



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westwynd Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, RP, RR**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;

All parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The parties agreed the tenancy started on May 1, 2018 and is ongoing. The tenant paid a security deposit of \$987.50 at the start of the tenancy which the landlord holds. Monthly rent is \$1,975.00 payable on the first. The parties agreed the tenancy includes the provision of a refrigerator in the unit.

The parties agreed the refrigerator has been replaced and repairs are no longer needed. The tenant claimed compensation for loss of food of \$1,000.00 during the tenancy resulting from an inadequately functioning refrigerator. The tenant also claimed rent reduction of \$450.00 for the three-month period between the tenant's complaint about the refrigerator and the replacement.

The parties agreed they conducted a condition inspection in May 2018 on moving in and the refrigerator was in the unit at that time. No deficiencies in the refrigerator were noted by either party and this is reflected in the report.

However, the tenant claimed that the appliance did not work well from the time the tenancy started. After moving in, he noticed that droplets of water in the refrigerator "dripped slowly but constantly" onto a plastic drip tray which the tenant had to regularly remove and empty. The tenant said this had to be done every couple of days or so.

The tenant testified that the tray was unstable and was easily accidentally dislodged causing water spillage onto the contents below it. The tenant claimed that water frequently dripped onto his food in the refrigerator and spoiled it.

The tenant acknowledged that he did not complain to the landlord about the refrigerator until August 18, 2020 when he sent an email. The tenant testified that he finally complained as he "had enough" of the dripping and wet contents. In his application, the tenant wrote, "The fridge has always had this makeshift salad insert since I've moved in and has increasingly become worse ruining thousands of dollars of produce over the years I've resided here."

The landlord acknowledged the written complaint and came to the unit to inspect the refrigerator a week later, on August 26, 2020. The landlord agreed the refrigerator was old and should be replaced. The landlord acknowledged the dripping but said it was minor, not getting any worse, and the refrigerator was working adequately.

The landlord acknowledged they told the tenant at the time of the inspection that they would replace the refrigerator as soon as possible. The refrigerator was replaced in mid-November 2020.

The tenant claimed he is entitled to compensation for the period of the tenancy with a dripping refrigerator as well as rent reduction of \$450.00 for the three-month period between his complaint and the replacement. He asserted the landlord should have

immediately replaced the refrigerator within a few days. Although the tenant estimated the loss of groceries of a value of \$1,000.00 throughout the entire tenancy, he did not submit any documentary evidence in support of his claim such as photos of spoiled food or copies of food receipts.

The landlord testified that the dripping did not noticeably worsen in the two years of the tenancy and that the tenant's claim was an effort to obtain compensation to which he is not entitled. The landlord asserted that the tenant used the refrigerator for two years without complaining. They stated that as soon as the tenant complained, they inspected the refrigerator and agreed right away to replace it. The landlord claimed they did everything practically possible to replace the appliance in a reasonable time.

The landlord explained that they ordered a new refrigerator soon after the inspection from a large urban supplier only to learn a few weeks later that delivery could not take place for several months. The landlord testified that the delay was unavoidable and was caused by the pandemic; delivery had slowed to the city in which the unit is located.

The landlord testified they replaced the appliance as soon as possible given the special conditions in place at that time. The landlord asserted that they had complied with their obligations to the tenant as soon as possible and that the delay in the replacement was beyond their control. The landlord requested that the tenant's application for compensation be dismissed without leave to reapply.

Analysis

I have considered all the submissions and refer only to key, admissible facts. Substantial evidence and conflicting testimony were submitted in an 58-minute hearing. Only relevant findings based on admissible evidence are referenced.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 65(1) of the Act allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if a determine that there has been "a reduction in the value of a tenancy agreement". The section states that if an Arbitrator finds that a landlord or

tenant has not complied with the Act, the regulations or a tenancy agreement, the Arbitrator may order that past or future rent be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

The section reads in part as follows:

65 (1) ... *if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*

(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

(ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

Residential Tenancy Policy Guideline #16 provides guidance in determining the value of the damage or loss under such circumstances. This guideline notes, “the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.”

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

The tenant must meet the burden of proof with respect to each claim.

The tenant testified the operation of the refrigerator was substantially the same when he complained about it as when the tenancy started, about two years earlier. The tenant claimed that the landlord did not provide a properly functioning refrigerator for three months after the written complaint which was an unreasonable delay. The tenant claimed that throughout the tenancy, the dripping water ruined stored food which he estimated had a value of \$1,000.00 although the tenant submitted no substantiating documents confirming what he spent on food requiring refrigeration and what part of that amount was spoiled.

I acknowledge that the landlord disagreed with the tenant's version of events and asserted that the refrigerator, although older and suitable for replacement, worked well and no food was spoiled as a result of any dripping which was minor and insignificant.

The landlord testified they responded reasonably quickly, conducted an inspection in a timely manner and promptly agreed to replace the refrigerator. The landlord provided credible testimony that the landlord replaced the refrigerator as soon as possible given the conditions of supply of the item during the pandemic. I agree with the landlord that they took all reasonable steps to address the problem.

I accept that it was inconvenient for the tenant to have a refrigerator that dripped. However, I find that the tenant lived with the refrigerator for two years without complaining which indicates that the problem was not serious. Because of the time before the tenant reported the matter to the landlord, I find that the inconvenience was not important or noteworthy. Otherwise, common sense tells me that the tenant would have reported the matter earlier.

I found the tenant's evidence was unsupported by any evidentiary documents. The tenant provided only a guess of the amount of his losses, saying the loss of groceries was "around \$1,000.00". I find the tenant has not established any loss.

While the tenant expressed his frustration and exasperation with the landlord's failure to replace the refrigerator for three months, I find the delay was reasonable in the circumstances. The tenant still had a working refrigerator in this period. I find the value of a tenancy agreement was not diminished.

I find it plausible and understandable that the landlord did not locate a replacement refrigerator in a shorter time. I find that in the 3-month period before the refrigerator was replaced, the landlord took reasonably diligent steps to solve the matter. I find the

landlord complied with the Act and tenancy agreement.

Based on testimony, the documentary evidence and the weight I have given to the parties' evidence, I therefore find the tenant has failed to meet step one of the four-part test that the tenant incurred any loss.

I also find the landlord took reasonable steps to address the tenant's complaints after the complaint and is not in violation of the landlord's obligation under the Act or the tenancy agreement. I find tenant has not met the burden of proof on a balance of probabilities that the landlord failed to comply with their duty under either section 67 (damages and compensation) or section 65 (rent reduction). I find that the tenant has not met the second part of the four-part test referenced above with respect to his claims.

As the tenant must meet all four parts of the above test, I find the tenant's claims are dismissed without leave to reapply.

Conclusion

The 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: January 21, 2021

Residential Tenancy Branch