Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to make repairs, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Tenant stated that on June 16, 2021 the Dispute Resolution Package was sent to the female Landlord, via email. The female Landlord acknowledged receiving these documents by email, although she cannot recall the date they were received. As the female Landlord acknowledged receiving the documents, I find that they were sufficiently served, pursuant to section 72(2)(c) of the *Residential Tenancy Act (Act).*

The Agent for the Tenant stated that on June 16, 2021 the Dispute Resolution Package was sent to the male Landlord, via email. The female Landlord stated that male Landlord does not use email frequently and that he did not receive the package that was allegedly served to him by email.

Section 89(1) of the *Residential Tenancy Act (Act)* permits a party to serve an Application for Dispute Resolution to the other party in the following ways:

(a) by leaving a copy with the person;
(b) if the person is a landlord, by leaving a copy with an agent of the landlord;
(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
(e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
(f) by any other means of service provided for in the regulations.

Section 43(2) of the *Residential Tenancy Regulation* stipulates that documents described in section 89 (1) of the *Act* may, for the purposes of section 89(1)(f) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

The Agent for the Tenant was not able to provide evidence that the male Landlord had given the Tenant an email address to be used as a service address for the purposes of serving legal documents.

At the hearing the Agent for the Tenant was advised that the male Landlord had not been properly served with the Application for Dispute Resolution and, as such, the hearing could not proceed in the absence of the male Landlord. The Agent for the Tenant asked that the Application for Dispute Resolution be amended to remove this party as a Respondent. I find that request to be reasonable in these circumstances, and the Application for Dispute Resolution was amended accordingly. Any monetary Order awarded in regard to this Application for Dispute Resolution will not, therefore, name the male Landlord.

On June 17, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for losses related to the washer, dryer, and/or refrigerator?

Background and Evidence:

The Agent for the Tenant and the Landlord agree that:

- The tenancy began on March 01, 2021;
- The Tenant, the male Landlord, and the female Landlord signed a tenancy agreement for the rental unit;
- The Tenant agreed to pay rent of $2,350.00;
- On March 04, 2021 the Tenant reported that the washing machine was leaking;
- A new washer and dryer were delivered to the rental unit on March 18, 2021;
- The female Landlord and the Tenant were both present when the new washer and dryer were delivered on March 18, 2021;
- On March 18, 2021 the Tenant informed the Landlord that the new washing machine was leaking;
- The Landlord contacted the supplier who sent a service technician to the rental unit, at which point it was determined that the new washing machine was faulty;
- A new washing machine was delivered on April 03, 2021;
- The female Landlord and the Tenant were both present when the new washing machine was delivered on April 03, 2021;
- The Tenant received a rent reduction of $100.00 for inconveniences related to the leaking washing machine;
- When the Tenant moved into the rental unit on March 01, 2021, he was informed the refrigerator would be replaced because it was noisy; and
- The refrigerator was replaced on March 18, 2021.

The Tenant is seeking compensation of $250.00 for time spent cleaning up after the washing machine leaked on two occasions. In support of this claim the Agent for the Tenant stated that the Tenant spent approximately 2 hours cleaning up after the leak that occurred on March 04, 2021 and 2 hours cleaning up after the leak that occurred on April 03, 2021.

In response to the claim of $250.00, the Landlord stated that:

- The Tenant told her that on both occasions he turned off the water shortly after the leak was discovered;
- The washing machine is located in a small space;
- Water did not leak out of the small space; and
- It would have taken 10-15 minutes to clean the water after each leak.

The Tenant is seeking compensation of $2,350.00 for being without a fully functional washing machine for approximately one month and for living with a noisy refrigerator for less than one month. In support of this claim the Agent for the Tenant stated that the Tenant is making this claim because he expected to be provided with a rental unit with fully functional appliances. The Landlord contends that the $100.00 rent reduction provided to the Tenant is adequate compensation for any inconvenience associated to the faulty appliances.

The Tenant is seeking compensation of $2,000.00 for 4 days of lost income as a result of time spent dealing with the leaking washing machine.

The Landlord stated that the Tenant did not need to be present when the appliances were delivered, as the Landlord attended to coordinate the installation. She stated that when she attended the unit on March 18, 2021 the Tenant was present because the parties needed to sign papers in regard to an unrelated tenancy matter. She stated that when she attended the unit on April 03, 2021 the Tenant was visiting with friends and did not participate in the installation.

