



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On April 12, 2022, the Tenant made an Application for Dispute Resolution seeking a Monetary Order pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was the final, reconvened hearing from the original Dispute Resolution preliminary hearing set for December 19, 2022. The original hearing was adjourned as per an Interim Decision dated December 19, 2022. The final, reconvened hearing was set down for May 1, 2023, at 9:30 AM.

The Tenant and Landlord V.M. attended the final, reconvened hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed at the original hearing, and there were no issues with service. As such, I am satisfied that all evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2021, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on March 31, 2022. Rent was established in the amount of \$1,475.00 and it was due on the first day of each month. A security deposit of \$737.50 and a pet damage deposit of \$500.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

At the original hearing, the Tenant advised that she was seeking compensation in the amounts of **\$1,260.00** for the cost to replace her couch and **\$60.00** for the cost of doing laundry at a laundromat. She testified that the combination washing machine/dryer did not function properly during the tenancy, that the dryer did not vent anywhere, that she was forced to hang her laundry in the rental unit as a result, and that these issues caused excessive humidity in the rental unit. She referenced documentary evidence submitted demonstrating the amount of condensation in the rental unit. She stated that she sent Landlord V.M. a text message about this problem on December 12, 2021, that she texted V.M. on December 23, 2021, requesting that the oven and dryer be fixed, and that the Landlords fixed the oven and provided dryer balls to her by January 4, 2022.

She submitted that the dryer would still not work properly. She stated that V.M. also attempted to use the dryer; however, she also had difficulties in successfully drying anything. As such, V.M. offered a \$50.00 rent reduction on or around January 14, 2022.

Witness S.S. advised of his frustration that the Landlords would not put a separate dryer into the rental unit, as it was his opinion that the area was already set up adequately to accommodate this appliance. He acknowledged that he was frustrated with this situation and used profanity to express himself, while also suggesting to V.M. to install a separate dryer. He reiterated that the Landlords took over a month to fix the stove, that these issues were occurring immediately at the start of the tenancy, and that V.M. offered to let the Tenant out of the fixed-term tenancy.

The Tenant advised that V.M. wanted to deal with the dryer through its warranty; however, when a technician confirmed that the dryer was operating correctly on January 24, 2022, she stated that she attempted to dry one, single towel, but it still did not dry. It is her belief that V.M. acknowledged fault by attempting multiple times unsuccessfully to dry anything in the dryer, by hiring a technician to look at the dryer, and then by offering a rebate.

With respect to her couch, she testified that she purchased it brand new prior to the tenancy commencing, that it was boxed, wrapped, and tarped when she was transporting it, and that it was not raining when they were driving. She stated that she only noticed the mould on the couch at the end of the tenancy. She did not submit any receipts as documentary evidence to support this claim.

She stated that she had a dehumidifier that she used every day from January 2022 to the end of the tenancy, but this did not alleviate the condensation in the rental unit. She acknowledged that the Landlords informed her to keep the windows open to allow for air circulation.

Regarding the claim for compensation in the amount of \$60.00, she stated that this was for the cost of going to the laundromat to use the dryer once a week, for 10 weeks. She calculated this as costing \$10.00 per week, which somehow totalled \$110.00, but then actually totalled \$60.00 in compensation after the \$50.00 rebate was provided by the Landlords. She did not submit any receipts as documentary evidence to support this claim.

V.M. advised that the Tenant had her own Tenant's insurance and she suggested that due to the short length of the tenancy, the couch must have already had mould spores prior to the tenancy starting. As well, she stated that there was no mould in any other parts of the rental unit. She submitted that the Tenant did not do anything to mitigate this situation, that the Tenant caused the excessive moisture by hanging her laundry in the rental unit, that the Tenant was trapping the moisture by not opening the windows, and that the dehumidifier was only used in the bedroom. She testified that the previous tenant, and the tenant after this tenancy, had no issues with the dryer. She stated that she was able to dry items in the dryer over Christmas 2021 and that the technician that was hired was able to dry items as well.

She testified that the Tenant was provided with a welcome letter with instructions on how to use the dryer properly and that she should open windows to ventilate the rental unit. She referenced documentary evidence confirming that the Tenant received this letter; however, it is her position that the Tenant is at fault for the issues as the Tenant refused to change her habits to use the dryer properly. She referenced documentary evidence of the appliance technician who confirmed that there were no issues with the dryer and that it was his belief that the problem stemmed from the Tenant using the appliance incorrectly. As well, she stated that the \$50.00 rebate was given to the Tenant in good faith.

