



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD. and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes RP, OLC, MNDC, PSF, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order for repairs to the rental unit or property, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, compensation for a monetary loss or other money owed, an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act, and to recover the cost of the filing fee.

The tenant, the tenant's legal counsel (counsel), the tenant's family member, and two landlord's agents (landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlord confirmed receipt of the tenant's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Counsel confirmed receipt of the landlord's evidence, but not until September 29, 2022. Counsel objected to the admission of this evidence due to the date received. I find the landlord did not submit their evidence within the time required by the Rules and I therefore declined to consider the landlord's documentary evidence. The landlord provided their oral evidence at the hearing.

Issue(s) to be Decided

Is the tenant entitled to orders made against the landlord, monetary compensation, and recovery of the cost of the filing fee?

Background and Evidence

The evidence shows this tenancy began on July 1, 2021, monthly rent is \$2,650, and the tenant paid a security deposit of \$1,325.

Repair requests –

In her application, the tenant writes:

The landlord needs to comply with the following: 1) Repair hold in ceiling and paint (outstanding since sprinklers leaked in 09/2021) 2) Clean windows dirtied by last dust removal attempt (since 10/2021) 3) Replace smoke detectors with ones that don't alarm all the time for no reason.

[Reproduced as written]

Counsel confirmed that the hole in the ceiling around the sprinkler has now been fixed. The tenant claims that the hole repair is substandard and the ceiling where the repair occurred is unacceptable. There are different colors on the ceiling and it needs to be repainted. The tenant submitted that she had to hire a professional cleaner to clean up after the ceiling repair.

The tenant submitted photos of the ceiling repair area and the windows.

The tenant submitted that her refrigerator died at Christmas time, and it took 44-45 days to get a decent replacement. The tenant submitted that it took until January 14-15 to be given a replacement.

The tenant submitted that the smoke alarms are too sensitive, and they go off all the time, in her rental unit and in the residential property. The tenant submitted she attempted to clean her oven, which caused the alarm to go off. The tenant submitted that making toast is enough to cause the smoke alarm to go off. The tenant submitted she has no quality of life. For these reasons, the tenant requested a replacement smoke alarm.

The tenant submitted that her windows were left streaky and dirty from the last dust removal attempt and requested they be cleaned.

As to the tenant's request for orders for the landlord's compliance and to provided for services or facilities required by law or the tenancy agreement, the tenant writes the same description, as follows:

The landlord needs to comply with the following: 1) Repair hold in ceiling and paint (outstanding since sprinklers leaked in 09/2021) 2) Clean windows dirtied by last dust removal attempt (since 10/2021) 3) Replace smoke detectors with ones that don't alarm all the time for no reason. 4) Respond to inquiries or requests in a reasonable period of time.

The tenant requested that the landlord be required to respond to inquiries in a more timely manner. The tenant submitted that there have been three building managers since she moved in and continues to get the run around from them. For instance, she has been asked to submit the same photos multiple times and has to keep making the same requests.

As to the tenant's monetary claim, counsel said they are just looking for a reasonable amount. The tenant submitted a monetary order worksheet listing a total claim of \$880 for lost groceries, dining out, food delivery charges, cost of prepared food and general inconvenience of \$5 per day, or \$220.

Other testimony taken from the tenant and counsel was that the tenant said she moved into the rental unit expecting to have a high quality of life, after downsizing following her husband's death and has not been given that due to the issues mentioned in her

application. The tenant said that she was “crippled”, seldom leaves her rental unit, and wanted the nice views. This is why it was important to have clean windows. Counsel said the tenant paid a premium monthly rent in order to ensure she be given a good lifestyle.

Landlord’s response –

The landlord CA testified that the tenant moved into a brand-new apartment building and that she first reported the refrigerator issue on December 28, 2021. The landlord said that the refrigerator was still under warranty, and the owners wanted to inspect the refrigerator to detect the issue so that the repair/replacement be handled under warranty. This caused the refrigerator not to be immediately replaced. The landlord submitted that they put in a temporary, full-sized replacement refrigerator on January 21, 2022, taken from another rental unit, but that it had to be returned by the beginning of the month. The landlord submitted that the tenant was provided a smaller refrigerator at that point. The landlord submitted that they were still experiencing supply chain issues at that time. The landlord submitted that the tenant was only without a refrigerator for 23 days. The landlord submitted that this was not ideal, but the tenant still had use of her stove and a refrigerator. The landlord said some of the receipts from the tenant were from August.

