Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT RR FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of $844.22 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for a rent reduction and to recover the cost of the filing fee.

The hearing began on November 29, 2021 with tenant AP and the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. As neither party proved any service issues, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Have the tenants provided sufficient evidence to support that they are entitled to money owed for compensation for damage or loss under the Act?
- Have the tenants provided sufficient evidence to support that they are entitled to a rent reduction under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

Both parties confirmed that there was no written tenancy agreement, which I will address later in this decision. The parties agreed that a verbal tenancy began in 2018. The parties also agreed that current monthly rent is $1,898.00 and is due on the first day of each month.

The tenants have claimed $844.22 as follows:

1. $300.00 for 12 weeks (3 months) without 2 of the 4 heating elements being non-functional, while waiting for parts.
2. $444.22, for a 9-day period without a working fridge, which the tenants confirmed contained an adding error and is comprised of food spoilage ($177.00), Ice ($30.22) and a per diem amount of ($23.00 per day X 9 days X 2 people = $414.00).

The tenants were advised that it would be prejudicial to the landlord to increase the amount of the monetary claim at the hearing, and as a result, the tenants were informed that the maximum claim they were be entitled to would be the original $844.22 before the filing fee, and nothing more and that the maximum amount would still have to be proven, which I will address later in this decision.

Regarding item 1, the tenant referred to a May 2, 2021 text to the landlord advising the landlord of the fluctuating heat that constantly goes up and down and that they can never cook a meal properly. The tenant did not address the 2 smaller elements in any of the texts provided. The tenant also asked if the stove was still under warranty. On May 21, 2021, the tenant sent another text that advised the landlord that one of the stove elements has stopped working completely. The landlord asked the tenant if they called Whirlpool for the shipment of the coil elements, and the tenant replied, “no.”

The landlord asked if the two smaller elements were impacted, and the tenant confirmed the problem was with the 2 larger elements and that they have not noticed anything with the 2 smaller elements.

On May 3, 2021, the landlord replied via text to the tenants to advise that after being on hold for an hour, Whirlpool will ship 4 new elements in 12 weeks and provided the order tracking number in the text and said the status can be checked on the Whirlpool website and gave the website address.

The tenant stated that the tenants were spending well over $100.00 per month during the 12 weeks without the 2 large stove elements working. The tenant testified that they would spend $30.00 4-5 times per week when ordering out. The landlord stated that as of June 25, 2021, the elements were replaced and working. The tenants filed their application on June 24, 2021. The tenants claim the stove was repaired in July 2021 but “could not recall”.

The landlord testified that the tenants still had use of the 2 smaller elements on the stove and that the tenants could have made do using the 2 smaller elements and does not agree that the tenants are entitled to any compensation as a result. The landlord also stated that they acted as soon as possible and that any delays were caused due to the pandemic and were not the fault of the landlord. The landlord testified that he responds to any tenants concerns very quickly and that any delay was out of their control.

The landlord also stated that he offered to the tenants that if they could find the elements anywhere else in the meantime, such as Home Depot, that the landlord would reimburse them for the cost. The landlord also stated that he was trying to please the tenants by paying an additional $80.00 for the stove for an upgraded model, which the tenants thanked the landlord for during the hearing.

The tenants said there was no evidence of a conversation about the tenants going to Home Depot to find elements and that it would have been the landlord’s responsibility to do that and not the tenants.

Regarding item 2, the tenants have claimed $444.22 for food spoilage of $177.00, for ice in the amount of $30.22 and then a per diem amount of 9 days without use of a broken fridge multiplied by $23.00 per day, which the tenants stated was a BC guideline for a per diem amount and then multiplied that number by 2 people. As stated above, the tenants made an addition error and is limited to the original $444.22 amount claimed

for item 2. The tenants stated that on June 11, 2021, the fridge broke and that a new fridge was delivered 9 days later on June 20, 2021.

The tenants submitted a video from October 2020, which shows a fridge being very loud in the video. The tenant stated that the fridge was over 25 years old and that when the tenants asked for it to be replaced, the landlord refused and said when it breaks, it would be replaced within a 2-day turnaround. The tenant stated that the fridge could have been delivered in 2 days, which would cost the landlord an extra $100.00 but the landlord refused to pay the extra $100.00 and asked the tenants to pay the extra $100.00, which the tenants refused to do. The landlord claims he could not hear a loud fridge in the October 2020 video, which I will address later in this decision.

At the second date of the hearing, the landlord raised the issue of the other tenant, PK being available as the landlord mainly dealt with tenant PK during these events. As a result, tenant AP arranged for tenant PK to attend the second date of the hearing to provide their evidence. Unfortunately, tenant PK could not recall specific dates during the hearing.

The tenants later said at the reconvened hearing that 1 large element and 2 small elements were not working on the new stove; however, the texts submitted do not support that the landlord was ever advised that 2 small elements were not working. The landlord testified that only 1 large element was not functioning according to what the tenant stated in the texts provided. In a photo contained in one of the texts, the tenant took a photo of the element being on the highest setting and showed water in a pot that was not boiling, and the element was not red and appeared to be not functional.

