Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACCESS PACIFIC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant under the *Residential Tenancy Act* (the Act) on November 12, 2021, seeking:

- Compensation for monetary loss or other money owed;
- The return of all or a part of their security and/or pet damage deposit; and
- Recovery of the filing fee.

The hearing was originally convened by telephone conference call on June 14, 2022, at 1:30 PM and was subsequently adjourned. An interim decision was made on June 14, 2022, and the reconvened hearing was set for November 4, 2022, at 1:30 PM. A copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the Branch) on June 15, 2022, in the manner requested by them at the hearing. The hearing was reconvened on November 4, 2022, at 1:30 PM and was attended by the Tenant, the Tenant's advocate D.B. (Advocate), and an agent for the Landlord A.Y. (Agent). All testimony provided was affirmed. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, a copy of the decision and any order issued in their favor will be emailed to them at the email addresses confirmed at the hearing and listed in the Application.

Preliminary Matters

Although I allowed the parties an opportunity to submit new and relevant documentary evidence for my consideration during the adjournment, as well as additional documentary evidence with regards to service of the 3 evidence packages the Agent stated were not received from the Tenant at the first hearing, neither party submitted any additional documentary evidence for my consideration.

As the Agent denied receipt of 3 evidence packages, as set out in the interim decision, and I was not satisfied by the Tenant and Advocate that they had been served on the Landlord and were accessible tot hem, I have therefore excluded those 3 evidence packages from consideration.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to the return of all, part, or double the amount of their security and/or pet damage deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant an Advocate, who is the Tenant's spouse, stated that on February 19, 2021, the Agent attended the rental unit with two strange men and took away the stove provided to them as part of the tenancy agreement while the Tenant was cooking and home alone. The Tenant and Advocate stated that this was particularly egregious as the Tenant was pregnant, alone, cooking on the stove at that time, and afraid. The Tenant and Advocate stated that this occurred as the home in which the rental unit is located

has two illegal suites plus a short-term rental and that the municipality was coming the next day to complete an inspection, so the Landlord wanted the stove and oven removed before the inspection.

The Tenant and Advocate stated that as a result of losing the stove and oven they had to eat out or order in as they had nothing to cook on. Receipts were provided in support of this statement. Although the Tenant and Advocate stated that the agent gave them a portable hot plate, they stated that it did not work. The Tenant and Advocate stated that despite the Landlord's removal of their stove and oven, as well as the manner in which this occurred, they still paid their rent on time but suffered significant financial losses due to their inability to cook in the rental unit and therefore their need to eat out or order in. The Tenant and advocate stated that the Agent had also significantly interfered with their right to quiet enjoyment by threatening to take away their basic needs if they made trouble, by emailing discriminatory things to the Tenant's employer, entering their rental unit without proper notice or approval to remove their stove and oven, and overall devaluing their tenancy. As a result, the Tenant sought compensation in the amount of $2,480.58 for lots of use, loss of quiet enjoyment, and recovery of amounts spent on eating out and ordering in due to their lack of an oven and stove.

The Agent stated that this situation came about because the Tenant reported the illegal suites to the city and therefore the stove needed to be removed. The Agent also stated that the stove and oven removed were not provided under the tenancy agreement and belonged to the Tenant. The Agent stated that when the rental unit was rented to the Tenant, it had only a portable induction cooktop (hot plate), which is what was returned to the rental unit when the Tenant's stove and oven was removed. The Agent stated that although the Landlord had permitted the Tenant to bring in and hook up their own stove and oven, when the Tenant reported the suite to the municipality as unpermitted, the stove and oven therefore had to be removed. The Agent argued that as they returned the rental unit to the state in which it was rented to the Tenant at the start of the tenancy, the Tenant is therefore not owed any compensation.

The Tenant and Advocate denied purchasing or installing a stove ad oven in the rental unit. The Tenant pointed to the residential tenancy agreement in the documentary evidence before me in support of their position that a stove and oven were initially provided under the tenancy agreement.

