



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Group 1st West Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, MNDCT

Introduction

This hearing was originally scheduled to deal with a tenant's application for repair orders and orders for compliance. The tenant subsequently amended the application to request return of the security deposit and pet damage deposit and seek compensation for loss of use of the oven.

Both parties appeared or were represented at the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. By agreement, the tenant's application was amended to exclude the tenant's daughter as a named tenant as she was an occupant of the rental unit but not a tenant.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the tenant served and the landlords received the tenant's original application, evidence and Amendment. I also confirmed the tenant received the landlord's documentary evidence via registered mail. However, the landlord's agent also stated that a video was emailed to the tenant on August 8, 2022. The tenant denied receiving a video via email on August 8, 2022. I note that this file did not include an upload of a video by the landlord either. I explored this further with the landlord's agent as far as proof of service of a video via email. The landlord's agent stated he did not have a copy of the sent email before him and he understood the video was emailed on August 8, 2022 based on what another agent told him. That other agent was not available to testify. The tenant stated she did see one video the landlord provided to her in March 2022. I informed the parties that I would permit the parties to describe to me what they could see in the video.

I heard the tenancy ended after the tenant filed her original Application for Dispute Resolution. As such, the tenants request for repair orders and orders for compliance are moot as of the date of the hearing and the only outstanding issues to resolve are the tenant's monetary claims. Accordingly, the remainder of this decision pertains to the tenant's monetary claims against the landlord only.

In this decision, the term landlord may refer to the owner of the property or the property management company or an agent for the property management company as all meet the definition of landlord under section 1 of the Act.

Issue(s) to be Decided

1. Is the tenant entitled to return of the security deposit and pet damage deposit?
2. Has the tenant established an entitlement to compensation for loss of use of the oven in the amount claimed?

Background and Evidence

The tenancy started on January 16, 2021 and the tenant paid a security deposit of \$740.00 and a pet damage deposit of \$740.00. The monthly rent of \$1480.00 was payable on the first day of every month.

The landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") to the tenant. Pursuant to the 2 Month Notice the tenancy ended on June 30, 2022 and the tenant received free rent for the last month of tenancy as compensation for receiving the 2 Month Notice.

Return of security deposit and pet damage deposit

It was agreed that the tenant has not been refunded any portion of her deposits and the tenant did not authorize the landlord to make any deductions from her deposits. It was also agreed that the tenant provided her forwarding address to the landlord's agent via email on July 12, 2022. On July 21, 2022 the landlord filed a claim against the tenant and her deposits. The tenant acknowledged she has been served with the landlord's claims and the hearing is set for April 18, 2023 (file number referenced on the cover page of this decision).

The tenant argued that during the July 4, 2022 move out inspection the landlord's agent stated the deposits would be returned to the tenant via direct deposit. The tenant stated

she had this on video although I was not provided with such a video by the tenant. Nor had the tenant identified this issue in making her Application for Dispute Resolution and the agent the tenant identified in her testimony was not present at the hearing to respond to this allegation.

I reviewed the file number provided to me for the landlord's Application for Dispute Resolution to confirm the information provided to me. As a result, I did not illicit a response from the landlord as I was satisfied the landlord made a claim against the tenant's deposits within 15 days of receiving the tenant's forwarding address, as permitted under section 38(1) of the Act. I informed the parties, that the landlord's claims against the deposits and disposition of the deposits shall be the subject of the hearing scheduled for April 18, 2022.

Compensation for loss of use of the oven

The tenant submitted that rodents had entered the rental unit and the space between the oven and stove top. Surrounding the oven, and beneath the stove-top is a layer of white insulation. The rodent(s) defecated and urinated on the insulation. As a result an overwhelming stench could be smelled when the oven heated up.

The tenant complained of the issue to the landlord. The property management company sent their inspector to the rental unit to further investigate the complaint, on March 17, 2022. Both parties provided consistent statements that the inspector confirmed the appearance of rodent feces on the insulation of the oven.

According to the tenant the inspector stated that rodents can come in under a door. According to the property manager, the inspector stated that he observed an open window when he was at the rental unit and rodents could enter through an open window. The property manager acknowledged that the inspector did not put his findings in writing and the inspector was not available to testify.

