



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, MNDC, & FF

### Introduction

This hearing dealt with an application by the tenant seeking to have a 10 day Notice to End Tenancy Due to Unpaid Rent set aside and seeking compensation related to loss of her refrigerator in the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

During the hearing the tenant provided her new forwarding address. The landlord had the opportunity to write this address down during the hearing as well. Pursuant to section 38(1) the landlord is not required to return the tenant's security deposit until the tenant has provided the landlord with the her forwarding address in writing. The tenant should still provide the landlord with her forwarding address in writing to meet the requirements of section 38(1) of the *Act*.

### Issues(s) to be Decided

Did the landlord fail to repair or replace the fridge in a reasonable amount of time resulting in damage or loss to the tenant?

### Background and Evidence

This tenancy began on April 1, 2006 for the monthly rent of \$600.00 and a \$300.00 security deposit which the tenant paid on March 11, 2006. The tenancy has ended as of October 15, 2010.

On August 27, 2010 the tenant contacted the landlord regarding her fridge. According to the tenant, she told the landlord her fridge was not working and she required the landlord to fix or replace the fridge. The tenant stated that she did not hear from the landlord during weekend.

On September 1, 2010 the landlord and the tenant made arrangements to have a fridge brought to the tenant at 3:45 p.m. on September 2, 2010. The tenant stated that the landlord failed to appear, although there was a dirty fridge left on her doorstep earlier that day. The next day the landlord delivered the fridge into the tenant's rental unit. The tenant stated that she should be compensated for the food she lost and for the inconvenience and discomfort of not having a fridge for the sum of \$1,200.00. As a result of the loss of use of her fridge the tenant decided to withhold her rent for September and then October 2010. It was the tenant's intent to request a rent reduction of \$50.00 from the landlord, but the tenant stated that she was never provided the opportunity. Instead the landlord told her that she should find a new place to live. The tenant was served with a 10 day Notice to End Tenancy Due to Unpaid Rent on September 3, 2010. Although part of the tenant's application was to have the notice to end tenancy set aside, the tenant has subsequently vacated the rental unit as of October 15, 2010.

The landlord provided a written statement which he referred to during the hearing. The landlord confirmed the tenant contacted him about the fridge on August 27, 2010; however, the landlord believed that the fridge partially worked. The landlord did not take any steps to replace the tenant's fridge until the following Monday after the weekend. The landlord stated that he had a suitable replacement fridge but could not access it until his son returned. The landlord confirms that he made the appointment with the tenant to deliver the fridge on September 2, 2010; however, he was unable to make the appointment. The landlord stated that the tenant was very difficult to contact by phone and unreasonably upset about his failure to make the appointment on September 2, 2010. He made arrangements to deliver the fridge on September 3, 2010.

The landlord stated that the tenant failed to pay rent owed on September 1, 2010 and on October 1, 2010; however the landlord indicated that the tenancy could have continued if the tenant paid the outstanding rent. The landlord stated he is willing to compensate the tenant for any lost food but he requires the rent be paid for September and October 2010.

### Analysis

I allow the tenant's application in part. I accept from the evidence before me that the tenant's fridge failed on approximately August 27, 2010 and the landlord did not replace the fridge until September 3, 2010, approximately 7 days later. I find that the two parties were unable to effectively communicate with each other and as a result the issue was not resolved quickly. It was a relatively simple issue which could have been resolved

quickly if the parties had cooperated with each other. In the circumstances before me, this event led to the end of this tenancy.

Despite the issues with communication, I find that the landlord had the requirement to provide the tenant with a working fridge pursuant to sections 27 and 32 of the *Act*. I find that the landlord took an unreasonable amount of time to replace the tenant's fridge.

As a result of the landlord's breach of sections 27 and 32, the tenant was without an essential facility for seven days. I find that a fridge is an essential service as it is essential to the tenant's use of the rental unit as living accommodation.

However, despite the landlord's failure to fix the fridge in a reasonable time, the tenant had a duty to mitigate her loss. The tenant stated that she was not able to transfer some of her perishables to her neighbours because she did not know them well; however, the tenant did not appear to make any attempt to ask her friends to assist her or make efforts to transfer food items into a cooler or some other method of mitigating her loss. I find that the tenant could have made more effort to save some of the perishables she submits were lost.

The tenant also failed to verify the amount of perishable food lost. The tenant did not provide an inventory of her fridge at the time it failed or any receipts to show she recently purchased groceries. The tenant did state that she always keeps a full fridge and estimated her loss at \$150.00. The landlord confirmed that when he spoke to a refrigerator repair shop they gave him the opinion that the average cost of perishable goods from a fridge averages \$150.00 to \$200.00.

Based on the evidence before me and on the balance of probabilities, I find as follows:

I accept that the tenant's fridge failed on August 27, 2010 and she lost an undermined amount of perishable food. I accept that an estimated assessment of the loss is \$150.00. However, because I found that the tenant failed to mitigate her loss, I find that the tenant is only entitled to half of this estimated sum for the total of \$75.00.

In addition, I find that the tenant is entitled to the sum of \$100.00 related to the loss of use of her fridge for 7 days. This sum reflects the loss of use of the facility and is meant to compensate the tenant for having to make use without a fridge, such as eating out or other expenses incurred as a result of the loss of use of the fridge.

Although the tenant sought to have the 10 day Notice to End Tenancy Due to Unpaid Rent as part of this application, the tenant has vacated the rental unit accepting the

notice. Therefore, only a portion of the tenant's application was necessary and successful and I only order that the landlord reimburse the tenant for half the cost to file this application for Dispute Resolution for the sum of \$25.00.

I find that the tenant is entitled to compensation for the sum of \$200.00.

### Conclusion

I allow the tenant's application for Dispute Resolution in part.

I find that the tenant has established a monetary claim due to breach of the tenancy agreement and Act by the landlord for the sum of **\$200.00**. This Order must be served on the landlord. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The landlord is at liberty to file a separate application for Dispute Resolution seeking monetary compensation due to the tenant's failure to pay 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: October 19, 2010.

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Dispute Resolution Officer