



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX KELOWNA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on June 06, 2014 this Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted a Canada Post receipt that corroborates this statement. The Agent for the Landlord stated that he obtained the service address at a dispute resolution proceeding on May 14, 2014. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

On September 24, 2014 the Landlord submitted five documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were served to the Tenant by registered mail on September 24, 2014. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

The Agent for the Landlord stated that two photographs were also submitted to the Residential Tenancy Branch and mailed to the Tenant on September 24, 2014. I did not have these photographs with me at the time of the hearing nor was I able to locate them after the hearing concluded. Documentation on the Evidence Fax Sheet corroborates the testimony that the photographs were submitted. I therefore provided the Landlord with the opportunity to resubmit those photographs.

The Agent for the Landlord stated that the photographs will be mailed to the Residential Tenancy Branch on October 02, 2014 and he was advised that a decision would be reached once the photographs were received.

Preliminary Matter #1

I had not received photographs from the Landlord by the time this decision was rendered on October 24, 2014. I find that waiting more than three weeks before rendering this decision provided the Landlord with a reasonable opportunity to resubmit the photographs.

Section 77 of the *Act* requires me to render a decision within 30 days after the proceedings conclude. As this hearing was concluded on October 02, 2014, I find that I have until November 02, 2014 to render this decision. As I am not working between October 25, 2014 and November 02, 2014, I find that I must render this decision by October 24, 2014.

As I did not receive the photographs the Agent for the Landlord stated that he would resubmit, I must render this decision in the absence of those photographs.

Preliminary Matter #2

This tenancy was the subject of a dispute resolution proceeding on May 15, 2014. At the conclusion of that hearing, an Arbitrator, dismissed the Landlord's claim for repairing the fridge, with leave to reapply. As granted the Landlord leave to reapply on this issue, I find I have jurisdiction to consider the claim.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to a fridge?

Background and Evidence

In her decision of May 15, 2014 noted that:

- The Landlord submitted photographs of the fridge door that show "what appear to be extensive smears on the stainless surface"
- One of the two photographs of the fridge "indicate that there may have been scratches on the door, but the quality of the photograph made it difficult to discern"
- The Landlord submitted an email, dated March 13, 2014, from an individual providing an estimate of costs to replace the fridge and freezer outer panels
- The panels have not yet been replaced
- The Tenant stated that the fridge was not scratched and that the marks are from a cleaning product that has not fully been wiped off
- The Tenant could not see any reason why the doors should be replaced.

In her decision concluded that "in the absence of clear evidence of scratches, and in the absence of evidence that the doors have been replaced I find that the claim for the fridge and freezer door replacement is dismissed with leave to reapply". In addition, she

concluded that “if the landlord proceeds with door replacement and can bring forward evidence of the costs, a claim may proceed”. She declared that she came “to this conclusion as there may well be damage, but a cost has yet to be incurred or proven”.

The Agent for the Landlord stated that this tenancy began in 2012 and ended in November of 2013.

The Agent for the Landlord stated that the fridge and freezer door was scratched during the tenancy, for which the Landlord is seeking compensation of \$800.00. He said the doors look like they have been cleaned with a scouring pad.

The Agent for the Landlord stated that the two photographs submitted in evidence are the same two photographs that were submitted as evidence for the hearing on May 15, 2014. He stated that additional photographs were not provided as it is difficult to capture the nature of the damage on a photograph.

The Agent for the Landlord stated that the doors have now been purchased and is waiting to be picked up by the Landlord. He stated that the Landlord paid \$797.89 for the two doors. The Landlord submitted no evidence to corroborate this statement.

The Landlord submitted an email dated, March 13, 2014, which indicates the freezer and fridge door can be replaced for \$685.62 plus tax and shipping. The Agent for the Landlord stated that he understood he simply needed to establish that the doors had been purchased in order to prove this claim.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

As the Arbitrator merely concluded that “there may well be damage”, I find that the Landlord is still obligated to prove that the fridge and freezer doors were damaged. I find that the Landlord submitted insufficient evidence to show that the doors were damaged. In reaching this conclusion I was heavily influenced by the fact I was unable to view any photographs of the alleged damage to the doors.

I note that the Landlord has not submitted any evidence, such as photographs or written documentation from an unbiased third party, which was not before the Arbitrator at the hearing on May 15, 2014. I therefore find that there is no new documentary evidence which corroborates the Landlord’s claim that the doors were damaged or that refutes the testimony provided by the Tenant at the previous hearing, in which she denied the damage. Given that this claim was in dispute at the previous hearing, I find it

reasonable and prudent for me to consider the Tenant's previous testimony when determining this matter.

Although the Agent for the Landlord testified that the doors have now been purchased, the Landlord submitted no documentary evidence, such as a receipt, to corroborate this testimony. I find it reasonable to expect the Landlord to provide such evidence, as it would be readily available once the doors are purchased.

Given that the email estimate provided to the Arbitrator was dated March 13, 2014 and the email estimate provided for these proceedings was dated March 13, 2014, I find it reasonable to conclude that this is the same document.

In determining this matter I note that even if the Landlord has replaced the doors, I do not find that to be conclusive evidence that the doors needed replacing as a result of damage. I find the most relevant and reliable evidence is actual proof of damage, which can be easily proven with photographs and documentary evidence or testimony from a reliable, unbiased third party.

As I have determined that the Landlord submitted insufficient evidence to show that the doors were damaged, I dismiss the Landlord's claim for compensation for replacing the doors.

I note that the Landlord has submitted no additional documentary evidence to support the claim that the fridge was damaged. In the absence of additional corroborating evidence, the Landlord should have no reasonable expectation that I would reach a different conclusion than the Arbitrator.

Conclusion

The Landlord's claim has been dismissed in its entirety.

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: October 24, 2014

Residential Tenancy Branch