



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHISHAUN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

RP, RR, FF

Dispute Codes

Introduction

On June 18, 2019, the Tenant applied for dispute resolution under the Residential tenancy Act ("the Act") seeking the following:

- for an order that the Landlord make repairs to the rental unit.
- to allow the Tenant to deduct the cost of repairs, services or facilities from the rent.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by the Landlord. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to an order for the Landlord to make repairs to the unit?
- Is the Tenant entitled to deduct the cost of repairs, services or facilities from the rent?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began in December 2017, and is on a month to month basis. Rent in the amount of \$615.00 is due by first day of each month. The Tenant paid a security deposit of \$300.00 to the Landlord.

Repair

The Tenant testified that in February 2019, she noticed that her oven was not heating properly because it would not reach the required temperature. She testified that she notified the Landlord about the issue in February 2019.

The Tenant testified that on April 24, 2019, the Landlord attended the rental unit look at the oven. The Tenant testified that on May 29, 2019, the heating element in the oven was replaced.

The Tenant testified that on June 2, 2019, she set the oven temperature to 350 degrees and noticed that it only achieved a temperature reading of 320 degrees. She testified that she used an oven thermometer to determine the temperature.

The Tenant testified that on June 3, 2019, she sent the Landlord a letter about the issue with the oven. The Tenant testified that the Landlord responded on June 11, 2019, explaining that the oven was purchased new and has had the element replaced and that the precision of the temperature control and the difference in the setting and the actual reading is considered to be normal.

On June 18, 2019, the Tenant applied for dispute resolution.

In reply, The Landlord provided testimony acknowledging that on February 20, 2019, the Landlord received a complaint from the Tenant about the oven.

The Landlord testified that he was dealing with other priority repair issues in the rental building and he could not deal with the Tenant's complaint right away. The Landlord testified that the Landlord left messages for the Tenant on April 17, 2019. The Landlord testified that the oven was looked at on April 24, 2019. The Landlord testified that on April 30, 2019, the Landlord had to return to rental unit to retrieve the model number of the oven, for ordering parts.

The Landlord testified that following this the Landlord was not able to get into the rental unit because the Tenant did not respond and was also away on vacation. The Landlord testified that the heating element was replaced on May 29, 2019.

The Landlord acknowledged that the Landlord received the Tenants further complaint on June 3, 2019. The Landlord testified that on June 18, 2019, the Landlord offered the Tenant a refurbished oven, but the Tenant did not respond to the offer.

In response, the Tenant testified that she does not want a refurbished oven; she wants the Landlord to provide a new oven.

Compensation

The Tenant is seeking compensation in the form of a rent reduction in the amount of \$400.00 for a reduction in value of the tenancy due to the oven not working properly. The Tenant testified that she is seeking \$50.00 each month for the four months of March, 2019, April 2019, May 2019, and June 2019.

The Tenant testified that because she did not have an oven she needed to go out more often and purchase baked goods.

The Tenant provided copies of residential tenancy decisions where Tenants were awarded compensation in similar circumstances.

In reply, the Landlord testified that the Landlord tried numerous times to contact the Tenant regarding the oven with no response. The Landlord testified that the Tenant was away on vacation for a period of time and the Tenant did not respond the Landlord's offer to replace the oven with a refurbished model.

Analysis

Section 65 of the Act states that if the director finds that a Landlord or Tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Section 7 of the Act provides,

if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord has an obligation under the tenancy agreement to provide a working oven to the Tenant.

I find that the Tenant informed the Landlord about the problem with the oven in February 2019, and the Landlord repaired the oven by replacing the heating element on May 29, 2019. I find that it is more likely than not that some of the delay in having the repair completed is attributable to the Tenant being away or not available.

With consideration to the time it took for repair, I find the three to four months it took for the Landlord to deal with the repair of the oven is an unreasonable amount of time to fix the problem and resulted in a loss of value in the tenancy.

I find that since May 29, 2019, when the heating element was replaced, the oven is operable. I find that the lack of precision of the temperature control does not establish that the oven needs to be replaced. I find that the variance between the actual

temperature and the temperature indicator does not establish that the oven needs to be replaced. I find that the oven is functional.

I find that the Tenant is not entitled to an order for the Landlord to repair the oven and the Tenant is not entitled to a new oven. The Landlord is only obligated to provide an oven that works. If the Landlord wishes to replace the oven, the replacement can be new, used, or refurbished.

I have considered the Tenants claim for \$50.00 for each month that the oven was not working. While the Tenant has not provided receipts to prove her loss, I find that the amount claimed each month is a reasonable amount and I award the Tenant the nominal amount of \$100.00 for the months of March 2019, and April 2019. I decline to compensate the Tenant for the month of May 2019, since I find that some delay is attributable to her being away or not available.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I authorize the Tenant to deduct the amount of \$200.00 from one (1) future rent payment.

Conclusion

The Tenant's application was partially successful.

The approximately four months it took for the Landlord to deal with the repair of the oven is an unreasonable amount of time to fix the problem and has resulted in a loss of value in the tenancy.

I award the Tenant the nominal amount of \$100.00 due to the Landlords failure to provide a working oven for the months of March 2019, April 2019.

As the Tenant was partially successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I authorize the Tenant to deduct the amount of \$200.00 from one (1) future rent payment.

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: July 17, 2019

Residential Tenancy Branch