The property manager's agent consulted with the property owner and the owner took the position that the tenant was responsible for cleaning the insulation. The owner attributed the rodent droppings to the tenant doing the following:

- The tenant frequently leaving the windows in the rental unit open;
- The tenant having a cat that may have brought rodents into the rental unit;

- And, since the oven was clean when the tenancy started without any prior rodent issues reported by previous tenants, any cleaning required would be the tenant's responsibility.

The tenant disagreed with the landlord's position via email and email communications went back and forth. The property manager obtained an estimate of \$150.00 to clean the oven. However, the landlord neither cleaned the oven nor replaced the insulation before the tenancy ended.

The rental unit was described as a basement suite that is below grade and the windows have window wells but no window screens. The owner stated he did not have window screens installed because the tenant did not request them.

The landlord testified that he has a video showing the tenant's cat outside in the yard and carrying a rodent. The tenant acknowledged that she was shown a video showing her cat carrying something in its mouth that could be a rodent; however, she would never allow her cat to enter the rental unit with a rodent.

The landlord pointed out that the previous tenants did not have any rodent issues and that the tenant did not complain of any rodents for the first eight months of her tenancy. As such, the landlord believes the tenant is responsible for any damage or cleaning required due to rodents in the rental unit.

The tenant seeks compensation for 106 days, calculated as being from March 15, 2022 when she complained to the landlord and the end of her tenancy. The tenant seeks to recover \$16.78 per day. This daily amount is the cost to purchase two quarter chicken dinners for her and her daughter since she could not cook dinner in the oven and supported by a receipt. The tenant testified that she did not claim for any breakfast or lunches since she would not use the oven for those meals. Further, the tenant limited the claim to the portions of a meal that would require an oven and not the other portions of a dinner that would be cooked on the stove top, such as vegetables. The tenant also argued that she chose the chicken dinners to calculate her claim since it was a very economical purchase and that on other occasions she purchased more expensive oven roasted meals.

The landlord was of the position that the tenants request for \$1778.68 is unreasonable considering the tenant only submitted one receipt for the purchase of two quarter chicken dinners and no other receipts were submitted. Also, dinners could be cooked on the stove-top since the stove top remained operational.

The parties attempted to reach a settlement during the hearing but it was unsuccessful. Both parties requested that I make the decision as to the tenant's entitlement. Both parties confirmed they were satisfied they had sufficient opportunity to present their evidence and arguments.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons with respect to the tenant's claims against the landlord.

Security deposit and pet damage deposit

Section 38(1) of the Act provides that a landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it.

In this case, the tenancy ended on June 30, 2022 and the tenant provided a forwarding address to the landlord via email on July 12, 2022. The landlord made a claim against the tenant's deposits on July 21, 2022. I am satisfied the landlord filed a claim against the tenant's deposits within 15 days of the later date of receiving the tenant's forwarding address. As such, the disposition of the deposits shall be addressed under the landlord's application that has been filed and set for hearing on April 18, 2023.

Accordingly, I make no order against the landlord with respect to refunding the tenant's deposits by way of this application. Should the landlord cancel the hearing set for April 18, 2023 the tenant may make another Application for Dispute Resolution seeking return of double the security deposit and pet damage deposit.

Compensation for loss of use of oven

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages 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.

The burden of proof is based on the balance of probabilities.

Section 32 of the Act provides for the obligation to repair and maintain a rental unit and residential property. Below, I have reproduced subsections (1) and (2):

- 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.
- (2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Generally, a landlord is responsible for pest control and rectifying pest damage under the landlord's obligations to repair and maintain a residential property under section 32(1) of the Act. There are instances where a tenant may be held liable for rodent infestation and/or rodent damage; however, the landlord would have to establish the tenant caused the infestation and/or damage through deliberate or unreasonably neglectful actions or inaction.

In this case, it is undisputed that during the tenancy a rodent or rodents entered the rental unit and caused damage or the need to clean the insulation that surrounds the oven portion of the range. I accept the tenant's undisputed position that the rodent feces and urine would cause a horrible stench when the oven was turned on so that one would not be reasonably expected to continue to use the oven so long as the urine and feces contaminated insulation remained in that condition.

