

Residential Tenancies Tribunal

Application 2022 No. 0840 NL

Decision 22-0840-00

Jaclyn Casler
Adjudicator

Introduction

1. The hearing was called at 9:11 AM on 09 February 2023 via teleconference.
2. The applicant [REDACTED], hereinafter referred to as "the tenant" participated in the hearing. The respondent, [REDACTED] [REDACTED], hereinafter referred to as "the landlord" was represented at the hearing by the following:
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
3. The tenant provided an affidavit of service related to a previous hearing date of 10 January 2023 (T#1). [REDACTED] confirmed receipt of service on behalf of the landlord and indicated that the January 2023 hearing date was postponed due to local weather conditions. All parties indicated that they were ready and willing to participate in the hearing.
4. The details of the claim were presented as a month-to-month rental agreement that started in April 2017 for which a written rental agreement was provided (T#2). Monthly rent is #263.00, due at the first of the month, and paid on the tenant's behalf. A security deposit was not collected.
5. In a proceeding under the *Residential Tenancies Act*, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicants have to establish that their account of events is more likely than not to have happened.

Issues before the Tribunal

6. The tenant is seeking the following:
 - An order for compensation for inconvenience in the amount of \$260.00; and
 - An order for compensation for damages in the amount of \$281.00.

Legislation and Policy

7. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018* (*the Act*).
8. Also relevant and considered in this case is section 10 of the *Act*.

Preliminary Matters

9. The rental premises is a 3 bedroom unit located at [REDACTED] [REDACTED]. The tenant resides there with two children full time, and a third child part time. Her application for dispute resolution is the result of her experience with requesting that the landlord address her concerns with the refrigerator in the rental premises. This refrigerator was replaced by the landlord on 31 August 2022. The tenant's claims for compensation for inconvenience and damages are interrelated and were dealt with simultaneously during the hearing. They are also simultaneously addressed in this report.

Issue 1: Compensation for Inconvenience \$260.00

Compensation for Damages \$281.00

Tenant's Position

10. The tenant submitted a phone bill dated 12 September 2022 as evidence of calls placed between 13 August 2022 and 12 September 2022 (T#3). She circled all instances where the landlord was called and testified that she attempted for multiple weeks to have the refrigerator fixed or replaced. The tenant testified that she reached the landlord's maintenance department after choosing to do so from the landlord's main line (e.g., [REDACTED]). The tenant specifically testified that she kept being told things were happening, and yet the refrigerator did not get replaced for many weeks.
11. The tenant submitted a written summary of her claim (e.g., a list of food items that had to be replaced) for compensation for damages in the amount of \$281.00 (T#0). She also submitted pictures of her refrigerator contents to depict food that had been lost and also submitted photographic proof of using a cooler to supplement the broken appliance (T#4). On the same written document for the damages, the tenant wrote out her claim for compensation for inconvenience in the amount of \$260.00 including the following:

- Garbage removal \$60.00 (hand written receipt provided T#5)
- Extra gas/delivery for take out meals \$200.00 (no receipts)

12. The tenant summarized her claim by stating that she is a single mother on a fixed income awaiting disability support. She testified that she is looking for compensation for food lost and inconvenience experienced during the extended amount of time required for the refrigerator to be replaced after it allegedly first stopped working.

Landlord's Position

13. [REDACTED] testified that the work order for a new refrigerator was received and created on 29 August 2022 and installed in the tenant's rental premises on 31 August 2022. She testified that tenants are advised to call the maintenance line (e.g., [REDACTED]) during regular office hours and confirmed that the 24 hour answering service called by the tenant, does not recognize appliance issues as an emergency. [REDACTED] testified that the tenant's refrigerator was replaced because it is the landlord's practice to replace appliances over a certain age. [REDACTED] did not know the age of the refrigerator that was replaced.

14. [REDACTED] testified as the tenant's former Housing Officer and designated point of contact for the tenant at the time the refrigerator was reported as not working. She read portions of various emails into the record between herself and the tenant that spanned between 14 August 2022 and 16 September 2022. Copies of these emails were not provided. [REDACTED] testified that she responded to the tenant's request for compensation for lost food and was told by her superiors, that the landlord recommends all tenants maintain tenants' insurance. Accordingly, [REDACTED] testified that the landlord did not provide financial compensation for any lost food since the tenant was expected to claim such losses against insurance. [REDACTED] also testified that she attempted to assist the tenant with removal of garbage and bulk refuse from the exterior of the tenant's premises. [REDACTED] testified that tenants are informed to contact maintenance directly (at [REDACTED]) if and where they have maintenance concerns.

Analysis

15. The applicant in a damage or inconvenience claim is required to provide and speak to the evidence (witness, documentary, or recorded) necessary to establish on the balance of probabilities that:

- That the damage they are claiming compensation, exists;
- That the respondent is responsible for the reported damage through a willful or negligent act; and
- The value to repair or replace the damaged item(s).

16. If and when damaged items pass the validity test of damages based on the balance of probabilities, actual compensation amounts are calculated in

accordance with *Residential Tenancies Policy 9-005 Depreciation and Life Expectancy of Property*. According to this policy, higher compensation is awarded for damage of newer items, less compensation is awarded for items considered to have exceeded their serviceable life.

17. Regarding the tenant's claim for compensation in this dispute, I accept that her broken refrigerator was replaced. However, I did not accept her reported timeline for allegedly reporting to the landlord that the appliance was not functioning. For instance, I reviewed her phone records provided and did not find evidence of a single call placed to the landlord's maintenance department. Additionally, I found that the tenant was vague in her testimony. Where she testified that she was entitled to compensation due to the landlord's delay in replacing the fridge, I was not convinced that there was indeed a delay. Rather, I found that the landlord's representatives effectively countered the tenant's accusation of failing to respond. In particular, I accept that once the tenant actually made contact with the landlord's maintenance department on 29 August 2022, her concerns were promptly noted and a new refrigerator was delivered and installed two days later.
18. Consequently, I find that the tenant failed to establish on the balance of probabilities that she is entitled to compensation as did not establish that the landlords failed to uphold their Obligations as a Landlord under 10(1)(1)(a) of the Act to:
 - (a) *The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.*
19. Additionally, I was satisfied by the landlord's policy that tenants would be expected to claim for food loss against tenant's insurance. I also note that the tenant did not provide any verifiable evidence related to the purchase of replacement food in the alleged amount of \$281.00. Consequently, I find that her claim for compensation for damages does not succeed in any amount.
20. Regarding the tenant's claim for compensation for damages, I do not accept a hand written receipt as evidence for a \$60.00 charge said to be incurred for the removal of garbage resulting from any spoiled food. Nor do I accept the tenant's handwritten claim for \$200.00 for gas and delivery charges said to be associated with her purchase of take out food for the duration that her refrigerator was said to not be functioning. Such purchasing was her own choice. Consequently, I find that the tenant's claims for compensation for inconvenience do not succeed in any amount.

Decision

21. The tenant's claim for compensation for inconvenience does not succeed in any amount.

22. The tenant's claim for compensation for damages does not succeed in any amount.

Issue 2: Hearing Expenses

Relevant Submissions

23. The tenant claimed the \$20.00 expense of applying for the hearing. As however, her claim was not successful, she is not entitled to compensation from the landlord.

Summary of Decision

24. The tenant's claim for compensation for inconvenience does not succeed in any amount.
25. The tenant's claim for compensation for damages does not succeed in any amount.

21 February 2023

Date

Jaclyn Casler
Residential Tenancies Tribunal