The Agent denied that they entered the rental unit without authority and although they stated that they provided proper notice for entry under the Act, they could not provide

me with the exact date that this notice was given. The Agent stated only that it was sent by e-mail and that the Tenant responded. The Agent stated that when they attended the rental unit, they knocked on the door and the Tenant let them in willingly. As a result, the Agent argued that they should not be considered to have entered the rental unit without consent or proper authority to do so under the Act.

The Tenant and Advocate denied receipt of any notice under the Act for entry to the rental unit, and stated that although the Tenant did not bar entry when the Agent and two strangers attended unexpectedly, the Tenant was scared, intimidated, and did not know what to do.

Although the Tenant and Advocate argued that the electronic induction cooktop did not work, the Agent disagreed stating that the reason the Tenant can touch the cooktop with their hand in the video submitted for my review and consideration is that it is an induction cooktop which does not get hot to the touch.

The parties agreed that the tenancy ended on March 15, 2022, that the Tenant paid rent up to and including that date, that neither the $575.00 security deposit nor the $575.00 pet damage deposit had been returned to the Tenant, that section 38(3) and 38(4) of the Act do not apply, and that the Landlord had not filed a claim in relation to these deposits as of the date and time of the reconvened hearing. However, they disagreed about whether the Tenant had provided a forwarding address in writing. The Tenant stated that they provided their forwarding address in writing on March 14, 2022, at the time of the inspection as they wrote it on both the move-out condition inspection report and on an envelope. The Agent stated that this is inaccurate and that the address shown as a forwarding address on the move-out condition inspection report was actually provided by the Tenant on this form at the start of the tenancy in error, and therefore should not constitute a forwarding address.

Analysis

Section 7 of the Act states that 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 for damage or loss that results and that the party who claims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. Section 27(1) of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the

rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

Although the Agent stated that the stove and oven removed from the rental unit belonged to the Tenant, and that only an induction cooktop was provided under the tenancy agreement at the start of the tenancy, the Tenant denied this. Although the Agent stated that the induction cook op is shown in the original advertisement for the rental unit, they did not provide me with a copy of this alleged advertisement for review or consideration. In contrast, the Tenant provided me with a copy of the tenancy agreement which clearly states on page 2 that a stove and oven are included. Although the Agent argued that the tenancy agreement is simply inaccurate, I am not satisfied this is the case. I do not find that a two-burner induction cooktop is likely to have been confused for a stove and oven, as it has no oven. As neither party argued that a separate oven had been provided, such as a portable convection oven, I also do not find it likely that the check box for “stove and oven” was inadvertently selected because the Tenant had been provided with both a stove/cooktop and a separate oven. Further to this, the tenancy agreement used has areas labelled “other” which could easily have been used by the Landlord or Agent to indicate that only an induction cooktop had been provided under the tenancy agreement, which was not done. As a result, I find it more likely than not that a stove and oven were provided to the Tenant at the start of the tenancy as indicated in the tenancy agreement, rather than just a two-burner portable induction cooktop.

Based on the videos provided by the Tenant and the testimony of the parties, I am also satisfied that this stove and oven was removed by the Agent and two unnamed persons on February 19, 2022, and replaced with a two-burner portable induction cooktop. Although the Tenant and Advocate argued that the Tenant was not provided with proper notice of this entry, I disagree, as there is an email in the documentary evidence before me dated February 17, 2021, wherein the Agent stated that they would be inspecting the rental unit between 9:30-10:30 on Friday. As the Tenant responded to the email that same day, I therefore find that it was received by the Tenant, and I consider the Tenant sufficiently served with notice of the Agent’s entry pursuant to sections 28(b) and 71(2)(b) of the Act.

Despite the above, I do not find that the Agent was permitted to remove the stove and oven as part of this entry, as the notice was for the completion of an inspection, and I have already found above that the stove and oven were provided to the Tenant under the tenancy agreement. Further to this, I find that a cooking apparatus, in this case the

stove and oven I am satisfied was rented to the Tenant under the tenancy agreement, or something comparable in function, was essential to the Tenant's use of the rental units use as living accommodation. I therefore find that the Landlord breached section 27(1) of the Act when they removed the stove and oven, regardless of whether the stove and oven were permitted by the municipality, and did not replace it with something of similar functionality.

