



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, RR, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

1. An order requiring the landlord to carry out repairs pursuant to section 32;
2. An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
3. An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Both parties attended and had opportunity to provide affirmed testimony, present evidence and make submissions. The agent AD testified he was the agent and property manager for the landlord who did not attend ("the landlord"). No issues of service were raised. The hearing process was explained. Neither party made any adjournment or accommodation requests.

1. Preliminary matter – service of Decision

The parties provided the email addresses to which this Decision shall be sent.

2. Preliminary matter – recording

The parties confirmed they were not recording the hearing.

3. Preliminary matter – settlement discussions

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or Order(s).

Before the conclusion of this 45-minute hearing, the parties discussed the issues between them and were unable to achieve a resolution. The hearing continued.

4. Preliminary Issue – withdrawal of claim

The tenant withdrew their claim for repairs under section 32. This part of the claim is dismissed without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to the following:

1. An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
2. An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

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 claim and my findings around each are set out below.

This is an application by a tenant for a rent reduction and reimbursement of the filing fee as the tenant did not have a functioning oven from January 29, 2022, to June 10, 2022. The landlord denied the tenant is entitled to any compensation.

The background details are not in dispute. The parties agreed they entered into a monthly tenancy agreement beginning November 1, 2020, which is ongoing. Rent is \$2,100.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$1,050.00 and a pet deposit of \$1,050.00 which the landlord holds.

The parties agreed the tenancy includes the provision of an oven. They agreed the tenant informed the landlord on January 29, 2022, that the oven was not working and the landlord replaced the oven on June 10, 2022. This period is referred to a 4-months for convenience.

The Tenant's Evidence

The tenant stated in their application:

We would like a working oven as it is listed in our lease agreement, and money back for the months we did not have a proper working oven as we both work from home and cook 3 meals a day.

We are asking for the oven to be replaced asap we would like reduced rent for each month in the amount of \$400/month for e (\$20/day for 2 people for 5 days a week/month - we excluded weekends) in addition to the \$1200 to cover January - March before we filed for the dispute

The tenant submitted documentary evidence including copies of texts and correspondence as well as the following timeline which they confirmed in testimony:

Jan 29th 2022 5:09pm – emailed landlord to remind him that the oven was still not working properly and turning itself on and off – included audio clips and videos

Jan 30th 2022 3:26pm – landlord responded to email asking for model number

Jan 31st 2022 landlord came himself to take a look at the oven, told us to flip the breaker to see if it makes a difference

Feb 1st 2022 - 5:46pm texted landlord that we still hadn't seen a difference with the breaker and also mentioned that the washing machine is also not working. And asked him to come back the same week.

Feb 10th 2022 – 8:36pm landlord responded, are you available this weekend so I can arrange with the handyman.

Feb 11th 2022 10:57am – we replied to the landlord giving permission for him to come by on the weekend any time because we were out for them to look at the oven and washing machine.

Feb 16th 2022 10:55am – texted the landlord to ask if they had stopped by over the weekend with the handyman because the oven had turned itself on again that day

Feb 16th 2022– landlord said he didn't make it and would follow up with the handyman again

Feb 19th 3:22pm – landlord texted to say that he spoke to contractor, the oven was custom built in. He said if they are able to find the same one it will take 3-6months to receive with covid delays. He will buy a standalone over for now and later come in and cut the counter to install a regular oven. He instructed us to not use the oven.

Feb 19th 9:25pm – landlord sent link to air fryer at Best Buy that he suggest and we agreed to pick it up ourselves

Feb 22nd – picked up air fryer and paid out of pocket; and sent receipt to landlord to deduct from March 1st rent per agreement via email

March 15th 2022 8:55pm – emailed to check in asking for a timeline on oven replacement as the air fryer does not work for every day use

March 16th 2022 1:19am – landlord replied that he still needs to order the stove and make arrangements for a professional

March 22nd 2022 10:41am - emailed landlord because we were shocked no movement on repairs had been made yet given how long it had been

and asked for an official timeline asked for reduced rent for months we are without a proper oven

March 23rd 2022 10:47pm – landlord responded saying he will finally send somebody over the weekend and declined our request for reduced rent

The tenant continued the timeline in their testimony.

The landlord's technician came to the unit on March 29, 2022. On March 31, 2022, the tenant sent an email to the landlord asking for an update as they planned to host a holiday meal and required an oven. The landlord replied the oven was not ordered.

On April 2, 2022, the tenant asked for an update. The landlord replied that the oven was not repairable, and the replacement was not ordered.

On May 24, 2022, the tenant sent an email to the landlord and asked if the oven was ordered. The landlord replied that the order was placed and expected delivery time was 16-18 weeks.

As stated above, beginning in January 2022 the tenant testified that the oven would turn on unexpectedly. As they never knew when the oven would turn on, they believed it was a health and safety hazard. They reported their concerns to the landlord throughout the 4-month period.

