



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

Issues(s) to be Decided

Is the landlord to blame for the malfunction of the refrigerator?

Background and Evidence

The parties agreed that on August 5 the tenant contacted the landlord and reported that her refrigerator was not working properly. On the same date, a repairman attended at the rental unit, removed the refrigerator and installed another refrigerator, which was a used refrigerator. The tenant was not home at the time the replacement refrigerator was installed and a note was left on the refrigerator which the tenant claimed instructed her to see if the refrigerator worked and the landlord claimed advised that the refrigerator had been replaced.

The tenant testified that shortly after the replacement refrigerator was installed, she noticed that the vegetables in the refrigerator were freezing, so she lowered the temperature in the refrigerator compartment to level 5. On August 18 the tenant noticed that a carton of milk which had just been opened had spoiled. On August 19 the tenant found that the rest of her food had spoiled and contacted the landlord on that date to report that the replacement refrigerator was malfunctioning. The tenant testified that the repairman attended at the rental unit, checked the refrigerator and adjusted the

temperature controls. The repairman advised that the refrigerator was functioning properly, but the tenant insisted that the refrigerator be replaced again, so the landlord complied and replaced the refrigerator.

The landlord claimed that the tenant did not complain the second time on August 19 but on August 24. The repairman attended the hearing and testified that he is a licensed appliance technician and an electrician. The repairman testified that he attended the unit on August 24 and discovered that the refrigerator was overfull and the airflow was obstructed. This obstruction combined with the change in the temperature control had caused the refrigerator to malfunction. The landlord arranged for a second technician to inspect the refrigerator. The second technician arrived at the same conclusion and issued a report indicating that he suspected that the freezer had been overfilled.

Analysis

In order to establish her claim, the tenant must prove on the balance of probabilities that her loss resulted from the landlord's negligence rather than her own. In this case, two licensed appliance technicians found the refrigerator to be in working condition after the tenant complained that it was not working. The refrigerator worked for at least 2 weeks after it was first installed in the rental unit and while the tenant made some adjustments to the temperature as one might expect her to when discovering that her produce had frozen, she did not appear to have made further adjustments when she discovered that her milk had spoiled. I do not accept the tenant's argument that the refrigerator or freezer could not have obstructed the airflow because she always buys the same amount of food and this has not occurred previously. I find it entirely possible that the amount of food purchased or the manner in which it was positioned in the refrigerator worked together with the altered temperature controls to cause the refrigerator to malfunction. I find that the tenant has failed to prove that the landlord's negligence caused her loss and accordingly I dismiss her claim.

Conclusion

The tenant's claim is dismissed.

Dated: January 08, 2010
