



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sunstar Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided; and an Order for repairs to the unit, site or property, having contacted the landlord in writing to make repairs, but they have not been completed; and to recover the \$100.00 cost of their Application filing fee.

The Tenants, A.C. and M.B., and three agents for the Landlord, D.M., C.L., and T.H. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application, and the Parties confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both. and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, the Parties agreed that the repairs had been completed; therefore, this claim was rescinded.

Issue(s) to be Decided

- Is the Tenant entitled to a reduction in rent, and if so, in what amount?
- Is the Tenant entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on December 1, 2020, and runs to December 31, 2021, with a monthly rent of \$4,000.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$2,000.00, and no pet damage deposit. The Agents confirmed that the Landlord still holds the security deposit in full.

The Tenants said that the oven in the rental unit was:

...essentially non-working since we moved in. We reported it on December 3, [2020]. Sunstar sent someone to look. The repair didn't work, so they sent someone else, who ordered a part. We were without the oven for seven weeks. It was on January 15 that they initially came with that part. Then on January 20th, it was not working, and we reported it again. Another repair person came January 21st. They said they could potentially fixed it by ordering a refurbished part

We hadn't heard anything by January 24, so we followed up. On January 25 – [C.L.] said there were two options – first, order a part to have the oven repaired with no guarantee; or two, to replace the oven. If the latter, we would be without it for an extended amount of time.

The Tenants submitted an email from [C.L.] dated January 25, 2021, which states:

Hi [A.C.],

The good news is that [D.] Appliance diagnosed the issue with the [B.] wall oven

and it is control board that shorted and needs replacement. But the bad news is that it's going to take a month for the part to arrive.

There are 2 options that I will be presenting to the owner. Option 1 is to repair the oven and Option 2 is to replace the oven. I know that your preference is to replace the oven however, it's up to the Landlord to decide. As there is an option to repair, the Landlord may lean this way as it would cost more to replace the oven. If this is the Landlord's decision, what do you propose is a fair reduction in rent for the loss of use of your oven? Of course, I cannot promise or guarantee that your proposed amount will be granted, however, I will present it to the Landlord for future direction.

Regards,

[C.L.]
Realtor & Assistant Property Manager

In the hearing, the Tenants continued:

How much of a rent reduction will you give us? We thought it should cover our having to order additional meals, since we couldn't cook. They didn't agree. We said we would go to the RTB. On January 29, we followed up again, asking for reduced rent because we were still waiting for this

In a January 29, 2021 email from the Tenants to the Landlord, the Tenants addressed different repair issues, including the oven. In terms of the oven, they said:

. . .

For the oven, a month turn around (considering it's already been 2 months) is too long. We understand that the landlord would like to be cost sensitive and due to that you're looking for a replacement part or a second hand option, but this isn't an item that we can wait around on – it's a vital appliance, and as such we don't feel this is an appropriate timeline and other options need to be explored. Additionally, we're happy to do the research on our end as well, as it does seem that the wall unit oven is pretty common place, and as such shouldn't have a turnaround time that long if looking at a new unit.

Given the timelines we've already encountered as far as having the damaged items repaired, and the continual back and forth in following up constantly with [the Landlord], we feel that this is a fair offer. Please let us know by the end of

business today so we can make appropriate adjustments for our Feb rent, or move forward with our resolution with the RTB.

In the hearing, the Tenants said:

On February 1st, we still hadn't heard anything, so we called [the Landlord] and left a voicemail. [T.H.] returned our call, but she had no timeline and couldn't provide a firm number for rent reduction, so we paid in full. They had agreed to replace the oven at that point.

On February 4th, we followed up again looking for a timeline. They were not able to provide one. They decided to take it to the Landlord re a rent reduction when they had a firm timeline.

On February 5th, we learned that the oven was on its way from China, and it had an estimated timeline of 2 to 3 weeks. We followed up a few more times, provided them a list of ovens in stock in Vancouver that we could have had in a few days. Their excuse was that it wouldn't fit in the space we had. We showed that the space could have accommodated any of those.

On February 23rd the oven was finally installed. That's 12 weeks in total without an oven. Once it was installed, we followed up that it was all installed and let them know that he showed up with a saw and said it is commonplace to amend spaces to fit. We asked what the rent payback will be, given we've spent the entire tenancy without the stove. They never responded.

The Tenants said that they had requested a rent reduction of \$1,500.00:

...based on the time without the oven and our tenancy agreement, which says a working stove and oven are included. We came to \$1,500.0 based on us having had to order out food or to order meal prep food that didn't use the oven to cook.

The Agents said:

I have provided a list of supporting documents: Exhibits A – R. These are actionable items that we responded in writing to the Tenants, and that show we did what we had to do as a Landlord to get contractors out there to resolve the issues. The timeline has been very tight. We did not delay or waste any time. We

had demonstrated to you with exhibits, any reasonable landlord has done what we did. We tried to repair and when not work, we replaced.

