



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT RP

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 make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

GN represented the landlord in this hearing. 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'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

As both parties confirmed that the tenant had moved out on February 29, 2020, the tenant's application for repairs is cancelled. The hearing proceeded to deal with the tenant's monetary claim.

Issues

Is the tenant entitled to recover the filing fee for this application from the landlord?

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

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 on November 17, 2013, and ended on February 29, 2020. The monthly rent was set at \$1,840.28, payable on the first of every month. The landlord collected, and still holds a security deposit in the amount of \$800.00, and a pet damage deposit in the amount of \$500.00.

The tenant is applying for the following monetary orders:

Item	Amount
\$55/month x 12 months – loss of hood fan/microwave	\$660.00
\$100/month x 12 months – loss of dishwasher	1,200.00
Filing Fee	100.00
Total Monetary Order Requested	\$1,960.00

The tenant testified that the landlord has failed to repair or replace the hood fan/microwave and dishwasher despite her multiple requests to do so. The tenant provided detailed submissions in her evidentiary materials that document the history of her requests and applications for dispute resolution with the landlord. The tenant testified that the hood fan/microwave stopped working in 2016, and after several verbal requests, the tenant informed the landlord in writing on May 31, 2017.

The tenant testified that the dishwasher leaked, and the tenant informed the landlord's agent immediately on May 18, 2017. The tenant included the email in her evidentiary materials, as well as the landlord's agent's response that they left a message with the landlord, and will contact her soon.

The tenant provided copies of acknowledgment form the landlord, such as the notes dated April 15 and 17, 2019 stating that the landlord would check the washing machine. On December 28, 2020, the tenant provided another written letter to the landlord. The tenant included this letter in her evidentiary materials.

The tenant testified that both appliances were repaired as of January 8, 2020, but this was after the landlord had sold the property, and entered into a sale agreement on January 4, 2020. The landlord then served the tenant with a 2 Month Notice for Landlord's Use on January 24, 2020 with an effective date of March 31, 2020 after the buyer requested that the landlord issue the 2 Month Notice.

The tenant testified that the landlord would issue notices to end tenancy in an effort to delay the process of repairs, and when the tenant would file an application, the application for repairs would be dismissed with leave due to lack of time to address both matters. The tenant provided a chronology of previous disputes for this tenancy dating back to August 14, 2017.

The tenant provided details of how she had calculated the compensation she had requested in her evidentiary materials. The tenant is requesting \$100/month for 12 months for the dishwasher as she had to spend approximately 1 hour/day washing dishes by hand, and \$55/month for 12 months for the hood fan/microwave.

The landlord's agent in the hearing testified that his role was to list the property in December 2020, and not management of the property. The agent testified that prior to December 8, 2020 he was unaware of the issues described by the tenant.

The agent testified that the tenant was provided with another microwave. The agent testified that when he had received the written request on December 28, 2020, that he did address the matter as soon as possible, but the delay was reasonably given the holiday season. The agent testified that he had texted the tenant, and after no response he assumed the issues were dealt with until the tenant filed her claim.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

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.”

In this matter the tenant bears the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenant’s application were 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 of the *Act* states the following about a landlord’s obligation to provide facilities as set out in a tenancy agreement:

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.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I have considered the testimony of both parties, and I find that a working dishwasher is listed as an appliance that would be supplied by and maintained by the landlord. I also find that a functioning hood fan is would be considered an item that the landlord should maintain under section 32 of the *Act* in order to comply with health and safety standards.

Although the landlord's current agent who attended the hearing disputes that he was aware of the previous requests for repairs, I find that the tenant had provided sufficient evidence to support that not only did she inform the landlord in writing on multiple occasions, the tenant provided evidence to support that the landlord acknowledged her requests. Furthermore, I find that these items remained unrepaired until the landlord sold the property. I am satisfied that the landlord failed to comply with sections 27 and 32 of the *Act*. I must now determine whether the tenant suffered any losses due to the landlord's failure to comply with the *Act*.

I find the tenant's calculation for the loss of use of the dishwasher to be reasonable. Accordingly, I allow the tenant a monetary order of \$1,200.00 for the loss of the dishwasher.

Although I find that the tenant did not have a functioning hood fan or microwave, I am not satisfied that the monetary loss the tenant claimed by the tenant to be sufficiently supported in evidence. Although the tenant references a possible fine that ranges from \$200.00/day up to a maximum of \$10,000.00, I find that the value of a potential fine does not correlate with the tenant's actual losses. As the burden of proof is on the tenant to support their loss, I dismiss this portion of the tenant's application without leave to reapply.

I allow the tenant to recover the filing fee for this application.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$1,300.00. 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.

The remaining portion of the tenant's application is 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: April 2, 2020

Residential Tenancy Branch