Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, LRE, AS, OLC, FFT

Introduction

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

- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an Order for the tenant to be allowed to assign or sublet, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Both parties confirmed their email addresses for service of this Decision.

The tenant testified that she served the landlord with her application for dispute resolution via registered mail but could not recall on what date. The landlord testified that he received the tenant's application for dispute resolution but could not recall on what date. I find that the landlord was served in accordance with section 89 of the *Act.*

Both parties agreed that they were each served with the other's evidence in the required time period; however, neither could recall the dates the evidence in question was served or received. I find that the parties' evidence was sufficiently served on the other, for the purposes of this *Act*, pursuant to section 71 of the *Act* because both parties confirmed receipt in the correct time frame.

Preliminary Issue- Tenancy Ended

At the outset of the hearing both parties agreed the tenant moved out of the subject rental property on June 23, 2022.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the following claims without leave to reapply:

- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32; and
- an Order for the tenant to be allowed to assign or sublet, pursuant to section 65.

I find that the above issues are moot because the tenancy has ended:

Issues to be Decided

1. Is the tenant entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Pursuant to Rule 7.4 of the Residential Tenancy Branch Rules of Procedure, evidence must be presented by the party who submitted it, or by the party's agent. At the start of the hearing both parties were advised that their evidence must be presented. Evidence not presented by the parties may not be considered in this decision.

Both parties agreed to the following facts. This tenancy began on June 30, 2021 and the tenant moved out on June 23, 2021. Monthly rent in the amount of $1,500.00 was payable on the first day of each month. A security deposit of $750.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that she is seeking the following compensation:

Item	**Amount**
Cost of mini fridge	$270.75
Cost of space heater	$105.27
20% reduction in utilities	$618.89
$100.00 per month for failure of the landlord to make required repairs from July 2021 to March 2021	$900.00
Total	**$1,894.91**

The tenant's application for dispute resolution also states that she is seeking $2,250.00 for loss of roommate rent for January to March 2022; however, when asked what claims the tenant was pursuing, the tenant did not put forward the above claim and provided no testimony on the above claim in the hearing.

Cost of mini fridge

Both parties agree that the tenant first contacted the landlord about issues with her fridge on November 13, 2021. The tenant entered the November 13 text message into

evidence which states:

- Tenant: Hi [landlord], my fridge freezer is freezing and refreezing food. I think there's a problem with it
- Landlord: Your freezer is freezing food in the fridge?
- Tenant: I think the freezer is warming and freezing. I just threw out a bunch of food I just bought- it was freezer burned within a couple days, I also just threw out some ice cream you can tell melted and refroze.

Both parties agree that shortly after the above text exchange, the landlord attended at the subject rental property and vacuumed out the back of the fridge. The landlord testified that if the rear exterior of a fridge gets too dirty, it can impact the fridge's ability to cool.

Both parties agree that the tenant contacted the landlord about the fridge again on November 24, 2021 regarding food in the fridge not being cold. Both parties agree that shortly after the November 24, 2021 text message the landlord attended at the subject rental property to inspect the fridge. The landlord testified that he tested the fridge temperature with an infrared temperature gun, and found that it was operating at the correct temperature and informed the tenant of same. The landlord testified that he offered to exchange the fridge with another fridge, but the tenant did not take him up on his offer.

The tenant entered into evidence a text exchange between the parties dated November 24, 2021 which states:

- Tenant: Hi [landlord, I can take some photos at lunch for you. Freezer is still frozen
- Landlord: I have a second fridge here if we need to swap.
- Tenant: Ok sounds good

The tenant testified that after the landlord took the temperature reading, she did not inform him of any further fridge/freezer issues before purchasing a mini fridge for $270.00 sometime in the winter of 2021. The tenant testified that she is seeking the landlord to pay the cost of the mini freezer. The tenant testified that she took the mini fridge with her when she moved out.

Cost of space heater

Both parties agree that the subject rental house has two suites, and that the tenant resided in the lower suite. Both parties agree the upper suite controlled the thermostat for the entire house.

The tenant testified that the subject rental property was very cold and that she was not able to get the temperature over 18.9 degrees Celsius. The tenant testified that the temperature gauge in the subject rental property did not work, so she purchased a portable one to check the temperature in the subject rental property.