It was also undisputed that the tenant reported the rodent issue to the landlord and the landlord had an inspector confirm the tenant's complaint, on March 17, 2022. It is further undisputed that the landlord did not proceed to clean the insulation or have it replaced prior to the tenancy ending on June 30, 2022. Accordingly, I accept the tenant's position that during the remainder of the tenancy the tenant was left with an oven that was essentially unusable.

The landlord argued the tenant is responsible for dealing with the rodent damage or need for cleaning rodent soiled oven insulation; however I reject the landlord's excuses for the following reasons:

1. Rodents, as with other pests, are opportunistic and may enter a rental unit at any time when the opportunity presents itself or find their way in by digging and/or chewing an entry. The fact a previous tenant did not have issues with rodents and the oven was clean when the tenancy started does not automatically mean the current tenant has done something that deliberately or negligently resulted in the presence of rodents in the rental unit.
2. The rental unit is equipped with opening windows, yet the landlord takes issue with the tenant opening the windows. Given the rental unit is equipped with opening windows I find it reasonable that the landlord would anticipate the tenant would open windows for fresh air, ventilation and the like. The landlord chose to not have window screens installed on the opening windows and in making that choice I find it unreasonable for the landlord to expect that pests would not enter the rental unit, especially considering the windows are so close to the ground.

3. The landlord's belief the tenant's cat brought a rodent into the rental unit because he observed of the tenant's cat carrying what appears to be a rat or mouse in its mouth in the yard of the residential property is speculative and the tenant reasonably refuted the landlord's believe by stating she would not permit her cat to enter the rental unit with a rodent in its mouth.

I find insufficient evidence that the tenant did something to deliberately attract rodents into the rental unit or that the tenant acted so unreasonably neglectful that her actions, or inactions, were such that a reasonable person would expect rodents to enter the rental unit.

In light of all of the above, I find the landlord was responsible for rectifying the damage caused by a rodent or rodents that entered the rental unit and soiled the oven insulation.

Based on the undisputed communication the tenant had with the property management company, including several emails, it is clear the tenant notified the landlord of the issue. I also find it clear the landlord was refusing to take appropriate action to deal with the damage caused by the rodent(s). As such, I find the landlord violated section 32(1) of the Act.

Given the landlord's refusal to rectify the rodent damage, I find the tenant acted in a timely manner in filing an Application for Dispute Resolution to seek repair orders or orders for compliance. Accordingly, I find the tenant acted reasonably to mitigate her losses.

The rodent damaged insulation rendered the oven portion of the range unusable and I accept that the loss of use of the oven likely caused the tenant to suffer loss of use of an appliance she was entitled to use under her tenancy agreement and to suffer financial loss in purchasing pre-roasted meat, as demonstrated by the receipt provided as evidence.

The tenant's monetary request of \$1778.68 is calculated using a daily amount of \$16.78. The daily amount is supported by one receipt. The landlord issue with receiving only one receipt to support the amount claimed. The tenant argued she also purchased more expensive meals on other days; however, the tenant did not provide supporting evidence of such. Accordingly, I have considered the reasonableness of the amount claimed by the tenant, below.

The amount claimed by the tenant amounts to approximately \$503.40 per month of the \$1480.00 monthly rent payment, which would equate to a 34% rent abatement if I granted the tenant's request. Considering the loss was for a portion of one appliance, and the tenant still had use of the stove top, along with the remainder of the rental unit for daily living activities, I find the claim is excessive. Also of consideration is the request for reimbursement of the cost to purchase oven roasted chicken does not take into account the cost of the food, which the tenant would have had to purchase if she roasted the food at home. Therefore, I find it reasonable to limit the tenant's claim to 50% of what she seeks.

In light of the above, I award the tenant 50% of the amount claimed, or \$889.34.

Given the tenant's Application for Dispute Resolution had merit, I further award the tenant recovery of the \$100.00 filing fee she paid.

Provided to the tenant with this decision is my order for the landlord to pay the tenant the sum of \$989.34.

Conclusion

The tenant's request for return of the security deposit and pet damage deposit was premature as the landlord has made a timely claim against the deposits. The disposition of the security deposit and pet damage deposit shall be dealt with at the hearing set to hear the landlord's claims.

The tenant is awarded compensation for loss of use of the oven and recovery of the filing fee. In recognition of these awards, the tenant is provided a Monetary Order in the sum of \$989.34.

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: August 24, 2022

Residential Tenancy Branch