



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

*ERP, MNR, MNDC, RP, RR, PSF, DRI, FF*

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, to dispute a rent increase, to cancel the notice to end tenancy and for an order seeking landlord's action to carry out repairs, provide services and allow a rent reduction. The tenant also applied for a monetary order to be compensated for the food she lost and the inconvenience caused by the breakdown of the refrigerator.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the tenant entitled to compensation in the amount of \$3,588.40 for the inconvenience she endured from the breakdown of the refrigerator and the return of overpaid rent?  
Is the tenant entitled to an ongoing rent reduction? Was the landlord negligent in his responsibilities to carry out repairs?

### **Background and Evidence**

The tenancy started in November 1999. The current monthly rent is \$690.00 payable on the first day of each month. The rental unit is an apartment located in a building complex.

The tenant testified that the landlord has raised the rent on two prior occasions in an amount that is not in compliance with legislation. The tenant accepted the increase and continued to pay rent every month on time. However, the tenant has now applied for a refund of the excess rent paid due to a non compliant rent increase.

On July 05, 2010, the landlord served the tenant with a notice of a rent increase of \$23.00 per month. This rate of increase is in keeping with the rate allowed by legislation. However, the tenant stated that since the prior two rent increases were not in compliance, the base rent should be lower than what this increase is based on. The tenant also argued that she is the only tenant that has received a rent increase. The landlord stated that the rent increase is based on the start date of the tenancy and every tenant will be served with a similar notice at the appropriate time.

The tenant stated that in the past, when she went on vacation, she would give the landlord rent cheques in advance for the month that she was away. The landlord cashed these advance cheques prior to the first of the month. The tenant provided evidence to confirm this. The landlord agreed that his staff made mistakes.

On June 15, 2010, the refrigerator broke down. Water leaked out and the food that was stored in the refrigerator rotted. The tenant informed the landlord who acted immediately, but due to unavailability of appliances was unable to supply the tenant with a refrigerator until June 17, 2010.

The tenant stated that she had to throw out approximately \$300.00 worth of groceries and incurred an additional cost to eat her meals at restaurants, for two days. The tenant also stated that being diabetic, her medication had to be stored in the refrigerator and not having one, caused her a great deal of inconvenience that impacted her health.

The replacement refrigerator is smaller than the one that broke down and has a dent on the upper part. While installing the appliance, the delivery staff broke a wall hanging that the tenant referred to as an "antique frame". The tenant brought the broken wall hanging to the hearing. The item appeared to be a porcelain wall plate. She stated that she bought it from a private vendor and paid \$150.00 for it. The tenant was unable to provide any further evidence to support the value of this item.

The tenant decided that she had incurred an expense of \$500.00 due to the broken refrigerator and therefore deducted this off her rent for July.

Every month it was normal practice for the tenant to deposit her rent cheque into the landlord's mailbox. After the deduction, the tenant put a cheque for \$190.00 into the landlord's mailbox which represented the balance of rent for July.

On July 13, the landlord served her with a ten day notice to end tenancy for non payment of rent. At first the landlord denied having received any rent for July and later admitted to having received a cheque for \$190.00 which he returned to the tenant. The notice to end tenancy stated that the tenant had not paid rent for April and June – but during the hearing, the landlord stated that the tenant had paid rent for these months and only owed for July, August and September.

The tenant visited the Residential Tenancy Branch Office and filed for dispute resolution. As per the information the tenant received, on July 16, 2010, she served the notice of hearing along with two cheques – one was the original cheque for \$190.00 that was returned to her and the other was a cheque for \$500.00 which represented the balance of the rent for July. The landlord denied having received the cheques but acknowledged having received the notice of hearing.

The tenant stated that for the entire 11 years of the tenancy, she placed her rent cheques in the landlord's mailbox and never had a problem. The landlord agreed. However, the landlord stated that he had not received the rent cheques for August and September that the tenant stated she had placed in the landlord's mail box. The tenant did not want to give the landlord post dated cheques because he cashed them prior to the first of the month. The tenant brought her cheque book to the hearing to support her claim of having written rent cheques for August and September.