The tenant entered into evidence photographs of the portable thermometer showing temperatures ranging from 16 degrees Celsius to 18.9 degrees Celsius. The tenant entered into evidence text messages with the upstairs tenant in which the tenant requests the upstairs tenant to turn up the heat and the upstairs tenant agrees. The dates of the text messages range from November 17, 2021 to January 25, 2022.

The tenant entered into evidence a letter to the landlord dated October 20, 2021 which states, in part:

> Inadequate utilities- not having access to turn heat up or down in the winter months, or access to A/C. Also results in upstairs tenant having control over utility bill. As notified of uncomfortable Sept 10th, 2021/August 15th, 2021, August 14th, 2021/August 8, 2021.

The tenant entered into evidence text messages between the tenant and the landlord dated August 14-16, 2021 regarding temperature issues.

The tenant entered into evidence a text message to the landlord dated December 14, 2021 which includes a picture of the tenant's portable thermostat reading 16.9 degrees Celsius and a text message informing the landlord that its cold downstairs.

The landlord testified that each time the tenant complained about the temperature, he contacted the upstairs tenant to alter the temperature.

The tenant testified that the landlord did not do anything to fix the heating issues. The tenant testified that she purchased a space heater to bring the temperature up. The tenant testified that it cost $105.00 and she is seeking the landlord pay for the space

heater. The tenant testified that she took the space heater with her when she moved out. The tenant entered into evidence a receipt for a space heater shipped to the tenant on December 29, 2021 which cost $105.27.

The landlord testified that while the thermostat in the subject rental property did not control the temperature, it correctly recorded it and that whenever he attended at the subject rental property it read between 68- and 70-degrees Fahrenheit. The landlord testified that the portable thermometer could have been stuck in the fridge by the tenant and that the temperatures shown on its face are not reliable.

The landlord testified that the tenant is being untruthful about the heat and was provided with a solution to the heating issue but elected not to proceed with it because she wanted to pursue a monetary claim against the landlord. The landlord entered into evidence an email from the upstairs tenant to the landlord dated April 19, 2022 which states in part:

> ….Before I had even moved into the upstairs suite, [the tenant] expressed her concerns regarding the high utility bill. Because of this, I wasn't all that surprised to see the cost of electricity that is on the monthly hydro bill you provide. Over the winter, [the tenant] and I had several conversations regarding this topic. One of which was how I told [the tenant] I recently went to Costco and found a possible solution to the issue she has of not being able to control the temperature. I had seen a wireless thermostat that has an app and the temperature could be controlled from our phones. I thought it was a great idea so that if I was out of town or stuck at work, she would be able to set the temperatures to her liking. I told her I had taken a photo to show you and suggest that maybe you should purchase one for the property. She directed me not to saying that it was part of her argument in her rental dispute that she wasn't able to have control of the thermostat. I have txt you a screenshot of the picture I took, which will show you the date I took it and the conversation took place within a couple weeks, give or take….

Attached to the above email was a photograph of the wireless thermometer taken on December 19, 2021.

The tenant denied that the conversation with the upstairs tenant as described in the above email, took place.

20% reduction in utilities

Both parties agree that pursuant to the tenancy agreement, the tenant is required to pay the landlord 40% of hydro bills. The tenancy agreement was entered into evidence and states same. The tenant testified that she is seeking a 20% reduction in hydro bills because the upstairs tenant was operating a business in the garage and heating it with space heaters which substantially increased the electricity bills.

The landlord testified that the upstairs tenant was not running a business and the tenant is required to pay 40% of the hydro bills.

The landlord entered into evidence an email from the upstairs tenant to the landlord dated April 19, 2022 which states in part:

> …[The tenant] stated that I am “running a business out of the garage”. This statement is completely false. Yes, the garage is jam packed with crafting supplies because my hobby is crafting. At one time, prior to moving in, I was making a steady amount of product for sale. Since then, I have not been able to find the time to do so. At the beginning of the colder months this past winter, I was using the baseboard heater when I was trying to organize the many boxes I still had left to go through and unpack. Shortly after, I became aware of how costly baseboard heaters can be to run, especially older ones. I went and bought an infrared portable heater right away. When I told [the tenant] that I had purchased this new heater, it was at this time she told me that she too had a heater for downstairs. For the most part, the only time I need the heater on is when I am working with resin as it does not cure property in cold temperatures. The last time I worked with Resin was Christmas time, making gifts for family, nearly 4 months ago. There has been the odd time that I know I will be in the garage reorganizing shelves, or going through old stock et…and I will turn the heater on. The picture she sent you of the coasters I made were from 2021, 7 months before I moved in….

