

## Residential Tenancies Tribunal

Decision 19-0801-05

John R. Cook  
Adjudicator

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### Introduction

1. The hearing was called at 11:10 am on 19 November 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant”, participated in the hearing. The respondent, [REDACTED], was represented at the hearing by [REDACTED], hereinafter referred to as “the landlord”.

### Issues before the Tribunal

3. The tenant is seeking the following:
  - a. An order for compensation for inconvenience in the amount of \$79.50;
  - b. An order that repairs be carried out at the rental unit; and
  - c. An order that rent be paid in trust to the Director of Residential Tenancies.

### Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case is section 10 of the *Residential Tenancies Act, 2018* and Policy 9-5: Life Expectancy of Property.

**Issue 1: Stove Replacement**  
**Issue 2: Rent Paid to Director in Trust**

**Relevant Submissions**

The Tenant's Position

6. The tenant stated that she moved into the rental unit in December 2010.
7. The current rent is set at \$800.00. \$400.00 of that amount is paid by the tenant and \$400.00 is paid on the tenant's behalf by Newfoundland Labrador Housing (NLH). The tenant stated that the amount paid by NLH is paid to the landlord once yearly, in a lump sum.
8. The tenant stated that in August 2019 she had invited friends to her unit for a meal and she had cooked a roast beef. She stated that when she cut into the roast she discovered that it was undercooked and determined that there was a problem with the oven.
9. The tenant stated that she contacted the landlord about the matter and a technician was sent to the unit to inspect the oven. She claimed that the technician was only at the unit for 5 minutes and no repair was carried out on the oven.
10. The tenant stated that she continued to have problems with the oven and on 25 September 2019 she issued the landlord a Tenant's Request for Repairs and a copy of that notice was submitted with the tenant's application (█ #1).
11. According to that notice, the tenant requests that, because of breathing problems, the landlord supply her with a self-cleaning oven. The notice indicates that she should be provided with the oven by 02 October 2019.
12. The tenant stated that the landlord had not provided her with a new oven as requested and she is seeking an order from this Section requiring the landlord to comply with her request.
13. The tenant stated that she had hired her own technician to inspect the oven on 15 October 2019 and she submitted an invoice at the hearing (█ #2). On that invoice the technician had written that there is a "temp problem" with the oven and the tenant stated that she was informed that the oven calibrator is broken. She also stated that she was informed that the calibrator could be repaired, but because of the age of the oven, it would likely malfunction again. It was recommended to her that the oven be replaced.
14. With respect to the tenant's request that the replacement oven be self-cleaning, the tenant stated that she suffers from breathing problems and the fumes from oven cleaners irritate her. She stated that she could avoid that problem if the replacement oven that she is supplied with had a self-cleaning feature.

15. The tenant stated that she had been living at the rental unit for 10 years and during that time she has always paid her rent on time and has made no demands of the landlord. She stated that the unit has not been painted in the 10 years she has been living there and the carpets have not been replaced. She stated that she was unable to have a Thanksgiving dinner in her home because the oven does not work properly and now she is fearful she will be unable to cook a Christmas dinner.

### The Landlord's Position

16. The landlord stated that the technician that she had sent to the unit in August 2019 informed her that there was nothing wrong with the oven. She submitted a copy of her invoice from that inspection (█ #1) and on that invoice the technician had written that the "oven is ok" and "stove in mint shape".
17. The landlord stated that she denied the tenant's request, on 25 September 2019, for a new stove because she already had had it inspected and it was determined to be in good working order.
18. The landlord also testified that on 22 October 2019 she had called the technician the tenant had hired and he had informed her that the stove does not need to be replaced.
19. She stated that he informed her that the temperature of the oven is off by about 25 or 35 F°, but she was informed that that issue can be repaired, or, alternatively, the tenant could merely adjust her cooking temperatures.

