



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RR, FF

### Introduction

This hearing dealt with a tenant's application for compensation for damage or loss under the Act, regulations or tenancy agreement and authorization to reduce rent. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The application had identified the tenant's son as the tenant. After hearing from the landlord, the tenant and the tenant's son the application was amended to name the tenant as it appears on the written tenancy agreement. The tenant requested that his son represent him during the hearing. The tenant's son is an occupant of the rental unit.

Neither party provided any documentary evidence for this proceeding. Rather, the only evidence before me was verbal testimony.

### Issue(s) to be Decided

1. Has the tenant established an entitlement to recover \$356.68 paid to the landlord for half of the cost of a new fridge and a new oven element?
2. If the tenant is entitled to compensation, is the tenant authorized to reduce rent to recover the award?

### Background and Evidence

I heard undisputed testimony as follows: The tenancy commenced over eight years ago. The tenancy agreement reflects the tenant and five other persons as being occupants of the rental unit. On November 30, 2011 the tenant paid the landlord \$356.68 (in addition to rent payable) for ½ of the cost of a new fridge and \$51.48 for a new element for the oven.

With this application the tenant is seeking to recover the \$356.68 paid to the landlord. The tenant's son submitted that the former fridge stopped working and it was reported to the landlord. The landlord decided to replace the fridge with a new one but threatened to not deliver the fridge unless the tenant paid for half of the cost. The landlord also required the tenant to pay the cost of a new element for the oven.

The landlord submitted that her husband attended the rental unit to respond to the complaint of the non-working fridge. The landlord and her husband decided to replace the fridge with a new one rather than repair the former fridge.

The landlord submitted that the former fridge was approximately 8 – 10 years old and that it stopped working because the tenant and occupants pile items around the fridge, blocking the air flow around the fridge. The landlord stated that when her husband attended the property the kitchen had been cleaned up but that ordinarily the house is very cluttered. The landlord denies threatening to withhold the fridge from the tenant. Rather, the landlord requested payment as the landlord was of the position the tenant was responsible for its pre-mature end of life and this was agreed upon by one of the occupants. The landlord submitted that her own fridge is approximately 30 years old and is still working.

The tenant's son responded by stating that they provided ventilation on one side of the fridge; however, the other side of the fridge abuts the oven which is a poor design according to his enquiries with an appliance technician. The tenant's son submitted that he was informed by the fridge technician that modern fridges do not last as long as older models which may explain why the landlord's fridge has lasted so much longer.

An occupant (referred to by initials AE) was called as a witness. The witness testified that he did have a discussion with the landlord about the fridge and that the landlord told him the fridge would not be delivered unless the tenant paid for half the cost. The witness testified that it was the landlord that decided to buy a new fridge and that they would have been fine with a used one.

With respect to the oven element, the landlord explained that she requested the tenant pay for a new element because it was the tenant and the occupants that use the oven; therefore, they should be responsible for replacing the element. The element was at least eight years old.

The landlord suggested that this dispute has arisen because the landlord gave the tenant a rent increase recently. The tenant's son stated the rent increase was within the limit prescribed by the Act and is not the reason for this dispute.

### Analysis

Section 32 of the Act provides for a landlord's and a tenant's obligations to repair and maintain a rental unit. I have reproduced section 32 below:

#### **Landlord and tenant obligations to repair and maintain**

- 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.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (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.

As provided under section 32(4), reasonable wear and tear that comes from reasonable wear and tear, which includes the aging process, is not damage and a tenant is not responsible for repairing items that have depreciated or stopped working because of normal wear or aging. Accordingly, if a landlord seeks to recover costs from the tenant for repairs, the landlord has to establish the tenant has damaged the item by their actions or neglect beyond reasonable wear and tear.

Based upon the landlord's own testimony, the landlord has not shown that the oven element burnt out for any reason other than use of the oven over at least eight years. I find there is no evidence of damage or neglect that caused the element to burn out.

Thus, the landlord did not have a right to require the tenant to pay for a new element. The tenant is entitled to recover \$51.48 paid to the landlord for a new oven element. The tenant was authorized to recover this amount verbally during the hearing on December 28, 2011. I confirm that authorization by way of this decision.

According to guidelines provided in Residential Policy Guideline 37, appliances have an average useful life of 15 years and the fridge in this case was less than 15 years old. I accept that a fridge may break down prematurely due to inadequate ventilation as both parties appeared to have agreed on this. However, I heard conflicting testimony as to the ventilation that was provided around the fridge. Further, in the absence of any visible damage to the fridge, I find it is just as likely the fridge broke down due to an issue unrelated to ventilation. Ultimately, I find there is insufficient evidence in this case to make a determination as to the reason the fridge stopped working since the landlord did not have it inspected or repaired by a qualified technician.

Since the landlord had required the tenant to pay for the oven element and I found the element burnt out due to reasonable use and age I find it more likely than not that the landlord required the tenant to pay for a portion of the new fridge on the same basis. Therefore, I find the landlord did not have the right under the Act to require the tenant to pay for a portion of the new fridge.

Finally, I find that the landlord's position that the witness had agreed the tenant would pay half of the cost is not binding upon the tenant. In future, the landlord and tenant should deal directly with each other to avoid future miscommunication or disputes.

Considering the above, I order the landlord to return the amount collected from the tenant for one half of the fridge, or \$305.20.

I further award the \$50.00 filing fee paid for this application to the tenant.

In total, the tenant has been awarded \$406.68 (\$51.48 + \$305.20 + \$50.00) and the tenant is authorized to deduct this total amount from rent otherwise payable to the landlord. If the tenant has already deducted \$51.48 from January 2012 rent, the balance of \$355.20 is deductible from February 2012 rent.

### Conclusion

The tenant was successful in this application and has been authorized to deduct a total of \$406.68 from rent payable.

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: January 11, 2012.

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Residential Tenancy Branch