The landlord said that the sprinkler had to be repaired and it took some time to find a tradesperson to do the job. The landlord said that the ceiling will be repainted and professionally done when they can find someone, although it is harder to find someone for such a small job.

The landlord submitted that the fire alarm system and smoke alarms are all up to code and they will not be replaced. The landlord submitted that the oven cleaning would have required a temperature of 500° and the tenant should vent the rental unit, such as turn on the fan and open windows.

The landlord submitted that the owner has the residential property windows cleaned twice a year, and the next cleaning is scheduled soon. The landlord submitted that the photos supplied by the tenant shows one side cleaned and the other side has a screen, so the view is less clear.

The landlord submitted they addressed the tenant’s requests quickly.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The onus of proof is on the person making the claim, the tenant in this matter.

Section 32 of the Act requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character, and location of the rental unit, makes it suitable for occupation by a tenant.

While the tenant listed four claims or issues, I find three of the claim are related, in large part. Those claims related to the request for the ceiling repair to the hole where the sprinkler was repaired and repainting, clean the windows and replace the smoke alarms. The other issue was to have the landlord to respond to inquiries and requests in a reasonable amount of time.

As to the hole in the ceiling, the hole was fixed as of the time of the hearing and the issue is now moot. As to the appearance of the repaired area, I find this is a cosmetic issue and not a proper repair request under section 32. Apart from that, the landlord submitted they will be having the area repainted. For these reasons, I decline to order the landlord to repaint the repaired area.

As to the window cleaning request, I reviewed the photographic evidence of the tenant and do not find that the window requires cleaning. I find the window not covered by the screen to be clear. I decline to order the landlord to clean the windows. Apart from that, I accept the landlord's testimony that the windows in the residential property are scheduled to be cleaned soon for their bi-annual cleaning.

I find the evidence shows that the smoke alarms would have been newly installed in 2021, as the building was new when the tenant moved into the unit in July 2021. I find it reasonable to conclude that the smoke alarms would have been inspected for compliance with building codes in 2021 and therefore, compliant with their legal requirements. I decline to order a replacement smoke alarm to replace a code-compliant smoke alarm.

I find the tenant submitted insufficient evidence to show that the landlord failed to respond to her repair requests in a timely manner. This would have been shown through the dates of the written requests and the dates of response. I therefore decline to make such an order.

For the above reasons, I dismiss the tenant's application for an order for repairs to the rental unit, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act, without leave to reapply.

As to the tenant's monetary claim, under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

I find it reasonable that the tenant suffered a temporary inconvenience when she did not have a working refrigerator from December 28, 2021, through January 21, 2022. I also find it reasonable to conclude that the tenant lost food when the refrigerator stopped working.

While the tenant claimed the amount of \$880, I do not find this evidence sufficient to prove her claim. For instance, some bank charges for food were prior to the refrigerator breaking down. Further, it was not clear why the tenant could not cook for herself when she had the replacement refrigerators, even if the smaller refrigerator was not the size of the original refrigerator.

Due to the loss of the refrigerator and the amount of time taken to find a replacement, I do find the tenancy was devalued. Although I find the tenant submitted insufficient evidence to show an exact amount, in recognition that there has been an infraction of the tenant's legal right, I find the tenant is entitled to nominal damages. In recognition of the loss of food and temporary inconvenience, I find a reasonable amount to award the tenant in nominal damages is \$250. I therefore find the tenant has established a monetary claim of \$250.

I find it important to note that while the tenant filed a cleaning company receipt, this amount was not claimed for on the monetary order worksheet.

As part of the tenant's application has been granted, I find she is entitled to recovery of her filing fee of \$100.

I grant the tenant a one-time rent reduction of \$350 in satisfaction of the monetary claim of \$250 and the filing fee of \$100. The tenant should advise the landlord when making this deduction.

Conclusion

The tenant's application for orders for the landlord has been dismissed, without leave to reapply.

The tenant has been awarded \$350, \$250 for nominal damages and recovery of the filing fee of \$100.

The tenant is granted a one-time rent reduction of \$350 to satisfy her total monetary award.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 15, 2022

Residential Tenancy Branch