The tenant did not present any evidence to support her testimony that the upstairs tenant operated a business out of the garage.

Rent reduction

The tenant testified that she is seeking a rent reduction in the amount of $100.00 per month from July 2021 to March 2022 for failure of the landlord to repair, in a timely manner, the toilet, fridge, and a broken window.

Both parties agree that the landlord attended at the subject rental property the day after the tenant informed him that the toilet was running, and he replaced the flapper. The landlord testified that the toilet was working fine after he replaced the flapper.

Both parties agree that some time later the tenant informed the landlord that the toilet was not flushing. Both parties agree that the landlord hired a plumber who attended at the subject rental property shortly after the complaint was made. The landlord testified that the plumber could not find any issues with the toilet. The landlord entered into evidence a plumbing receipt which states:

- Service call for toilet not flushing in basement rental
- Tested with 40 sheets of toilet paper 3 times- no issues

The tenant testified that the toilet ran for the remainder of the tenancy, but it still worked.

Both parties agree that one of the windows had a crack in it for the duration of the tenancy.

I asked the tenant how the requested $100.00 per month rent reduction was calculated. The tenant testified that the $100.00 per month rent reduction was not based on any calculation, and that it was “just what I’m asking”.

Analysis

Section 65(1)(c)(i) of the *Act* states:

> **65** (1)Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:
>
> (c)that any money paid by a tenant to a landlord must be

(i)repaid to the tenant

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

If the applicant is unable to prove any of the above four points, the claim fails.

Section 32(1) of the *Act* states:

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

Cost of mini fridge

Based on the testimony of both parties, I find that the landlord responded promptly to the tenant's two complaints about the operation of the fridge/freezer made on November 13, and 24, 2021. I find that the tenant has not proved that the fridge/freezer was malfunctioning. I find that the landlord discharged his responsibility under section 32 of the *Act* by responding to the tenant's complaints in a timely manner. I find that the tenant has not proved that any other section of the *Act,* tenancy agreement or Regulation have been breached.

Based on the testimony of both parties, I find that the tenant did not inform the landlord of any further issues with the fridge between the end of November 2021 and when she purchased the mini-fridge. I find that the landlord cannot be held responsible for this cost when the tenant failed to inform the landlord of a continued issue or her desire to

purchase a mini fridge. As the landlord did not breach section 32 of the *Act,* the tenant is not entitled to rent repayment for the fridge.

Cost of space heater

As stated in Policy Guideline #16, the party claiming compensation must prove that loss or damage has resulted from the landlord's breach of the Act, regulation or tenancy agreement. I find that the tenant has not suffered a loss regarding the heater because at the end of the tenancy the tenant took the heater with her and continues to hold that benefit.

I also find the email from the upstairs tenant to the landlord dated April 19, 2021 to be credible as it is supported by a dated photograph of the wireless thermostat taken on December 19, 2021. I find that the tenant deliberately avoided a reasonable solution in an attempt to bolster and prolong her claims against the landlord. I find that the tenant failed to mitigate any potential loss suffered from the heating system at the subject rental property. For failure to mitigate damages, the tenant's claim is dismissed without leave to reapply.

20% reduction in utilities

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenant testified that the upstairs tenant greatly increased the hydro bill by operating a business out of the garage and heating it with space heaters. The landlord and the upstairs tenant denied the above. I find that the tenant has not proved her claim on a balance of probabilities and so her claim fails.

The tenancy agreement states that the tenant is obligated to pay 40% of the hydro bills. In accordance with the tenancy agreement, I find that the tenant is obligated to pay 40% of the hydro bills for the duration of this tenancy.

Rent reduction

As stated earlier in this decision, to be successful in a monetary claim, the party who suffered the damage or loss must prove the amount of or value of the damage or loss.

The tenant was not able to state how she arrived at the $100.00 per month claim and stated that it was just what she was asking for. I find that the tenant has not proved that the value of her tenancy was reduced by $100.00 per month by the alleged failure of the landlord to repair the toilet, fridge and cracked glass. For failure to prove the value of her alleged loss, I dismiss the claim for a rent reduction without leave to reapply.

As the tenant was not successful in any portion of her claim, I find that she is not entitled to recover the $100.00 filing fee, pursuant to section 72 of the *Act.*

Conclusion

The tenant's 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: June 28, 2022

Residential Tenancy Branch