See the [Act] and related Guidelines on page 4 of our documents. I highlighted that the Landlord must be given a reasonable amount of time to fix problems. If Landlord doesn't make repairs according to [Act], then Tenant may apply for dispute. We did the repairs and the replacement – both; however, it took a bit of time, which is unfortunate, but this is out of our hands, can't control a pandemic distribution bottleneck. The eventual brand is entirely . . . what we could do is place the order and ask for a replacement, but after that, it's up to the contractors and the supply chain to get the oven to Canada.

We chose reputable appliance companies. We used four different reputable appliance companies. We chose [C.] Appliance – have a lot of floor models, but their recommendation at Exhibit L, they recommended a model that could best fit the existing hole which was not available in [the city]. The owner went with this model because that would best fit the existing hole. We don't want to make unnecessary changes to the cabinet. Solid wood cabinets can be refinished. So, we went with [C.] Appliance's recommendation for the brand of new oven.

I asked the Agents to explain why the technician who installed the oven came with a saw. They said:

We administer lots and lots of repairs. If an oven is obviously not fitting into an existing hole because the measurements are way off, we have to do a proper repair job. But sometimes might have to saw a little bit, those are common situations with cabinet installers.

In the exhibits to which the Agents referred me regarding reputable appliance companies, I found that the Agents had contacted two people, M.W. at [C.] Appliances, and R.L. at an unidentified company. The Agents did not direct me to other companies they contacted in this regard.

The Agents then referred me to supporting documents, which show the maintenance records for the rental unit over the course of the three-month tenancy. They said:

This shows we're reasonable in responding to the Tenants' request for repairs and maintenance. We have paid \$7000+ on maintenance. Tenants must allow a Landlord a reasonable amount of time for repairs. We repaired and replaced the

oven, so we have complied with the RTA in that regard. Compensation is only necessary if a landlord doesn't comply - if he doesn't make repairs. So, the Tenants' request for money is not a valid claim

Lastly, with this tenancy – rent includes the oven, gas cooktop, and a microwave. So, there are two other pieces of cooking appliance they could have used. The oven was not working, but the Landlord took all measurements in the tight timeline. But the Tenants' agreement was not to say having a functional oven at all times. We do not have to deliver an oven that has to be functional at all times.

Those are the essence of how we look at this issue.

We have Exhibits J, H, and I that show we did enquire with two different companies and gave them the existing oven [specifications and measurements], and they were able to match it with a [different] oven – almost exactly the same specs. Didn't have that model in stock or on the floor. [C.] Appliances couldn't find one.

The Tenants said:

We did submit into evidence that we measured it when partially pulled out – measured the space around the oven, so we could tell when ovens in stock would fit. We personally measured around the oven. [The Landlord] never sent anyone to measure or look. And the cabinets are particle board, not wood.

We didn't want compensation initially; we wanted a working oven. It is included in the lease and even though there are other appliances, we pay a premium rent and we expect all the appliances to work. And we gave them a more than reasonable amount of time. We helped by providing the list of in-stock ovens that would fit. The only reason we were not okay with that, but went along with timeline, was because on January 25 [C.L.] said, 'If we go the longer route, what do you feel an appropriate compensation would be?' We agreed over the phone that we would revisit that, and now they are going back on their word on that offer, and that's why we're here today.

Regarding the maintenance record - \$7,000.00 paid; first, it's not relevant to this hearing. But it dates back to the 1st when we moved in and a number of things were not as they should have been. The \$7,000.00 of maintenance to date is because [the Landlord] put an advertisement online and we signed our tenancy

agreement based on that advertisement. But that wasn't what we moved into. The maintenance has nothing to do with the oven, but it's for placing an advertisement with the condo without factual information. Their mistake They had to bring it up to that level.

In their last statements, the Agents said:

The last bit of comments made re that they initially took it, and it wasn't what was marketed is not relevant. That is exactly one of the points; we made a mistake, because we used a 2-year-old advertisement. It wasn't freshly painted. The owner is willing to make amends for issues that are legitimate.

To close my position, I'd like to emphasize that all the evidence before us demonstrates that we tried our best to comply with the [Act]. We worked with it everyday and we take Policy Guidelines and Rules everyday. We request that the claim for compensation be dismissed.

In their last statements, the Tenants said:

Thank you for hearing us out, unlike [the Landlord], it has been uncomfortable for us. Again, we're asking for the monetary order that was offered to us if chose longer route, which they did - we lived through that. This all could have been avoided, if [the Landlord] had sent someone over here for measurements and referenced stock in [the city]. We could have had that in less than a week and all of this could have been avoided.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

As set out in Policy Guideline #16 ("PG #16"), "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 claiming compensation to provide evidence to establish that compensation is due."

The Tenants said they moved into the rental unit on December 1, 2020, and that the oven was not working from the start of the tenancy. They said they contacted the Landlord on December 3, 2020, to report the problem, and that the Landlord sent

someone out to investigate. The testimony and documentary submissions before me indicate that the Landlord tried unsuccessfully to have the oven fixed, and eventually, decided to purchase another oven for the rental unit; however, the Agents ordered a model that would not arrive for three to four more weeks, even though the Tenants had been without an oven for two months by then - at the end of January 2021. The oven was installed on February 23, 2021, or almost three months after the Tenants reported their non-functioning oven to the Landlord.

