



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FFT

Introduction

On September 26, 2019, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for money owed or compensation for damage or loss under 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 evidence was reviewed and confirmed received by each party. 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.

Issues to be Decided

- Is the Tenant entitled to a monetary order for damage or loss?

Background and Evidence

The parties testified that the tenancy began on April 25, 1994 and is on a month to month basis. Rent in the amount of \$1,075.00 is due to be paid to the Landlord by the first day of each month. A security deposit of \$347.00 was paid by the Tenant to the Landlord.

The Tenant is seeking compensation for a loss of use of a refrigerator for 17 days; the cost to replace spoiled food; damage to personal health; cost of gas and time to purchase food and ice; and to recover the cost of the filing fee. The Tenant is seeking compensation in the amount of \$600.00.

The Tenant testified that she noticed the refrigerator in the rental unit was malfunctioning and she reported the issue to the Landlord on September 2, 2019.

The Tenant testified that the Landlord responded the next day and repairman serviced the refrigerator. The Tenant testified that the refrigerator was still malfunctioning, so she informed the Landlord on September 3, and 4th.

The Tenant testified that the Landlord ordered a new refrigerator on September 4, 2019. The Tenant testified that a new refrigerator was delivered to the rental unit on September 18, 2019. The Tenant provided copies of text messages that she exchanged with the Landlord regarding the refrigerator.

The Tenant testified that she lost \$300.00 worth of food that spoiled. The Tenant provided photographs she took of food items that she disposed of.

The Tenant is seeking reimbursement of \$167.36. The Tenant provided receipts for the purchase of ice and food from the time period of September 9, 2019 to September 17, 2019 in the amount of \$167.36.

The Tenant is also seeking compensation as follows:

Photocopying costs	\$22.65
Photograph costs	\$7.02
Parking costs	\$8.46
Registered mail costs	\$14.53
Gas / time / health	\$ undisclosed

In reply, The Landlord provided testimony acknowledging that the Tenant requested compensation for food and that they are not in agreement to pay compensation. The Landlord testified that they responded to the Tenant right away and replaced a part in the refrigerator. The Landlord testified that they ordered a new refrigerator the next day on September 5, 2019. The Landlord testified that it can take anywhere from 2-3 days and up to two weeks to receive a small size refrigerator to fit in the kitchen of the unit.

The Landlord testified that the refrigerator came in on September 17, 2019 and it was delivered to the Tenant on September 18, 2019. The Landlord testified that they were not able to receive it any faster. The Landlord testified that they offered a loaner refrigerator to the Tenant. The Landlord testified that they left a message on the Tenants phone about the loaner but did not hear back from the Tenant.

The Landlord testified that the old refrigerator was disposed of because it was not worth fixing.

In reply, the Tenant testified that on September 12, 2019 the Landlord left a message saying he wanted to measure the space to see if another refrigerator would fit. The Tenant testified that she did not respond because she believed the Landlord already had the measurement.

Analysis

Section 7 of the Act provides,

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. 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.

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.

Residential Tenancy Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises is intended to help the parties to an application understand issues

that are likely to be relevant and may also help parties know what information or evidence is likely to assist them in supporting their position. The policy guideline provides that a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. A tenant is not responsible for reasonable wear and tear to the rental unit or site. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

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

I find that the Landlord has an obligation under the tenancy agreement to provide an operable refrigerator to the Tenant and the Landlord is responsible for repairs / maintenance to the refrigerator.

I find 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 the issue with the refrigerator. I find that the Landlord is responsible to compensate the Tenant for the Tenants loss.

With respect to loss, the Tenant is required to provide proof of loss and proof of the actual amount required to be compensated for the loss. The Tenant provided photographs of spoiled food and receipts for the purchase of food and ice.

I find that the Tenant was purchasing ice in an attempt to mitigate against further loss of having food spoil. I find that it is reasonable to award the Tenants the amount claimed of \$167.36.

The Tenants remaining claims are dismissed without leave to reapply. The Tenants costs of preparing for the hearing including; photocopying, mailing, photographs, gas and time are not recoverable against the Landlord. In addition, there is insufficient evidence from the Tenant that the loss of the refrigerator for 17 days compromised her health.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was partially successful in her application by establishing that she suffered a loss, and the Landlord is responsible for

maintaining and replacing the appliance, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

The Tenant established a monetary claim in the amount of \$267.36. I authorize the Tenant to deduct the amount of \$267.36 from one (1) future rent payment.

Conclusion

The Tenant's application was partially successful.

The Tenant suffered a loss due to an inoperable refrigerator. The Landlord is responsible to compensate the Tenant for the loss.

I award the Tenant the amount of \$267.36. I authorize the Tenant to deduct the amount of \$267.36 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 6, 2020

Residential Tenancy Branch