



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67; and
- To recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to recover the filing fee from the landlords?

Background and Evidence

This periodic tenancy began in 2009 and ended in October 2020. The rental unit is a suite in a detached home. The tenant had a large freezer unit on the deck of the rental suite in which they stored cuts of meat, fish, fruits and vegetables.

The tenants submit that they left the rental unit for a trip during the September long weekend and when they returned after a few days found the freezer unit unplugged and

all of its contents melted and inedible. The tenant submitted numerous photographs of the ruined food.

The parties confirmed that the landlords were on the property doing work during their absence and using the electrical outlets on the property. The tenants believe that the power to the freezer was disconnected due to the actions of the landlords and seek a monetary award for the value of all of the lost groceries. The tenants say that the freezer unit was functioning normally when it was plugged back into the electrical socket. The tenants confirmed with both the other residents of the rental property and the landlords that the landlords were present on the property during that weekend performing work.

The tenant submits that the items included several pounds of wild sockeye salmon, prawns, rock cod, chicken, pork and blueberries. The tenants provided photographs of the items being weighed using a digital scale, some comparative price information from local grocery stores and estimates that the total amount of their loss to be \$550.00.

The landlords gave lengthy testimony that they are not liable for the loss of power to the freezer unit. The landlords claim that electrical appliances may fail for a variety of reasons, that other individuals could have gained access to the appliance and that it is the tenants' fault for leaving their appliance on an accessible patio area. The landlords gave rambling testimony about electrical codes and housing standards and claim that they would have no reason to willfully unplug the freezer. The landlord also gave testimony about their poor relationship with the tenants and past issues.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied with the evidence that the freezer unit of the tenants lost power and all of its contents melted and became inedible. I find the numerous photographs to be sufficient to demonstrate that the fresh food was no longer safe to eat. I accept the

evidence of the tenants that the total value of the lost food is \$550.00. I find the volume of food to be evident in the photographs and measurements and the comparative pricing submitted from local groceries to be reasonable.

The landlords dispute that they are responsible for the loss of power to the freezer but I find that the tenants have met their evidentiary onus on a balance of probabilities that the loss is most likely attributable to the landlords. I find it reasonable to conclude that the nature of the incident, specifically the freezer not being properly plugged into the electrical outlet to be a result of someone either unplugging or causing the plug to come loose from the socket. The landlords, in their own testimony, say that they were present on the rental property throughout the tenant's absence performing various work. I find it likely that the freezer becoming unplugged is a result of the landlord's activities on and around the rental unit.

I find the landlords' suggestion that others may have entered the rental property, unplugged the freezer and caused this damage to be a fanciful theory with no basis in the evidence or reality.

I find much of the landlords' submission regarding their poor relationship with others, their claim that the electrical system of the building is done according to relevant codes and their ongoing conflicts with the tenants to have no relevance to the matter at hand.

I find that the tenants have met their evidentiary burden on a balance of probabilities that they have suffered a loss due to the actions of the landlords and that the cost of their losses is \$550.00. I issue a monetary award in the tenants' favour in that amount accordingly.

As the tenants were successful in their application they are entitled to recover their filing fee from the landlords.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$650.00. The landlords must be served with this Order as soon as possible. Should the landlords 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.

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 16, 2021

Residential Tenancy Branch