### **Analysis**

20. Statutory condition 1, set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

#### ***Statutory conditions***

***10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:***

##### ***1. Obligation of the Landlord -***

***(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.***

***(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant***

*had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.*

21. The tenant testified that she had attempted to cook several items since August 2019 and they have turned out to be undercooked. The technician she hired indicates on the invoice that there is a “temp problem” with the oven. Based on that evidence, I find it probable that the oven is not in a good state of repair.
22. Although the landlord’s invoice indicates that the stove is “ok” and “in mint condition”, the tenant testified that that technician did not inspect the oven and that he was only at the rental unit for 5 minutes. Given that the problem the tenant is complaining about is the temperature calibration in the oven, I agree with her that a more thorough and lengthy inspection would be required to reach the conclusion that the oven does not require repairs. In any case, even if the oven was deemed to be in good working condition in August 2019, it doesn’t follow that it can’t be malfunctioning in October 2019.
23. The tenant stated that the oven is 13 years of age. Given that an electric oven has an expected life span of 10 years, I find that it is probable that it is coming to the end of its useful life and it needs to be replaced.
24. As the rent the tenant is paying to the landlord includes the provision of a stove, and as that stove is not in a good state of repair, I find that the landlord is in breach of statutory condition 1, quoted above.
25. Section 47 of the *Residential Tenancies Act, 2018* outlines the following powers of the director:

***Order of director***

***47. (1) After hearing an application the director may make an order***

*(a) determining the rights and obligations of a landlord and tenant;*

...

*(c) requiring a landlord or tenant who has contravened an obligation of a rental agreement to comply with or perform the obligation;*

...

*(k) directing a tenant to pay rent or a specified amount of rent to the director;*

...

*(p) imposing terms and conditions the director considers appropriate, including terms and conditions to ensure compliance with this Act and the rental agreement*

26. Based on the foregoing, I make the following orders:

### **Decision**

27. The landlord shall supply the tenant with a new stove that is in good working order.
28. Once the landlord has replaced the tenant's stove, she is to provide the Residential Tenancies Section with an affidavit to that effect along with a receipt for the replacement stove.
29. The tenant shall forward her half portion of the rent, as it comes due, beginning 01 December 2019, to the Residential Tenancies Section in the form of a Canadian Postal Money Order made payable to the Residential Tenancies Trust Account. That rent will be held in trust until it is determined that the landlord has complied with the above orders. The tenant shall continue to forward rent to this Section, as it comes due, until she is ordered by this Section to reinstate payments to the landlord or until she vacates the rental unit.

### **Issue 3: Compensation for Inconvenience**

30. The tenant stated that because the landlord had not complied with her request to have the stove repaired, she was required to file this Application for Dispute Resolution. As she had to establish to this Tribunal that her stove was indeed malfunctioning, she was required to spend \$79.50 to hire a technician to inspect the stove. That invoice was submitted with the tenant's application (█ #2).
31. The tenant is seeking to be compensated for the \$79.50 she paid to hire that technician.

### **Analysis**

32. I accept the tenant's claim that stove is not in a good state of repair and that the landlord had not lived up to her statutory obligations, as I found in the previous section
33. As such, the tenant's claim for compensation for inconvenience succeeds.

### **Decision**

34. The tenant's claim for compensation for inconvenience succeeds in the amount of \$79.50.

35. That amount is to be deducted from the first payment the tenant is required to pay the Residential Tenancies Section in trust.

**Issue 4: Hearing Expenses**

36. As the tenant's claim has been successful, the landlord shall pay her hearing expense of \$20.00 for the costs of filing this application.

37. That amount shall also be deducted from the first payment to Residential Tenancies.

**Summary of Decision**

38. The landlord shall supply the tenant with a new stove that is in good working order.

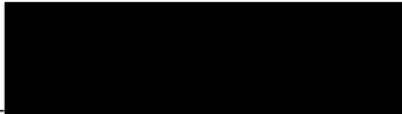
39. Once the landlord has replaced the tenant's stove, she is to provide the Residential Tenancies Section with an affidavit to that effect along with a receipt for the replacement stove.

40. The tenant shall forward her half portion of the rent, as it comes due, beginning 01 December 2019, to the Residential Tenancies Section in the form of a Canadian Postal Money Order made payable to the Residential Tenancies Trust Account. These payments equal \$400.00 per month, except for the first payment, which comes to \$300.50, determined as follows:

- a) Rent Owing .....\$400.00
- b) LESS: Technician Invoice ..... (\$79.50)
- c) LESS: Hearing Expenses..... (\$20.00)
- d) Total Owing to Landlord .....\$300.50

41. That rent will be held in trust until it is determined that the landlord has complied with the above orders. The tenant shall continue to forward rent to this Section, as it comes due, until she is ordered by this Section to reinstate payments to the landlord or until she vacates the rental unit.

27 November 2019  
Date

  
John R. Cook  
Residential Tenancies Tribunal