



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHISHAUN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OLC MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on May 27, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- An order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement.

The Landlord was represented at the hearing by two agents. The Tenant was present at the hearing by herself.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord acknowledged receipt of the Tenant's application and evidence. The Tenant acknowledged receipt of the Landlord's evidence package. I find both parties sufficiently served each other with all necessary hearing documents, and evidence.

During the hearing, the Tenant stated she is only concerned with obtaining monetary compensation at this point, as she already has a functioning fridge. The Tenant stated she does not require the ground where she requested the Landlord to comply with the Act, and would instead prefer to focus on the monetary component. I hereby amend the Tenant's application accordingly, and have removed her request for an order for the Landlord to comply with the Act.

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.

Issue(s) to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

Background and Evidence

Both parties agree that monthly rent is set at \$606.00 and is due on the first of the month. The Landlord stated that no security or pet deposit is held, as this is a subsidized rental unit, funded by BC Housing. The Tenant stated she has lived in the rental unit for approximately 10 years. The Landlord explained that this unit is part of a large rental building, and many of the units are very similar, if not the same, with similar appliances.

The Tenant filed this application because she alleges her fridge stopped functioning correctly, on or around December 5, 2020. However, the Tenant did not elaborate as to what was wrong with her initial fridge, nor did she provide any corroborating evidence to show what was wrong. The Tenant informed the Landlord there was an issue with her fridge on or around December 5, 2020. The Tenant stated that the Landlord gave her a replacement fridge on December 8, 2020, but she does not feel the replacement fridge was functioning properly, either, as it was a used fridge from the workshop in the building.

The Landlord stated that they removed the initial fridge from the Tenant's rental unit on sometime between December 6-8, 2020, and took it to a storage room in the building. The Landlord stated that they tested this fridge and determined that it was still functioning properly, and was not broken as the Tenant claimed. Regardless, the Landlord provided a different used fridge, from the workshop for the Tenant to use. The Landlord moved this replacement fridge in around December 8, 2020. The Landlord stated that the replacement fridge was working, but they acknowledged it was not new, and may not have been up to the Tenant's standards.

The Tenant asserts that the replacement fridge she was given was "old, used, and refurbished", and that it froze some of the fridge contents, despite being on a low setting. The Tenant stated that the shelf above the drawer is also unstable, and the

drawer was not original (and did not fit correctly). The Tenant asserts she lost food because the fridge was not keeping the proper temperature. Although she did not elaborate on what was lost. The Tenant provided an email to the Landlord on December 8, 2020, explaining these issues with the replacement fridge. The Tenant sent another letter on December 17, 2020, stating she was still unhappy with her fridge performance, and that she wanted more action, and potential monetary compensation. The Tenant wrote another letter on January 4, 2020, stating she could not wait until February 2021, or later, to get a *new* fridge because she did not want to lose more food.

The Landlord stated that the original fridge they took out of the rental unit was not broken, as the Tenant asserts. The Landlord stated that they found this to be the case once they removed and tested the fridge. After it was determined the original fridge worked fine, they offered it back to the Tenant, but she refused it. The Landlord provided a written letter from the building caretaker stating that the Tenant refused her original fridge back because she did not was to defrost and waste more food.

The Landlord does not feel the initial fridge ever needed replacement, but they tried to offer the Tenant options regardless, in order to keep her happy. The Landlord stated that this building operates on a very limited budget, and is subsidized by BC Housing. The Landlord stated that they often try to repair or refurbish appliances rather than replace them, to keep costs down. Buying new appliances is the last resort, and since there were working alternatives, which were made available to the Tenant, purchasing a new fridge was not a priority, but rather something on the radar, to be done at a later date.

The Landlord stated that they looked into buying a new fridge in mid-December. The Landlord explained that he checked with approximately 2 different big-box stores to see if he could order a suitable replacement fridge (one which is similar to the others in the building with comparable cost/quality), but he was told there was no inventory. The Landlord stated he was told that the fridge he wanted could not be ordered until February. The Landlord stated he could not find any new fridges in town, but did not explain where he looked, or what his parameters were. The Landlord noted that the Tenant complained again on December 17, 2020 that her replacement fridge was not working properly.

The Landlord stated that the Tenant tried to deduct money from rent to pay for her spoiled food and the fridge issues, and threatened to buy a new fridge herself, and deduct the costs from future rent, if the Landlord did not provide her a satisfactory one by January 26, 2021. The Landlord stated that they again offered another replacement

fridge to the Tenant on January 26, 2021, and this fridge was delivered on that day. The Landlord stated that later that day, they received a note from the Tenant that the fridge had an incorrect door swing configuration, and it would not suffice.

