



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD, MNDCT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the tenant the recovery of the filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Security Deposit

At the outset of the hearing both parties advised that the issue of the security deposit was dealt with in a previous hearing. I find that res judicata applies and dismiss that portion of the tenant's application without leave to reapply.

Issue to be Decided

Is the tenant entitled to a monetary award for damage or loss arising out of this tenancy?

Is the tenant entitled to the recovery of the filing fee?

Background, Evidence

The tenant gave the following testimony. The tenant testified that the tenancy began on August 1, 2017 and ended on August 31, 2020. The tenant testified that the rent of \$2200.00 was due on the first of each month. The tenant testified that on February 3, 2020 he advised the landlords that the microwave and fridge were not working properly. The tenant testified that the landlord did not address the issue for the next six months of his tenancy. The tenant testified that the relationship broke down to the point that the landlord issued a notice to end the tenancy. The tenant testified that they settled the matter by agreeing to end the tenancy on August 31, 2020.

The tenant testified that when he moved out, he had to rent a suite for \$3300.00 a month for a minimum six months as that was all that he could find. The tenant seeks the difference for the higher rent for those six months. The tenant testified if the landlord had fixed the appliances he would probably still be living there. The tenant testified that his wife was very emotionally disturbed by these issues and it affected her mental health for which he seeks compensation. The tenant also seeks the full return of rent paid for the months of February 2020 – August 2020 for the loss of use of the microwave and fridge. The tenant testified that he has incurred higher gas bills driving his son to school as they had to move farther away and seeks those costs.

The tenant testified that he had two different appliance technicians check the microwave and stove and advised that the likely cause of the damage was a power spike. The tenant testified that the landlord refused to repair them. The tenant testified that he

admittedly caused a small scratch in the bedroom floor that he repaired but the landlord pulled that floor plank out and replaced it anyways and wants the money for that.

The tenant is applying for the following:

1.	Increased rental costs for six months at new residence	\$6600.00
2.	Loss of use of appliances for six months- full rent rebate	13,200.00
3.	Extra fuel cost to drive to son to school from new residence	1800.00
4.	Stress and suffering for wife	13,000.00
5.	Red Seal Appliance diagnosis	105.00
6.	Electrafix Appliance diagnosis	126.00
7.	Flawless finishing repair	250.00
8.	Filing fee	100.00
9.		
10.		
	Total	\$35,181.00

Although the amount sought is over the legislated limit for the Branch to address, the tenant testified that he is “okay” with \$34,999.00.

The landlord’s agent gave the following testimony. The agent testified that the tenants claim should be dismissed, and that no compensation should be awarded. The agent testified that the microwave was a built-in unit and that due to COVID-19, supply lines and technicians were very limited at that time during the initial lockdown. However, the agent testified that the tenant advised that there was no rush and that they didn’t use the microwave. The agent testified that they would have gladly gotten a stand-alone microwave for the tenant to use if he wanted but he continually advised he didn’t use it. The agent testified that the fridge worked fine and that the tenants claim of frozen and damaged food is without merit or proof.

The agent testified that the tenant did not advise the landlord in writing until late July 2020 that the appliances were an issue. The agent testified that the parties were engaged in dispute resolution hearings at that point and that the landlords were very fearful of the tenant as he is aggressive and intimidating. The agent testified that the tenant sent 16 aggressive and threatening text messages over a 27-hour period on July 26 and 27, 2020. The agent testified that the tenants are attempting to use this hearing as way of making money without any justification. The agent testified that the tenant became very aggressive in attempting to get money from the landlords. The agent

testified that the landlord's health has also suffered because of all these hearings and ongoing issues. The agent testified that the landlord has no interest in pursuing any future claims against the tenants and simply wants to be left alone.

Analysis

The relationship between the parties is an acrimonious one. The parties have had several hearings previously. I had to caution both parties about their behavior during this hearing. While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim, and my findings is set out below. Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances like this tenancy.

Considered in its totality I find the landlords agent to be a more credible witness than the tenant. The agent provided consistent, logical testimony which was supported with documentary evidence where available. The agent admitted when she could not recall specific facts and, where appropriate, referred to her notes and documents prepared prior to this hearing to assist her recollection.

The tenant was argumentative, focused on irrelevant matters and conducted himself in an agitated and irrational manner. I found that much of the tenant's submissions to have little to do with the matter at hand and was concerned with attacking the landlord and making himself appear to be the wronged party. When given the opportunity and to discuss his monetary claim, the tenant chose to ask irrelevant personal questions rather than address the substantive matter. Towards the conclusion of the hearing the tenant continually interrupted the agent's testimony, in disagreement with her evidence.

Based on the foregoing, where the evidence of the parties clashed, I found that the agent's version to be more credible and consistent with how a reasonable person would behave.

Furthermore, it is worth noting that the tenant was extremely disorganized when presenting his claim. He was unable to answer basic questions or provide answers to the claim he put forth or able to explain the amount noted on the application. Much of his testimony lacked clarity or logic.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant submits that because the landlord failed to maintain the appliances in accordance with section 32 of the *Act*, namely repairing them in a reasonable and timely fashion, the proceeding chain of events resulted in the actions taken by the tenant and ultimately requiring him to seek compensation of \$34,999.00 for the costs incurred. The tenant submits that if the evidence shows that the landlords did not repair the appliances in accordance with section 32 of the *Act*, he ought to be awarded all the costs submitted as part of his application. The landlord submits the opposite argument that the tenants entire claim should fall because of the following; the tenant didn't ask permission to have appliance technicians make service calls, advised that the matter was not urgent, there was no proof of any damage to the fridge, and that they failed to mitigate the matter by reporting it almost five months later. The landlord submits that the tenant's application should be dismissed.

I address each claim as follows:

Rent Differential - \$6600.00

The tenant moved out of the unit by agreement when he settled the matter during a hearing. The tenant willingly moved out, accordingly; I dismiss this portion of the tenants' claim.

Rent rebate February – August 2020 for loss of use of microwave and fridge- \$13,200.00

The tenant did not provide sufficient evidence to show that the landlord was reckless or negligent. In addition, the tenant did not provide sufficient evidence to show that they

took reasonable steps to mitigate any loss or damage, accordingly; I dismiss this portion of the tenants' claim.

Extra fuel costs - \$1800.00

As noted above, I find that the tenant moved of his own volition and therefore is not entitled to these costs, accordingly; I dismiss this portion of the tenant's application.

Stress and Suffering - \$13,000.00

The tenant testified that if I wished to award a lower amount than claimed, "I'm okay with that". The tenant failed to provide sufficient evidence how his wife's mental health was directly related to this tenancy and failed to provide sufficient evidence to justify the amount, accordingly; I dismiss this portion of the tenant's application.

Repair Technicians x 3 \$481.00

The tenant did not have the landlord's permission to arrange for these technicians nor did he provide sufficient evidence to show that the repair was so vital in nature that it had to be done without first advising the landlord, accordingly; I dismiss this portion of the tenant's application.

All the tenant's claims made in this application rely on a finding that the landlord did not act in accordance with section 32 of the *Act* to maintain the appliances and therefore he would be entitled to all the subsequent costs alleged. For absolute clarity, the tenant has not provided sufficient evidence that the landlord contravened section 32 of the *Act*, for this reason and the reasons noted above, the tenant is not entitled to any of the costs as claimed.

As the tenant has not been successful in their application, they are not entitled to the recovery of the filing fee and I therefore dismiss that portion of their application.

Conclusion

The tenant's application is dismissed in its entirety 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: November 08, 2021

Residential Tenancy Branch