



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

MNDC, FF

### Introduction

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask questions of the other party, and to make relevant submissions to me.

### Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to a monetary order for paying an excess amount for the use of a fridge and to recover the filing fee for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Tenant submitted a copy of a written agreement between the Landlord and the Tenant, dated June 15, 1999, in which the Tenant agreed to pay an additional \$10.00 per month in exchange for the use of a new frost-free refrigerator. The agreement indicates that the duration of the agreement will be "36 months or until your tenancy is terminated". The Agent for the Landlord and the Tenant agree that the Tenant has been including this \$10.00 payment with his monthly rent payment since July 01, 1999.

The Tenant stated that he signed this agreement because the fridge that was provided with the rental unit was leaking and in need of replacement. The Tenant stated that he did agree to pay \$10.00 per month for the upgraded fridge, but he believed that he would only be required to pay the additional charge for a period of thirty-six months. The Tenant is seeking compensation for the money he paid toward the fridge after the end of the thirty-six month payment period.

The Agent for the Landlord stated that the rental units were equipped with a standard refrigerator at the time this agreement was signed, and that tenants had the option of upgrading to a frost-free fridge if they wished to pay an additional ten dollars. He stated that the Tenants leaking fridge would have been replaced with a standard fridge if the

Tenant had not opted to upgrade. The Agent for the Landlord contends that the agreement clearly stipulates that the payments will continue for the duration of the tenancy.

### Analysis

I find that the Landlord and the Tenant entered into an agreement to pay \$10.00 per month for a frost-free fridge. The Tenant does not dispute that he agreed to pay this amount for a period of thirty-six months, and he is not seeking compensation for the first thirty-six payments.

I find that the duration of the agreement is unclear and could be reasonably interpreted to mean that the payments would stop after thirty-six payments had been made or at the end of the tenancy, whichever came first. Conversely, the agreement could be reasonably interpreted to mean that the payments would stop after thirty-six payments had been made or at the end of the tenancy, whichever came last.

The court held in *Derby Holdings Ltd. V. Walcorp Investments Ltd.* 1986, 47 Sask R. 70 and *Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift*, [1982] 36 A.R. 193, that where there is ambiguity in the terms of an agreement prepared by a landlord, the agreement must be interpreted in favour of the tenant. In these circumstances I find that duration of the agreement is ambiguous and should be interpreted in favour of the tenant, which means the payments would stop after thirty-six payments had been made or at the end of the tenancy, whichever came first.

I find that the Tenant should have made his last payment of \$10.00 on July 01, 2002. I find that the Tenant is entitled to compensation for 75 payments of \$10.00 that he made after July 01, 2002, which is \$750.00. I also find that the Tenant is no longer required to pay this \$10.00 fee, and he can immediately reduce his monthly rent payment from \$640.00 to \$630.00.

### Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$800.00, which is comprised of \$750.00 in compensation for excess refrigerator payments and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution. Based on these determinations I hereby authorize the Tenant to reduce his next two monthly rent payments by \$400.00 per month.

Date of Decision: October 21, 2008