Landlord J.M. reiterated that the instructions provided to the Tenant specifically outlined that it should only be loaded halfway. As well, he stated that the Tenant did not provide any receipt for the couch.

At the final, reconvened hearing, V.M. reiterated that the Tenant was provided with instructions on how to use the dryer properly. She stated that she was able to successfully dry a load of laundry over Christmas 2021, and that she told the Tenant to bring up any further concerns. She confirmed that she later stressed to the Tenant that only half loads can be dried at a time. She stated that there was no proof submitted by the Tenant to corroborate the age of the couch or that it did not have mould when it was brought into the rental unit.

The Tenant confirmed that she received the Landlords' instructions about the correct use of the dryer, and she insisted that she followed these instructions. She stated that V.M. attempted to dry three, separate loads, and these all failed. She submitted that V.M. then offered the \$50.00 rebate. She advised that the couch was brand new, and she referenced the documentary evidence of it being boxed, bagged, and tarped. She

stated that she moved the dehumidifier to different rooms and emptied it daily, and that she cleaned any mould off the walls at the end of the tenancy.

The Tenant then advised that she was seeking compensation in the amount of **\$120.00** because the stove or oven did not work correctly. She testified that she texted the Landlords about this on December 12, 2021, that V.M. attempted to troubleshoot the problem on December 14, 2021, and that V.M. identified the issue as a power shortage on January 4, 2022. As such, she is seeking compensation in the amount of \$10.00 per day from December 12 to 24, 2021.

V.M. confirmed that it was just the oven that would not get up to a proper temperature, but the stove was fine. She acknowledged that the oven was repaired for the Tenant.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* requires that the Landlords provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When

establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlords fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

Moreover, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Tenant's claim for compensation in the amounts of \$1,260.00 and \$60.00, I have before me the Tenant's solemnly affirmed testimony that she used the dryer in accordance with the instructions provided, that despite this, the dryer would still not properly dry her clothing, and she submitted documentary evidence to support her position.

On the other hand, I have V.M.'s solemnly affirmed testimony that she attempted to work with the Tenant to solve this issue and that they eventually hired a technician to investigate the Tenant's allegations. Furthermore, she referred to documentary evidence from this technician who indicated that the dryer was functioning properly, and that the problem was likely due to the Tenant's improper use of the dryer. As well, she referenced documentary evidence from the previous tenant, and the subsequent tenant, who both had no issues using the dryer.

When reviewing the totality of the evidence before me, I find that the most compelling piece of evidence here is that of the appliance repair technician who investigated the dryer and made the following conclusion: "Labour cost (inspection and diagnostic of the unit, unit works fine with no issues, no error codes and all parts and modules inside works as supposed) / I believe new customers tenant just had difficulties with interface or timing of drying - its condencer [sic] dryer /washer." Given the assessment from this trained professional, I find it reasonable to conclude that there was nothing wrong with

the dryer, but it was the improper manner with which the Tenant, and also V.M., attempted to use the dryer.

Moreover, given that the Tenant then elected to hang her wet laundry in the rental unit, I am satisfied that the Tenant was negligent for the excessive moisture and condensation. This level of moisture was clearly evident in the documentary evidence, and I find it reasonable to conclude that a rational person, once this excessive condensation was observed, would either refrain from engaging in whatever behaviour that was contributing to this issue, or would take steps to mitigate it by turning on the heat and fans, and opening the windows to improve circulation. While it is possible that the Tenant attempted to mitigate this high moisture level with the use of a dehumidifier, it is clearly evident that this was not sufficient.

Based on a balance of probabilities, I am satisfied that that this problem stemmed from the Tenant's improper use of the dryer and her subsequent choice to then hang her wet laundry in the rental unit. Consequently, I find that the Tenant was negligent for any possible mould growth on her couch. As a result, I dismiss the Tenant's two claims for this compensation in its entirety.

With respect to the Tenant's claim for compensation in the amount of \$120.00 for the loss of use of the stove or oven that was not functioning properly in December 2021, as it is undisputed that this appliance needed repair, I grant the Tenant a monetary award in the amount of **\$120.00** to satisfy this claim.

As the Tenant was partially successful in her claims, I find that the Tenant is entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a monetary award as follows:

Monetary Award Payable by the Landlords to the Tenant

Loss of use of stove or oven	\$120.00
Filing fee	\$50.00
TOTAL MONETARY AWARD	\$170.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$170.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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 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: June 5, 2023

Residential Tenancy Branch