The landlord disputed the 12-week timeline claimed by the tenants and stated that it was only 8 weeks between the May 2, 2021, text regarding the stove element issue and the replacements being installed on June 25, 2021. The tenants were provided several opportunities to give evidence regarding a date in July 2021 and both tenants confirmed they were unable to recall dates in terms of when the stove elements were replaced.

The landlord reiterated near the conclusion of the hearing that they believe they acted very quickly and that any delays were beyond their control. The landlord stated that the stove elements failed and were replaced under warranty and that when the fridge failed, it was replaced within 9 days of being notified.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants 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. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I will first address the lack of a written tenancy agreement as indicated above. I find the landlord breached section 13(1) of the Act, which applies and states:

> **Requirements for tenancy agreements**
>
> **13**(1) **A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.**

[emphasis added]

Given the above, **I caution** the landlord to ensure that all future tenancy agreements are in writing pursuant to section 13(1) of the Act.

Item 1 – The tenants have claimed a $300.00 rent reduction for loss of stove elements between May 2, 2021 and the end of July 2021. Firstly, I find the tenants have failed to provide sufficient evidence to support that the stove elements were not repaired in July 2021, as neither tenant could recall specific dates in June or July 2021 during the hearing and as a result, I find the tenants have failed to meet the burden of proof. In addition, I find that RTB Policy Guideline 6 – Entitlement to Quiet Enjoyment (Guideline 6) takes a reasonable stance and says in part the following under **B. Basis for Finding of Breach of Quiet Enjoyment:**

> **Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment.**
>
> [emphasis added]

Given the above, I find that the tenants have provided insufficient evidence to support that all 4 heating elements on the stove were not functioning, and that I find that the 2 smaller elements were more likely than not, functioning correctly as the texts submitted by tenants fail to mention the 2 smaller stove elements. Therefore, I find the tenants could have used the 2 smaller stove elements for the 8-week period that it took to have the new elements ordered under warranty and replaced. I am not satisfied that the tenants were without all 4 heating elements for any period and that it did not take 12 weeks as the tenants could not recall specific dates, and that the onus of proof is on the tenants, not the landlord as this application was filed by the tenants.

Given the above, I find the 8 weeks of temporary inconvenience does not constitute breach of quiet enjoyment and does not justify a rent reduction. Therefore, this item is dismissed without leave to reapply, due to insufficient evidence from the tenants.

Item 2 – The tenants have claimed $444.22 related to a fridge not being available for a period of 9 days. I find that 9 days is not an unreasonable time to wait for a new fridge; however, I disagree with the landlord regarding the video provided dated October 2020. I find the tenants provided sufficient evidence from October 2020 that the fridge was making a very loud noise and that the fridge was not functioning correctly as a result. I also find that by ignoring the video from October 2020, that the landlord breached their duty under section 32(1) of the Act to have a service/repair technician attend to inspect and/or repair the fridge to ensure it was not making such a loud noise, or to have it replaced in October 2020. Section 32(1) of the Act applies and states:

> **Landlord and tenant obligations to repair and maintain**

> **32**(1) **A landlord must provide and maintain residential property in a state of** decoration **and repair that**
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> (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.**
>
> [emphasis added]

I find the landlord breached section 32(1) of the Act by failing to have a service/repair technician inspect and/or repair the fridge in October 2020. I find the noise it was making in the video to be unreasonable. Therefore, while I find the tenants' calculation are not correct in terms of their loss due to a mathematical error, I do find that the tenants should be reimbursed 25% for loss of their fridge for a period of 9 days. I find that amount to be reasonable. As monthly rent is $1,898.00, I find the daily rent rate for June 2021, which had 30 days, equals a daily rent amount of $63.27 per day. 9 days multiplied by $63.27 equals $569.43 and 25% of $569.43 equals $142.36. Given the above, I grant the tenants **$142.36** for loss of their fridge for a period of 9 days as I find the landlord would have known or ought to have known that the fridge needed repair and/or replacement in October 2020 and failed to act, which I find the video evidence supports. I dismiss any amount higher than $142.36 for this item due to insufficient evidence, without leave to reapply.

As the tenants' application has some merit, I also grant the tenants **$100.00** pursuant to section 72 of the Act for the recovery of the cost of the filing fee.

Based on the above, I find the tenants have established a total monetary claim of **$242.36.** As the tenancy continues, I authorize the tenants pursuant to section 62(3) of the Act to a **one-time rent reduction of $242.36 from a future month of rent,** in full satisfaction of their monetary claim.

Conclusion

The tenants' application is partially successful.

The landlord has been cautioned as noted above and is reminded to ensure that all future tenancy agreements are in writing.

The tenants have been granted a one-time rent reduction of $242.36 from a future month of rent as indicated above.

Item 1 was dismissed without leave to reapply, due to insufficient evidence.

This decision will be emailed to both parties.

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: April 20, 2022

Residential Tenancy Branch