The Agent for the Landlord stated that the claim for $2,000.00 in lost income includes time spent cleaning up after the leaks and coordinating installation times. He stated that the Tenant told him he felt “more comfortable” being present in the rental unit during the installations. He stated that the Tenant is a “businessman” with no specific office hours and that he does not know his work schedule on the dates of the installations.

Analysis:

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Tenant.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find that the Landlord was obligated, pursuant to section 32(1) of the *Act*, to either repair or replace the washing machine after the Tenant reported it was leaking on March 04, 2021.

On the basis of the undisputed evidence, I find that the Landlord arranged to have a new washing machine delivered to the rental unit on March 18, 2021. Given service delays that are typically associated to delivering appliances, particularly due to the COVID-19 pandemic, I find that the delay of two weeks was reasonable.

On the basis of the undisputed evidence, I find that the washing machine that was delivered on March 18, 2021 and that a replacement machine was delivered on April 03, 2021. I find that the Landlord acted reasonably and responsibly when she arranged to have a second washing machine delivered to the rental unit . Given service delays that are typically associated to delivering appliances, particularly due to the COVID-19 pandemic, I find that the second delay of just over two weeks was reasonable.

Residential Tenancy Branch Policy Guideline 16, with which I concur, reads, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA. In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

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A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord

keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

Regardless of my conclusion that the Landlord made timely and reasonable efforts to replace the leaking washing machine, I find that the Tenant is entitled to compensation for being without a functional washing machine for approximately one month. I find that the Landlord has already granted the Tenant a rent reduction for the month of April of 2021, which I find to be a reasonable amount of compensation for being without a washing machine for approximately one month and for any associated inconveniences. I therefore dismiss the Tenant's application for compensation for living without a washing machine.

On the basis of the undisputed evidence, I find that on March 01, 2021 the Landlord told the Tenant she would provide him with a new refrigerator, as the refrigerator in the unit was noisy, and that a new refrigerator was delivered on March 18, 2021. I find that living with a noisy refrigerator for a period of just over two weeks is relatively minor and that the Tenant is not entitled to any compensation for that inconvenience.

I find that the Landlord has failed to meet the burden of proving that he spent four hours cleaning up after the washing machine leaked on two occasions. In reaching this conclusion I was heavily influenced by the absence of any written or oral testimony that corroborates the Tenant's submission that he spent four hours cleaning up after the leaks.

I find the Landlord's testimony that water leaked into a very small area of the unit; that on both occasions the Tenant told her he turned off the water shortly after the leak was discovered; and her estimate that it would have taken 10-15 minutes to clean the area after each leak refutes the Tenant's submission that he spent four hours cleaning the area. I find her evidence more compelling in this regard, as she provided forthright, direct testimony while the Tenant provide his submission through a third party.

As the Tenant has submitted insufficient evidence to establish that he spent more than 1/2 hour cleaning after the washing machine leaked on two occasions, I find that the $100.00 rent reduction he has already received is sufficient compensation for the inconvenience of cleaning up after the leaks.

On the basis of the undisputed evidence, I find that the female Landlord was present on March 18, 2021 and April 04, 2021 when the appliances were installed. I find that the Tenant was not required to take time away from work for the purposes of those installations. I therefore dismiss the Tenant's application for compensation for any loss of income he experienced as a result of the installations.

As I have previously dismissed the Tenant's application for additional compensation for cleaning after the leaks, I find I do not now need to consider if the Tenant is entitled to compensation for any loss of income he experienced as a result of the leaks.

I find that the time spent coordinating installation dates would be relatively insignificant and that the $100.00 rent reduction he has already received is sufficient compensation for time spent coordinating the installation dates.

In adjudicating this matter, I was influenced, to some degree, by the Agent for the Tenant's testimony that the Tenant is a "businessman" with no specific office hours and that he does not know his work schedule on the dates of the installations. Even if the Tenant had a legitimate need to be present during the installation of the appliances, I find that he has failed to establish he lost income as a result.

I find that the Tenant has failed to establish the merit of his Application for Dispute Resolution and I dismiss his application to recover the fee paid to file this Application.

Conclusion:

The Application for Dispute Resolution 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: October 18, 2021

Residential Tenancy Branch