Although the Agent stated that the two-burner induction cooktop worked, they provided no documentary or other evidence to corroborate this statement. In contrast, the Tenant provided a video where an error code can be seen and a beeping noise can be heard for one of the burners and the Tenant is able to place their hand on the other burner while it is plugged in, and turned on to a high temperature. Although the Agent argued the Tenant can touch the burner as it is an induction cooktop that does not get hot to the touch, the cooktop is clearly labelled "HOT SURFACE DO NOT TOUCH". As a result, I find it more likely than not that the Tenant can touch the burner because it is not heating properly. Based on the above, and the receipts in the documentary evidence before me, I find that the Tenant has satisfied me on a balance of probabilities that the two-burner cooktop provided did not work or did not work properly and that they therefore suffered the financial losses stated due to their inability to cook in the rental unit.

In any event, even if this were not the case, I do not find that replacing a full four-burner stove and oven combination with a two-burner portable cooktop is reasonable as it is not comparable in form and function to what was removed. As a result, I find that the Tenant therefore also suffered a significant loss of use and a devaluation of their tenancy as a result of the removal of the stove and oven.

Finally, I am also satisfied that the Tenant's use and quiet enjoyment of the rental unit was significantly and negatively impacted by the removal of the stove and oven, the replacement of it with an improperly functioning two-burner portable cooktop, and the overall conduct of the Agent during the removal of the stove and oven. In the videos provided by the Tenant the Agent can be heard speaking very disrespectfully and sarcastically to the Tenant, accusing them of reporting the suite to the municipality and therefore wanting their oven and stove to be removed, stating that they are doing the Tenant a favor by removing their stove and oven despite the Tenant's protests, and can be seen moving their personal belongings without permission. I find this behavior exceptionally egregious and inappropriate. The Agent also engage in similar behavior during the hearing, calling the Tenant names and making mean-spirited and inappropriate comments about their relationship and pregnancy.

Based on the above, I therefore grant the Tenant's Application seeking $2,480.58 in compensation for loss of use of their oven and stove, and loss of quiet enjoyment. Having made this finding, I will now turn to the matter of the return of the Tenant's security and pet damage deposits.

Section 38(1) of the Act states that except as provided in subsection (3) or (4)(a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

At the hearing the parties agreed that the tenancy ended on March 15, 2022, and that neither section 38(3) nor 38(4) of the Act apply. The Agent also acknowledged that the Landlord had neither returned the deposits to the Tenant, nor filed a claim against them with the Branch. Although the Agent denied that the Tenant had provided a forwarding address, a forwarding address can clearly be seen on the last page of the move-out condition inspection report. While the Agent stated that this was provided by the Tenant at the start of the tenancy in error, no corroboratory evidence was submitted to support this allegation, such as a copy of only the move-in condition inspection report showing no move-out details but a forwarding address. As a result, I find the Tenant's testimony that this was provided at the end of the tenancy more plausible and likely as the point of a forwarding address is so that a landlord may have contact information for a tenant after they have vacated the rental unit at the end of the tenancy.

Section 38(6) of the Act states that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I am satisfied that the tenancy ended on May 15, 2022, that the Tenant provided their forwarding address in writing on the move-out condition inspection report on March 14, 2022, that the Landlord has not returned the deposits or filed a claim against them, and that the Landlord does not have a right under either section 38(3) or 38(4) of the Act to retain the deposits, I therefore also grant the Tenant's claim for $2,300.00, double the amount of the $575.00 security deposit and the $575.00 pet damage deposit I find was improperly retained by the Landlord, pursuant to section 38(6) of the Act.

As the Tenant was successful in their Application, I also award them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant the Tenant a Monetary Order in the amount of $4,880.58 and I order the Landlord to pay this amount to the Tenant.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$4,880.58**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision has been rendered more than 30-days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to issue them, are affected by the fact that this decision and the associated order were issued more than 30-days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: December 14, 2022

Residential Tenancy Branch