The tenant also complained about the condition of the carpet and walls in the unit and provided photographs as evidence. She stated that since she moved into the unit, 11 years ago, the carpets have not been updated and the unit has not been painted. She agreed that she had not made a formal request to the landlord to update the condition of the unit.

The tenant is making the following monetary claim:

1.	Replace spoilt groceries	\$300.00
3.	Antique wall hanging	\$150.00
	Total	<b>\$500.00</b>

### **Analysis**

Based on the testimony of both parties, I find that the tenant paid her rent for July by two cheques within five days of having received the notice to end tenancy. Therefore, the notice to end tenancy is set aside and the tenancy will continue.

The landlord has an obligation to repair and maintain the residential property. I am not satisfied that the tenant advised the landlord of the problems in the rental unit. Section 6 of the *Residential Tenancy Policy Guideline*, states that a landlord would normally be held responsible for a problem, if he was aware of a problem and failed to take reasonable steps to correct it.

In this case, the landlord was not notified of any problems or overdue renovations and therefore was not given an opportunity to rectify the situation. Accordingly, the tenant's application for an order to seek landlord's action to repair the unit is dismissed and therefore, the tenant is not entitled to a reduction in rent for the condition of the unit.

Pursuant to section 43 of the *Residential Tenancy Act*, a landlord may impose a rent increase only up to the amount calculated in accordance with the Regulations, or ordered by the director on an application by the landlord or agreed to by the tenant in writing. If a landlord collects a rent increase that does not comply with the Regulations, the tenant may deduct the increase from rent or otherwise recover the increase.

In this case, the landlord imposed a rent increase effective November 01, 2006 at a rate of 4.7% when the approved rate was 4%. This increase raised the rent from \$635.00 to \$665.00 instead of \$660.40.

Therefore the tenant overpaid rent in the amount of \$4.60 per month for a period of 17 months before the landlord imposed the second rent increase. Accordingly, the tenant overpaid rent in the total amount of \$78.20 for the period ending March 31, 2008.

The next rent increase should have been imposed on the base rent of \$660.40 and at the rent rate increase according to the Regulations for 2008 (3.7%). The new rent should have been \$684.83. The tenant paid \$690.00 per month and therefore overpaid rent in the amount of \$5.16 per month for the period starting April 01, 2008 to the present date. Accordingly the tenant has overpaid rent for 30 months in the total amount of \$154.95 for the period ending September 2010.

Overall I find that the tenant has overpaid rent as follows:

1.	November 01, 2006 to March 31, 2008	\$78.20
	Total	<b>\$233.15</b>

The landlord has imposed another rent increase effective November 01, 2010. This increase will be calculated on the base rent of \$684.83 at the approved rent increase rate of 3.2%. Therefore effective November 01, 2010, the tenant will pay a monthly rent of \$706.74. For October 2010, the tenant will pay rent in the amount of \$684.83

I find that the tenant did suffer a monetary loss and inconvenience when the refrigerator broke down. In addition, the tenant had to eat at restaurants for two days until her refrigerator was replaced. I find it reasonable to award the tenant \$350.00 towards her claim.

The tenant is also claiming \$150.00 for what she refers to as an "antique frame". This item appears to be a porcelain wall hanging that the tenant purchased from a private sale. The tenant did not have any evidence to prove the value of the item.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there

has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. I find it appropriate to award the tenant \$50.00 for the wall hanging that was broken by the delivery service men.

Since the tenant has proven a major portion of her claim, she is entitled to the filing fee of \$50.00.

Overall the tenant has established a claim as follows:

1.	Overpaid rent	\$233.15
3.	Porcelain plate	\$50.00
4.	Filing fee	\$50.00
	Total	<b>\$683.15</b>

### **Conclusion**

The tenant will pay **\$684.83** as rent for October 2010 and effective November 01, 2010; the tenant will pay a monthly rent of **\$706.74**.

The tenant may withhold her entitlement of **\$683.15** from a future rent.

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: September 13, 2010.

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Dispute Resolution Officer