



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On December 18, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit, for compensation for a loss of value in the tenancy, and to recover the filing fee for the Application.

The matter was scheduled as a teleconference hearing. The Tenant and Landlord appeared at the hearing.

The hearing process was explained, and the participants were asked if they had any questions. The parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The parties were informed that recording the hearing is not permitted.

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

On February 1, 2021, the parties appeared before me on the Landlord’s application regarding unpaid rent, disposal costs, and a claim against a security deposit. The Landlord was permitted to keep a \$300.00 security deposit and was granted monetary order for the balance of \$1,046.42 for unpaid January 2021 and February 2021 rent.

Since the issue of the security deposit was already considered in a previous hearing, the Tenant's claim for the return of a security deposit is dismissed without leave to reapply.

This hearing proceeded based on the Tenant's other claim to be compensated for loss of use /value in the tenancy.

With respect to disclosure of documentary evidence, the Landlord conceded that she did not serve a copy of her documentary evidence to the Tenant in accordance with the rules of procedure. The Tenant testified that she never received the Landlord's documentary evidence. Since the Tenant never received the evidence, the Landlord's evidence was excluded from consideration in this Decision.

Issues to be Decided

- Is the Tenant entitled to compensation for loss of value in the tenancy?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on October 7, 2017. Rent in the amount of \$900.00 was to be paid to the Landlord by the first day of each month. The parties testified that the tenancy ended on February 17, 2020.

The Tenant testified that the stove within the rental unit stopped working on January 18, 2021. She testified that the circuit breaker would trip and there was no power to the oven/ stove. She testified that she notified the Landlord about the issue a number of days later. The Tenant testified that the Landlord responded by telling her it is not an emergency and she refused to fix the problem.

The Tenant testified that she had no use of the oven or stove top from January 18, 2021 until February 17, 2021 when the tenancy ended.

The Tenant testified that since she was unable to cook her food, she needed to eat out and went to drive through food establishments. The Tenant is seeking \$30.00 for each day that she had no use of the stove/ oven. The Tenant testified that she did not keep any receipts for the purchase of food. The Tenant is seeking compensation of \$870.00 which is \$30.00 per day for 29 days.

In reply, the Landlord testified that the Tenant messaged her about the oven/ stove on January 27, 2021. She stated that she told the Tenant she would look into the issue.

The Landlord stated that she would have fixed the issue; however, the Tenant had not paid the rent and the Landlord did not have any money. The Landlord stated that the stove did not work properly for 24 days.

The Landlord testified that the Tenant could have used to the stove top or the microwave oven.

The Tenant replied that the stove top was not working and that she does not like microwaved food.

Analysis

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.

Section 32 of the Act provides that 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.*

Section 62(3) of the Act provides: 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.

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

I find that the Landlord had an obligation under section 32 of the Act to provide an operable stove /oven despite that the Tenant had not paid the rent owing under the

tenancy agreement for January 2021 and despite her statement that she had no financial means to conduct the repair.

I accept the Landlord's testimony that on January 27, 2021 she was notified by the Tenant that the stove was not working. The tenancy ended on February 17, 2021. I accept that the stove/oven was inoperable from January 27, 2021 to February 17, 2021.

I find that the loss of use of the stove/ oven amounts to a reduction in value of the tenancy. I find that the Tenant is entitled to compensation. I find that the Tenant failed to provide proof of the actual amount required to compensate for the claimed loss by providing receipts.

Since there has been a breach by the Landlord but insufficient proof of loss by the Tenant, I find that it is reasonable to grant a nominal damages award. I find that the Tenant is entitled to \$10.00 per day for 21 days for a total amount of \$210.00.

I order the Landlord to pay the Tenant the amount of \$210.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$310.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement is recoverable from the Landlord.

Conclusion

The Landlord failed to provide an operable stove/ oven to the Tenant and the Tenant is therefore entitled to compensation due to a reduction in value of the tenancy.

The Tenant is granted a monetary order in the amount of \$310.00.

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 28, 2021