

The Tenants claim for repairs to windows is dismissed with leave to reapply as it is not related to the claims for compensation. The Tenants application proceeded on the claim for money owed or compensation for damage or loss and for the Landlord to comply with the tenancy agreement.

Issues to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
- Is the Tenant entitled to an order for the Landlord to comply with the Act regulation or tenancy agreement?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on November 1, 2010 and is on a month to month basis. Rent in the amount of \$1,408.00 is due to be paid to the Landlord by last day of each month. The Tenant paid a security deposit of \$573.50 to the Landlord.

Compensation

The Tenant testified that her refrigerator stopped working on July 24, 2019. The Tenant testified that she informed the Landlord about the refrigerator on July 24, 2019. The Tenant testified that the refrigerator was temporarily fixed on July 31, 2019 but it only worked intermittently and stopped working again in August 2019.

The Tenant testified that the food in the refrigerator spoiled and had to be thrown away. The Tenant testified that she showed the two bags of spoiled food to the building manager. The Tenant testified that she cannot show receipts for the purchase cost of the items because she did not expect the freezer to stop working. The Tenant did not provide any photographic evidence of the spoiled food.

The Tenant testified that she asked the Landlord to give her compensation for the spoiled food, but the Landlord declined. The Tenant is seeking compensation in the amount of \$350.00 for the cost to replace spoiled food.

In reply, the Landlord testified that they responded immediately to the Tenants report regarding the refrigerator. The Landlord testified that the Tenants were away from

August 10 until September 23, 2019. The Landlord testified that they ordered a new part on September 17, 2019.

The Landlord acknowledged that the Tenants had a small bag of food from the freezer. The Landlord testified that the Tenants did not provide a list of items or a receipt for the cost of food.

Late Rent Fee

The Tenant testified that they have been paying the rent using cash for nine years and on October 15, 2019 the Landlord refused to accept a cash payment. The Tenant testified that On October 30, 2019 they provided the Landlord with a cheque and the Landlord accepted the cheque without any mention of concern.

The Tenants testified that the Landlord approached them on October 31, 2019 and informed them there was a problem with the cheque and to issue a new one. The Tenants testified that they provided the Landlord with a new cheque on October 31, 2019.

The Tenants testified that at 8:00 pm on October 31, 2019 the Landlord delivered a notice of late rent payment to them for the amount of \$25.00. The Tenants paid the late fee but want to recover the payment because the rent was paid when it was due.

In reply, the Landlord testified that the bank informed the Landlord that the cheque could not be accepted. The Landlord testified that rent is due before 1:00 pm on the last day of each month. The Landlord provided a copy of the tenancy agreement that provides that rent is payable in advance on or before 1:00 in the afternoon of the last day of each month. The Landlord testified that she was not sure whether or not the replacement cheque was received from the Tenants on October 31, 2019 or November 1, 2019.

Payment of Rent

On June 11, 2019, the Landlord and Tenants participated in a dispute resolution hearing before a different Arbitrator. At that hearing the hearing the Tenants requested that the Landlord comply with the tenancy agreement and allow payment of rent using cash. The Arbitrator considered the matter and found that there is insufficient evidence from

the Landlord that the Tenants insistence on paying the rent with cash is a breach of a material term of the tenancy sufficient to justify ending the tenancy.

I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of Res Judicata. Res judicata is a rule in law that a final decision, determined by an officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

Since this matter was already considered and decided at a previous hearing, I decline to consider the matter further.

Analysis

Section 65 of the Act states that if the director finds that a Landlord or Tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant 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 Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord has an obligation under the tenancy agreement to provide a working refrigerator to the Tenant. The testimony of the parties is in agreement that the refrigerator was not operating properly and needed repair. I find that it is more likely than not that the Tenants suffered a loss due to an issue with the refrigerator. I find that the Landlord is responsible to compensate the Tenant for their loss.

With respect to loss the Tenants are required to provide proof of loss and proof of the actual amount required to be compensated for the loss. The Tenants did not provide any receipts or photographs to prove loss, and establish the actual amount required for compensation. I accept that the Tenants experienced a loss and the Landlord acknowledged that the Tenant had a small bag of food from the freezer.

Since I find that the Tenants suffered a loss, but the value of the loss has not been proven, I find that it is reasonable to award the Tenants with a nominal monetary award of \$100.00.

Late Rent Fee

I accept the Landlord's testimony and evidence that rent is payable on or before 1:00 in the afternoon of the last day of each month.

There is insufficient evidence from the Landlord regarding the time of day that the tenants provided the replacement rent cheque. The Landlord testified that she is not sure whether or not the replacement cheque was received from the Tenants on October 31, 2019 or November 1, 2019. If the Landlord does not know when the replacement cheque was received, I am not satisfied that the Landlord knows when the rent payment was made.

I grant the Tenants recovery of the \$25.00 late rent payment fee.

The Tenants have established a monetary claim in the amount of \$125.00. I authorize the Tenants to deduct the amount of \$125.00 from one (1) future rent payment.

Conclusion

The Tenant's application was partially successful.

The Tenants suffered a loss due to a broken refrigerator and are also entitled to the recovery of a late rent charge.

I authorize the Tenants to deduct the amount of \$125.00 from one (1) future rent payment.

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 5, 2020

Residential Tenancy Branch