



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for compensation for the cost of emergency repairs, compensation for damage or loss under the Act, an Order authorizing the tenant to change the locks to the rental unit and to allow the tenant to reduce rent for repairs or services agreed upon but not provided.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matters

The landlord submitted twenty-one pages of evidence to the Residential Tenancy Branch, but confirmed that they did not serve the tenant with this evidence. I referenced the copy of the tenancy agreement contained in the landlord's evidence package and reviewed it with the parties in order to determine the terms of the tenancy; the balance of the evidence was not referenced.

The landlord confirmed receipt of a portion of the tenant's evidence submission, which was not served to the Residential Tenancy Branch within the required time frame. I referenced the portions of the evidence package confirmed received by the landlord; a number of receipts for payments made by the tenant. The tenant was at liberty to provide testimony in relation to the balance of her evidence.

The tenant testified that the matter related to emergency repairs has been settled as she deducted the cost of the lock from the last month's rent due.

The tenant amended her Application by adjusting the compensation claim to \$602.11.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss in the sum of \$602.11?

Is the tenant authorized to change the locks to the rental unit?

May the tenant reduce rent owed for repairs and services agreed upon but not provided?

Background and Evidence

The tenancy agreement submitted by the landlord was reviewed with the tenant and she was able to confirm that the tenancy commenced on September 1, 2010. Rent is \$850.00 per month, due on the first day of each month. A deposit in the sum of \$425.00 was paid. The tenancy agreement has been signed by the tenant and one other individual.

The tenant has made the following claim for compensation:

Fridge repair	72.80
Food loss	99.75
Loss of blueberries	45.00
Registered mail costs	19.08
Photocopying costs	3.00
Loss of fridge use	100.00
Cleaning completed by tenant	100.00
Adverse health effects - damages	100.00
Cost of eating out	51.48
<b>TOTAL</b>	<b>602.11</b>

The landlord agreed to reimburse the tenant for the costs of food in the sum of \$110.75; the balance of the claim remained under dispute.

When the tenant moved in the unit required cleaning. The landlord agreed to allow the tenant to clean the unit and deduct the cost from rent owed. The carpets had been cleaned prior to move-in, but workers who were completing repairs had walked on the carpets, making them dirty again. The landlord had paid to have someone clean but they left the unit in a dirty state. The tenant did not deduct the cost of cleaning from her rent owed as the landlord then disagreed that she had provided the tenant with permission to make this deduction.

On September 10, 2010, the tenant emailed the landlord in relation to the fridge that was freezing her food; the freezer compartment was thawing. The tenant moved her frozen items to a neighbouring home and she lost all of the items in the fridge, due to the freezing. The landlord did not respond to her repeated requests to repair the fridge and on September 23 the tenant had a repair company assess the need for repair. The tenant paid \$73.48 and a balance in the sum of \$93.20 would have covered the repair required. A September 23, 2010, receipt was provided as evidence; the landlord was given a copy of this receipt.

The landlord confirmed they knew of the fridge malfunction early in September and chose to bring in a repair service in after September 23 and had the fridge replaced at the end of September.

The tenant claimed costs for eating out in the sum of \$51.49 and costs for organic blueberries that she took to a neighbouring unit for storage in a fridge; these blueberries were stolen. The cost has been estimated.

The tenant wishes to be reimbursed for costs related to this hearing; photocopying and registered mail.

The tenant has claimed a loss of value of her tenancy due to the absence of a working fridge for the month of September. The tenant has specific dietary needs and found the loss of a fridge made a significant impact on her ability to eat well. No replacement fridge was installed until the end of September.

The tenant has claimed damages in the sum of \$100.00 for the negative health impact related to her inability to eat properly during the time she did not have a fridge. The tenant suffers from some health issues which she submitted were aggravated by her diet during the time she did not have access to a fridge, which would have allowed her to prepare proper meals.

At the time the tenant moved in a number of repairs were agreed to by the landlord. The tenant reviewed a list of repairs that have yet to be addressed by the landlord, including:

- Broken exterior porch light;
- Door bell repair;
- Bathroom light;
- Garage light switch;
- Light above the fireplace, which is making a sound;
- Baseboard heater in bedroom coming off wall;
- Furnace room and laundry room doors broken;
- Bathroom sink leaking; and
- Fireplace chimney to be checked for safety.