The Landlord stated that the building has a mix of left and right-handed fridges, in rooms that have exactly the same configuration as this room, and there is no reason why the Tenant could not reasonably use it. The Tenant asserts the door would not open fully, without bumping into the stove.

The Tenant went and purchased a new fridge on January 29, 2021, for \$499.66, as per the receipt provided. The Landlord did not consent to this purchase or to reimburse the Tenant for it. The Landlord stated that they were more than accommodating, and they provided numerous options to the Tenant but they were under no obligation to provide a fridge to the Tenant which had a particular door configuration.

On the Tenant's application she indicated she is asking for the Landlord to repay her for the new fridge she purchased (\$499.66), plus \$100.00 for spoiled food costs, and \$100.00 for a rent reduction due to not having a sufficiently functioning fridge.

Analysis

A party that makes an application against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

After reviewing the evidence and testimony on this matter, I accept that a functioning fridge was included under the tenancy agreement. This matter is not in dispute. The Tenant asserts there was an issue with her original fridge on or around December 5, 2020, which appears to have precipitated a larger dispute over fridge replacement and suitable alternatives over the following months.

When reading the relevant portions of the Act, including section 32 of the Act, as well as Policy Guideline #1, and the Tenancy Agreement, I note the Landlord is required to ensure the Tenant has a sufficiently functioning fridge, throughout the tenancy. Generally, if repairs are necessary, the Landlord is responsible for the costs, provided the Tenant did not cause the damage by neglect or deliberate actions. There is no requirement for the fridge to have a particular door swing configuration, color, age, or style, provided it works reasonably well.

In this case, the Tenant asserts there was an issue with her initial fridge, but she did not specify what that issue was, nor did she explain whether this issue was related to the operation of the fridge, or for other reasons (such as cosmetic, age, or style). The Landlord stated that they took the Tenant's original fridge out of the rental, and provided a used replacement fridge (which the Tenant was not happy with). The Landlord asserts the original fridge was working fine when they tested it, following its removal from the rental unit, and it has since been successfully used elsewhere in the building after it was removed from the Tenant's suite. The Landlord also provided a note from the building caretaker which states that the Tenant's original fridge was working, after it was taken out of the unit. The caretaker also noted that the Tenant refused to take her original, functioning fridge back, after it had been tested in early December 2020.

In any event, I do not find the Tenant has sufficiently demonstrated that her original fridge had issues which affected the operation and functionality of the appliance, such that there was a breach of the Act or the tenancy agreement. The Tenant said there were issues with the original fridge, but did not elaborate and explain this matter further, nor did she provide any documentary evidence to support the issue. Instead the Tenant focused her testimony and evidence on the issues she had with her replacement fridge options. In contrast to this, the Landlord specifically stated, and provided a letter from the caretaker to corroborate this point, that the initial fridge was in fact working fine, which is why it was offered back to the Tenant, after it was removed from the rental unit and tested.

I accept that the Landlord was attempting to keep costs down, while still trying to accommodate the Tenant's requests, and investigate potential appliance issues. The Landlord appears to have offered the Tenant her original fridge back, which they assert was tested and was functioning fine, as well as offering the Tenant a second fridge (which the Tenant said froze her food). Additionally, it appears the Landlord also offered the Tenant another fridge around January 26, 2021. However, the Tenant rejected the last fridge because it had an incorrect door swing configuration. Although the Tenant wanted to have the door swing in the other direction, I am not satisfied that the door

swing would have a material impact on the use and operation of the fridge, such that the Tenant was in a position to reject it as a viable option.

Following this final option, the Tenant went and bought her own fridge at the end of January 2021.

Overall, as stated above, there is insufficient evidence that the *original* fridge the Tenant had was not sufficiently functioning. Also, I find the Tenant was given more than one option for a functioning alternative, following the initial complaint, despite her not being pleased with the age, condition, and door swing of those options. I do not find the Landlord is responsible for reimbursing the Tenant for the costs she incurred to replace the fridge or for giving her a rent reduction, as there is insufficient evidence supporting an issue with her initial fridge, and also that there were no viable alternatives given to her.

The Tenant owns the new fridge she purchased, and is responsible for the cost and maintenance of it, as it was her choice to not accept viable alternatives presented to her. At the end of the tenancy she may take the newly purchased fridge with her, should she decide to move, or she may sell/return the fridge, if she is willing to accept a replacement fridge from the Landlord.

I decline to award any costs to the Tenant for spoiled food, as she did not sufficiently establish the value of her loss, or that it was due to the Landlord's breach of the tenancy agreement or the Act. The Tenant did not elaborate and explain what exactly she lost, what it cost, and provided no breakdown how she arrived at the amount claimed. I dismiss her request for food costs, without leave.

Conclusion

I dismiss the Tenant's application, in full, without leave.

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: May 28, 2021