The Agents relied on the Act and Policy Guidelines for the principle that a tenant has to give a landlord a “reasonable” amount of time to make repairs, with which I agree.

The Landlord identified the three-month delay in resolving this problem as having taken “a bit of time”. Further, they blamed the time delay on the “pandemic distribution bottleneck”; however, the oven was reported to them as a problem on December 3, 2020. The pandemic was not widespread at this point, not having hit the west coast of North America until March 2021 – after the oven was replaced. Accordingly, I find this excuse is inconsistent with common knowledge and common sense; it raises questions in my mind about the credibility of the Agents’ evidence regarding the delays involved.

The Agents said that all they could do is place an order for an oven, and then it’s up to the contractors and the supply chain to get the oven to Canada. However, I find that there is insufficient evidence before me that the Agents attempted to obtain an oven from a local retailer, despite the Tenants having provided them with a list of vendors in the city that had ovens that would fit in the space. The Agents did not have a response to the Tenants evidence in this regard. I find this indicates that the Agents were not, in fact, seeking to resolve the problem as quickly as possible. Rather, I find it more likely than not that they were attempting to save the Landlord as much money as possible on a replacement oven. I find that this contributed to them having taken an unreasonably long time to resolve this matter.

The Agents said that they provided over \$7,000.00 in repairs and maintenance to the rental unit in the first three months of the tenancy. They said this demonstrates that they were working all the time for the Tenants to resolve their issues in the rental unit.

However, the Tenants pay the Landlord \$4,000.00 a month for this rental unit. Regardless of the high rental rates across the Province, I find that charging \$4,000.00 per month for a rental unit makes it a high-end, deluxe unit. Having to spend \$7,000.00 in repairs and maintenance on a high-end rental unit in the first three months of the tenancy tells me that the rental unit was not likely in satisfactory condition at the start of

the tenancy. Rather than this demonstrating that the Landlord was treating the Tenants well, as the Agents claimed, the \$7,000.00 investment by the Landlord in the first three months of the tenancy tells me that the Landlord had neglected this rental unit; the Tenants were unlucky to have had to put up with ongoing maintenance and repairs, while paying \$4,000.00 a month to live there.

The Agents said that the tenancy agreement's inclusion of an oven in the monthly rent did not mean that it had to be a functioning oven at all times. They said: "We do not have to deliver an oven that has to be functional at all times." The Agents said this in the face of the Tenants having been without a functioning oven for approximately three months. I find that a reasonable property manager would be embarrassed at having let tenants in a \$4,000.00 rental unit be without a functioning oven for almost three months. Again, this raises questions about the Agents' credibility in this matter.

In the January 25, 2021 email noted above from [C.L.] to the Tenants, the Agent asks them what they think would be appropriate compensation for their time without an oven. However, in the hearing, the Agents said that I should dismiss the Tenants claim for this compensation that was offered by the Agent before the Tenants had to wait another three weeks for the oven. I find this indicates that the Agents are not interested in a reasonable solution to make up for what the Tenants endured, while paying \$4,000.00 a month in rent. I reject the Agents' call for a dismissal of the Tenants' claim.

The Tenants have applied for compensation of \$1,500.00 for their having gone almost three months without an oven in their rental unit, despite the tenancy agreement saying that an oven is included in the rent. I note that \$1,500.00 is only 12.5% of the rent the Tenants paid from December 2020 through February 2021. I find a more appropriate compensation for having to eat out and/or order food in for this unreasonable amount of time without an oven is worth at least 15% of the rent paid in this time or \$1,800.00.

Based on the evidence before me overall, I find that the Tenants have provided sufficient evidence to meet their burden of proof on a balance of probabilities. Therefore, pursuant to section 67 of the Act, I award the Tenants with **\$1,800.00** from the Landlord as compensation for having gone without an oven for almost three months in a premium, high-end rental unit.

I also award the Tenants with recovery of their **\$100.00** Application filing fee for a total monetary award of **\$1,900.00**. The Tenants are authorized to deduct \$1,900.00 from an upcoming rent payment in complete satisfaction of this award.

Conclusion

The Tenants are successful in their claim for compensation from the Landlord for having gone without an oven for nearly three months in a high-end rental unit, which I find was unreasonable in all of the circumstances. The Tenants are awarded \$1,800.00 or 15% of the rent they paid while living without an oven. The Tenants are also awarded recovery of their \$100.00 Application filing fee for a total award of **\$1,900.00** from the Landlord.

The Tenants are authorized to deduct \$1,900.00 from one upcoming rent payment in complete satisfaction of this award.

Although this Decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the Act states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a Decision affected, if a Decision is given after the 30-day period set out in subsection (1)(d).

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 3, 2021

Residential Tenancy Branch