



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRIBE MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order that the landlords make repairs to the rental unit or property and to recover the filing fee from the landlords for the cost of the application.

Both tenants attended the hearing and each gave affirmed testimony. The individually named landlord and an agent for the landlord company also attended and each gave affirmed testimony. The landlords were also accompanied by a property manager, who did not testify or take part in the hearing. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established that the landlord should be ordered to make repairs to the dishwasher?

Background and Evidence

The first tenant (BC) testified that this tenancy began in 2018 and a tenancy agreement, a copy of which has been provided for this hearing shows that this tenancy began on January 1, 2021. Rent in the amount of \$1,638.47 is currently payable on the 1st day of each month and there are no rental arrears. On January 1, 2021 the tenants

paid a security deposit to the landlord in the amount of \$84.23, however the tenants also paid a security deposit to previous tenants, but the amount is unknown. The tenant took over as a tenant on January 1, 2021 when previous tenants moved out. The rental unit is an apartment in a complex containing 4 floors, and the landlord's agent also lives on the rental property.

The tenant further testified that the condition of the dishwasher was questionable when the tenant moved into the rental unit in 2018; the basket was broken and the tenant zip-tied it with plastic to hold it together. The tenant looked at the serial number, and it's a 1994 dishwasher. The previous tenants said that they had asked the landlord for repairs and were told that the parts could not be replaced.

The tenant came home from work one day and the tenant's partner advised that a piece fell off and the tenant noticed a burn mark and asked the landlord's agent to repair or replace it. A technician arrived and said it was not possible to replace the broken part, and the landlord's agent gave the tenant an invoice to replace the dishwasher, but the tenant didn't pay for it. A heating element is on the bottom of the appliance, and the tenant believes the arm fell off and landed on an element causing it to melt, however the tenant didn't open it; the tenant's partner advised that she saw the arm on the bottom of the dishwasher. The tenant believes it fell off during use, and the tenant's partner took it out. On August 15, 2022 the tenant sent an email to the landlord explaining that, but the landlord did not respond and the dishwasher has not been repaired.

The landlord has filed an Application for Dispute Resolution claiming a monetary order for damages and for an order permitting the landlord to keep the security deposit. The hearing is scheduled for June 12, 2023.

The second tenant (EE) testified that when she arrived home, she put on the dishwasher and opened it up when the cycle was completed, leaving dishes still dirty. When the tenant opened the dishwasher she saw the arm laying on top of the heating element, and because of the age of the appliance it had an old part that had fallen. Two clips hold it in place, and over time it eroded and fell into the bottom of the dishwasher. Photographs have been provided for this hearing and the tenant testified that the burn mark is from the heating coil. When the tenant spoke to the landlord, the tenants were given a \$900.00 bill. The property manager said that the owner didn't want to replace it and threatened eviction if the tenants didn't pay for it.

The landlord's agent (LB) testified that when he was first called to check out the dishwasher he found the arm wasn't in place on the bottom of the top shelf and asked the tenant (BC) who said he moved the plastic pipe and accidentally put it on a hot stove element which burned a hole on the plastic pipe. The story doesn't match with the story of the other tenant.

The landlord's agent attended the rental unit at the request of the tenants and asked about the pipe. The tenant (BC) brought it to the landlord's agent from another room, not from the kitchen, gave it to the landlord's agent and put it on the kitchen counter.

The landlord (DJ) testified that a new dishwasher was purchased, and a copy of an invoice dated June 24, 2022 at a cost of \$719.61 including taxes and delivery has been provided for this hearing. The landlord has not installed it but it is in storage; the landlord thought the tenants were responsible.

If any of the elements in the building break due to normal wear and tear, the landlord replaces them without incident, but if a tenant takes action, the landlord is not responsible for replacing it, if it was functioning. The landlord has 39 dishwashers in the same building. The appliance is not plastic, but stainless steel inside and the landlord believes the tenants' action damaged the part. The landlord also keeps old appliances for parts, and got a part, gave it to the landlord's agent, who gave it to the tenants along with the entire top shelf assembly, but the tenants didn't install it. The arm is fastened to the underside of the top shelf and the landlord insisted that the landlord's agent install it, and he did.

The location of the hole burned in the arm is physically impossible for the pipe to contact the heating element. It's at the bottom, and can't get there as explained by the tenants. The tenants admitted to a mistake, but if they had just left the pipe, it could have been repaired. Photographs have also been provided by the landlord.

The tenant (BC) lived in the rental unit before in 2018 and a full move-in condition inspection report was done, but his roommates left. The condition was established in 2018.

Analysis

The *Residential Tenancy Act* states that a landlord must provide and maintain a rental unit in a state of decoration and repair, and the tenancy agreement specifies that a

dishwasher is included in the rent. The *Act* also states that a tenant must make repairs of damage caused by the tenant.

I have reviewed all of the evidence, and it appears that neither party has been entirely honest in their testimony, or have different recollections from what the evidence shows. Firstly, the first tenant testified that a message was sent to the landlord but no reply was received. Although not dated, the tenants have provided copies of text messages to and from the landlord's agent (LB), and an indication that the tenant (BC) received a copy of the owner's reply from the other tenant's email. The tenant also testified that he checked the serial number and the appliance is a 1994 model, but the email to the landlord says that the tenants looked up the serial number and found that the dishwasher came out in either 1995 or 2007. Secondly, the landlord's agent testified that the tenant (BC) brought it to the landlord's agent from another room, not from the kitchen, gave it to the landlord's agent and put it on the kitchen counter. However, the emails provided by the tenants show that the landlord's agent (LB) advised the tenants by email that when he arrived, the part was sitting on the kitchen counter.

In this case, the landlord's position is that the tenants caused the dishwasher to stop functioning, and the tenant's position is that the malfunction is a result of normal wear and tear. This is not a case where I am called upon to decide whether or not the tenants should pay for a new dishwasher, but a request from the tenants that the landlord make repairs to or replace the dishwasher. The original text message from the tenants asks that the part be replaced.

I agree with the landlords that if the arm fell off during normal operation of the appliance, it would not have fallen through 2 trays or baskets of it onto the element at the bottom. I also agree with the landlords that if it had fallen during normal operation, the tenants ought to have left it there for the landlord to see it.

The parties have also referred to Residential Tenancy Policy Guideline #1 – Landlord & Tenant – Responsibility for Residential Premises, which states, in part: The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

I am not satisfied that the tenants have established that they had no part in the failure of the dishwasher to function correctly, and I dismiss the tenants' application.

Conclusion

For the reasons set out above, the tenants' application is hereby 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: November 15, 2022

Residential Tenancy Branch