

## **Decision**

**Dispute Codes:** MNSD, OLC, ERP, RP

### **Introduction**

This hearing was convened in response to the tenant's application for return of the security deposit / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make emergency repairs for health or safety reasons / and an order instructing the landlord to make repairs to the unit, site or property. Both parties attended the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenant is entitled to any or all of the above under the Act, Regulation or tenancy agreement

### **Background and Evidence**

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the month-to-month tenancy began on June 1, 2011. Monthly rent is \$1,150.00, and a security deposit of \$575.00 was collected. There is no evidence of a move-in condition inspection report having been completed.

Subsequent to the tenant's filing of her application, it appears that she gave notice to end the tenancy effective August 31, 2011. At least partly in relation to this development, the tenant withdrew the aspects of her application concerning orders instructing the landlord to comply with the legislation and to make certain repairs.

The principal matter remaining before me concerns the tenant's application for compensation. The unit is comprised of an upstairs and a downstairs. Kitchen facilities are located upstairs. The tenant testified that from the start of tenancy the upstairs fridge did not properly function. A small size fridge was delivered to replace it on July 4, and a standard size fridge was brought in on July 16, 2011. The landlord acknowledged that the original fridge upstairs functioned only "intermittently."

However, the landlord testified that from the start of tenancy there was a fully operational fridge located downstairs. But the tenant argued that the downstairs fridge was filthy, and took the position that she should not have to go up and down stairs from the kitchen in order to access a functioning fridge.

During the hearing the parties became argumentative in relation to what agreements to resolve the dispute(s) had been reached between them before the hearing. They also argued about the current status of rent for August. However, neither of these matters is directly before me.

### **Analysis**

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

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.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 1 of the Act defines “**service or facility**” and provides that service or facility includes “appliances and furnishings” that are provided or agreed to be provided by the landlord to the tenant of a rental unit.

Section 27 of the Act speaks to **Terminating or restricting services or facilities**, and provides in part:

27(1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

Based on the documentary evidence and testimony of the parties, I find that a fridge was included as a service or facility provided in exchange for monthly rent. I further find

that the tenant did not have a fully functioning fridge in the kitchen until July 4, 2011, when a small fridge was provided by the landlord. I find that it was not until July 16, 2011 when a standard size fridge was provided in the kitchen. In the meantime, however, there is no dispute that a fully functioning fridge was located in the downstairs, even while the tenant considered it too dirty to use. While I find that the tenant was inconvenienced by not having a fully operating fridge in the kitchen until July 4, 2011, there is no evidence of costs incurred by the tenant arising either from spoiled food or from having to eat in restaurants.

Having considered the testimony and the limited documentary evidence, I find that it is reasonable for the tenant to expect that a fully functioning fridge would be provided in the kitchen. Accordingly, I find that the tenant has established entitlement limited to \$170.00. This is calculated on the basis of \$5.00 per day for the 34 day period between the start of tenancy (June 1, 2011) and the date when a small, but fully functioning fridge was provided in the kitchen (July 4, 2011). I am not persuaded that the tenant has established any additional entitlement to compensation resulting from having to wait until July 16, 2011 when the landlord delivered a standard size fridge to the kitchen.

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**. The parties are encouraged to resolve the disposition of the security deposit directly between them at the end of tenancy. In the meantime, the tenant's application for return of the security deposit is hereby dismissed with leave to reapply.

### **Conclusion**

Following from the above and pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of \$170.00. Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court and enforced as an order of that Court.

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*.

DATE: August 3, 2011

---

Residential Tenancy Branch