The tenant has claimed a rent reduction for repairs agreed to but not completed by the landlord within a reasonable period of time. Some of the items that the landlord had agreed to repair have been addressed; however the above-listed repairs remain outstanding.

During the hearing the landlord offered to inspect the rental unit with the tenant so that the need for repair of these or any other items can be established.

The tenant stated that the landlord allows people in to her unit and that the landlord enters the unit without prior permission. The landlord countered that he has talked with the co-tenant who has agreed to entry in advance. The tenant stated the co-tenant has not told her of any agreed upon, advance notice given. The tenant would like to install her own lock on the rental unit.

The landlord had entered the unit on one occasion, without notice, as there was a suspected gas leak.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award "nominal damages," which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the tenant.

The landlord has agreed to compensation in the sum of \$110.75 for the loss of food as the result of the malfunctioning fridge, based upon the provision of receipts provided by the tenant.

Section 1 of the *Act* defines an essential service or facility as one that is provided by the landlord, such as appliances. Residential Tenancy Branch policy suggests that a service is essential if it is necessary or indispensable. I find that this is a reasonable definition and that a fridge would qualify as an essential service.

As the landlord agreed to provide a fridge and failed to respond in a timely manner when it malfunctioned I find that the tenant is entitled to compensation claimed in the sum of \$100.00 for the loss of use and value of her tenancy.

I find, in the absence of evidence verifying the claim for blueberries and eating out that the tenant is entitled to nominal compensation in the sum of \$5.00.

In the absence of any evidence that the landlord agreed to have the tenant pay for repairs I find that the claim for assessment in relation to fridge repair is dismissed.

In the absence of any evidence that the parties had an agreement in relation to cleaning costs, the absence of any reference of this agreement as part of the tenancy and based upon the disputed testimony, I dismiss the claim for cleaning costs.

The tenant has not provided any evidence of a loss suffered as the result of a breach of the Act by the landlord. She has claimed that her health has been adversely affected, but not provided evidence for such a claim. Therefore, as the tenant has not met the burden of proving her claim, the claim for damages is dismissed.

The tenant has claimed \$22.75 of the cost of registered mail and copying. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied.

I find that the tenant's application has merit, and that she is entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Therefore, the tenant is entitled to the following compensation:

	Claimed	Accepted
Food loss	11.00	Agreed
Food loss	99.75	Agreed
Loss of blueberries	45.00	2.50
Registered mail costs	19.08	0
Photocopying costs	3.00	0
Loss of fridge use	100.00	100.00
Cleaning completed by tenant	100.00	0
Adverse health effects - damages	100.00	0
Cost of eating out	51.48	2.50
<b>TOTAL</b>	<b>602.11</b>	<b>215.75</b>

Section 32 of the Act provides, in part:

**32** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

- (a) complies with the health, safety and housing standards required by law, and*
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

The parties have agreed that the landlord will attend at the rental unit in order to establish the need for repair, as required by the Act. I find that the landlord must provide the tenant with written notice, as required by section 29 of the Act, unless the parties can mutually agree to a time of entry. Once the landlord has inspected the unit he will provide the tenant with a list of repairs that will be completed. This list must be provided to the tenant within a reasonable period of time and any necessary repairs must be completed within a reasonable period of time.

In relation to the tenant's request that an Order be issued allowing her to change the locks, I have declined this request. There is no evidence before me that the landlord has breached the Act by entering the unit without prior Notice to one of the 2 tenants; there was only disputed testimony. During the hearing I reviewed section 29 of the Act, which provides:

**29** *(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
  - (i) the purpose for entering, which must be reasonable;*
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
- (d) the landlord has an order of the director authorizing the entry;*
- (e) the tenant has abandoned the rental unit;*
- (f) an emergency exists and the entry is necessary to protect life or property.*

*(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).*

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$265.75, which is comprised of \$210.75 in damage and loss under the Act and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. A portion of the monetary claim has been agreed to by the landlord.

The sum of \$210.75 may be deducted from the next month's rent owed by the tenant.

The balance of the tenant's claim for compensation is dismissed.

The landlord has been Ordered to assess the need for repairs, as required by section 32 of the Act and to carry out any required repairs within a reasonable period of time.

The request allowing the tenant to change the lock to the rental unit is denied.

The landlord will comply with section 29 of the Act, when any entry to the rental unit is required.

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: November 04, 2010.

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Dispute Resolution Officer