The tenant acknowledged the unit contained a microwave, air fryer and stove top. However, they testified these appliances were small and limited in capacity. For example, the tenant testified the air fryer could cook one chicken breast at a time. These appliances did not replace the role of an oven in daily cooking and the oven was missed in routine meal preparation.

The tenant stated their inquiries revealed the landlord did not need a building permit to adapt the space to another type of oven which was locally and quickly available. However, the landlord refused to consider this option.

In summary, the tenant stated that four months is an unreasonable time to wait for a replacement oven. The landlord did not respond in a reasonable and timely manner.

The Landlord's Evidence

The landlord acknowledged the accuracy of the tenant's timeline of their contact about the oven.

The landlord acknowledged there were periods of weeks at a time when he did not contact the tenant. However, he testified that during these periods he was actively working on finding a solution: he was checking with contractors and appliance companies, shopping for replacement ovens, discussing repairs and carrying out product research.

The landlord testified that the tenant had adequate cooking appliances: a microwave, a stove top and the air fryer, which he purchased for them. He doubted the accuracy of their claim to inconvenience from not having an oven.

The landlord testified that he did everything possible to obtain a replacement oven and the delays were beyond his control. The oven was a special installation, and the same model could not be obtained. To instal another type of oven would require a permit from the city and substantial expenses which he was not prepared to undertake. The pandemic related supply chain issues affected his ability to find a replacement. Although the landlord eventually found a suitable substitute, he spent considerable time and effort trying to resolve the problem. In short, he is not responsible for the delay which was caused by matters beyond his control.

Summary of Claims

The tenant requested a rent reimbursement of \$800.00 a month for four months.

The landlord denied that the tenant was entitled to any rent reduction.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenant seeks compensation for loss in the value of the tenancy due to lack of access to a working oven for 4-months.

Burden of Proof

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 claimant (the tenant) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities all the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act

Sections 7, 65 and 67 address compensation as follows:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Director's orders: breach of Act, regulations or tenancy agreement

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:

(a)...

(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

(ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

...

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 28 of the Act deals with the tenant's right to quiet enjoyment. The section states as follows:

28. A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

a. reasonable privacy;

b. freedom from unreasonable disturbance;

c. exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

d. use of common areas for reasonable and lawful purposes, free from significant interference.

Credibility

I have considered evidence submitted by both parties. I find the tenant's testimony to be supported in all material aspects by documentary evidence and to be the more credible. As they lived in the unit, I find their description of the effect of not having a working oven to be direct, accurate and believable. Their

testimony was well supported by evidence including copies of communications with the landlord.

I do not accept the landlord's evidence that the tenant's evidence was overstated or exaggerated. I also do not accept his testimony that he was actively engaged during the 4-month period in searching for a timely solution to the issue of replacement of the oven. I find the documentary evidence that he submitted does not support this conclusion.

Therefore, I prefer the tenant's version of events. Where their evidence differs, I give greater weight to the tenant's testimony.

Findings

As acknowledged by the parties, the tenancy included an oven and the tenant was without a functioning oven from January 29, 2022, until June 10, 2022. Based on the evidence submitted I do find that there was some impact on the tenancy due to the absence of a functioning oven for over 4 months. due to this fact.

I find the tenant has established that the lack of an oven had a negative impact on their enjoyment of the unit. I accept their testimony that daily meal preparation was hindered. I accept the evidence of the tenant that their ability to enjoy the rental unit was diminished I find the tenant had a realistic expectation that they would have a functioning oven and that a replacement would be installed in a reasonable time.

I accept the tenant's testimony that they repeatedly contacted the landlord to obtain an update. I find they expressed their concern about the safety issues around the oven which would start alarmingly and unpredictably. I find they spent time and effort to repeatedly urge the landlord to act and solve the problem. I find they conveyed urgency to the landlord to which he did not adequately respond.

While pandemic related supply chain issues may have affected the landlord's ability to find a replacement suitable to him to some degree, I am not convinced that the landlord made reasonable efforts in a sustained, timely and effective manner.

In consideration of the quantum of damages, I refer to the *Residential Tenancy Policy Guideline # 6* which states:

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.

I have considered the history of this matter, the testimony and evidence, the Act and the Guidelines. Under the circumstances, I find that a nominal monetary award which reflects that the tenant did suffer some loss in the value of the tenancy agreement is appropriate.

Based on the foregoing, I find that a nominal monetary award in the amount of \$850.00, the equivalent of approximately 10% of the monthly rent for the duration of the period without an oven, is appropriate.

As the tenant was successful in their application, they are entitled to recover their filing fee from the landlord in the amount of \$100.00.

A summary of the Monetary Order of **\$950.00** follows.

ITEM	AMOUNT
Rent reduction	\$850.00
Reimbursement of filing fee	\$100.00
TOTAL	\$950.00

I direct the tenant may deduct this amount of **\$950.00** from rent on a one-time basis.

Conclusion

The tenant's application under section 32 is dismissed without leave to reapply.

The tenant is granted an award of **\$950.00** for the balance of their claims which may be deducted from rent on a one-time basis only.

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: July 14, 2022

Residential Tenancy Branch