



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, CNC, RR, MNDC, MNR, LRE, FF

### Introduction

This was the reconvened hearing dealing with the tenants' applications for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling the landlords' 1 Month Notice to End Tenancy for Cause (the "Notice"), an order requiring the landlords to make emergency repairs to the rental unit, for an order allowing a reduction in rent, a monetary order for money owed or compensation for damage or loss, a monetary order for the cost of emergency repairs and for recovery of the filing fee.

This hearing began on October 23, 2013; however documentary evidence issues prevented the hearing from going forward on that day.

An Interim Decision was entered on October 23, 2013, it is incorporated by reference herein, and should be read in conjunction with this Decision.

The parties were informed at the original hearing that the hearing would be adjourned in order to allow the landlords the opportunity to file responsive documentary evidence to the tenants' documentary evidence.

The parties were advised that during the period of adjournment, no further documentary evidence was allowed, other than the landlords' response to the tenants' documentary evidence served upon them on either October 14 or 15.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Procedural matter*-As advised at the original hearing, the tenants had given a notice to the landlords that they were vacating the rental unit, and in fact, at the adjourned hearing, the tenancy was over. As a result, I have amended the tenants' application,

and excluded their request for an order requiring the landlords to make emergency repairs to the rental unit, for a reduction in monthly rent, and an order suspending or setting conditions on the landlords' right to enter the rental unit as these are issues brought forth while a tenancy is ongoing.

The hearing continued to deal with the tenants' request for monetary compensation.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The evidence shows that this tenancy began on July 1, 2013, the tenants testified that they moved out of the rental unit on October 31, 2013, monthly rent was \$1050, and the tenants paid a security deposit of \$525, and a pet damage deposit of \$250, both of which have not been returned to the tenants.

The tenants' monetary claim is \$1307.70, consisting of:

Prorated rent, moving costs and expenses	\$275
Quote for refrigerator	\$73.35
Quote for dryer	\$73.35
Food loss	\$25
Service interruption	\$861

The tenants' relevant documentary evidence included an email from the landlord concerning an additional pet damage deposit, a partial written tenancy agreement, a bill for obtaining a quote for repair to the refrigerator, a bill for obtaining a quote for a dryer repair, text messages between the parties concerning tenancy issues, further email communication between the parties concerning tenancy issues and requests for repairs in the rental unit, photographs of the rental unit, and email statements from a witness concerning the condition of the refrigerator and condition of the rental unit at the beginning of the tenancy.

The landlords' relevant responsive documentary evidence included affidavits from previous tenants, email communication between the parties, concerning repair and other tenancy issues, a partial written tenancy agreement, printed information about refrigerator temperatures, and approximately 50 photographs, containing depictions of the rental unit, time for stove burners to work, contents of freezer/ refrigerator, condition of the rental unit during the tenancy, showing a leak, condition of the rental unit at the end of the tenancy, and a gauge showing the refrigerator temperature on November 17, 2013.

In support of their application, the parties provided the following testimony:

*Prorated rent, moving costs and expenses*-The tenant contended that they were entitled to prorated rent for the first month of the tenancy, as the landlords failed to provide an empty rental unit. More specifically the tenant said that there was a bunk bed and queen size bed remaining, and therefore she and her movers could not set up the bedrooms for the tenants and their children's use.

The tenant claimed that their movers were required to attend the rental unit on another day to fully move in their belongings, and that the landlords failed to meet their promise that the items would be fully gone by July 5, incurring additional moving costs.

In response, the landlords agreed that their former tenants left the beds in the rental unit and that they were unable to remove the items as they were out of province for the first few days of July.

The landlords further contended that when they returned to town on July 4, they phoned the tenants and asked if they could come over that day, but were denied. The landlord contended that they attended the rental unit on July 5 and removed the beds.

The landlords stated that they offered the tenants a reasonable compensation, but argued that the tenants still had use of most of the rental unit.

*Quote for the refrigerator and dryer*-The tenant said that she noticed immediately that there was a gap in the refrigerator door, causing food spoilage, and that the dryer did not function properly, both of which were mentioned to the landlord with a request to repair. The tenant referred to her documentary evidence, emails notifying the landlords.

The tenant submitted that the landlords did not fix either appliance when requested to do so, causing the tenant to hire service technicians to perform an assessment of the condition of the appliances. According to the tenant, the quotes for repair show both appliances were in need of repair. The tenant contended that she was entitled to reimbursement of the cost of the reports and quotes for repair.

In response, the landlords contended that they attended the rental unit multiple times when notified by the tenants, who informed them of such things that her milk was warm and the ice cream was drinkable.

The landlords said that just 5 days after they were informed of refrigerator problems, they attended the rental unit to find the appliance was "stuffed" with food and the ice cream was rock hard.

The landlords stated that the refrigerator was just 2 years old and that there was nothing wrong with the appliance, as noted by multiple inspections.

As to the dryer, the landlords said that as they wanted to find out if the dryer worked, they removed the dryer to their home and dried a load of towels and jeans, taking just one hour to fully dry the clothes.

The landlord contended that the email from the tenant shows the dryer worked, insofar as a sensory setting was required, rather than a timed setting.

The landlord said their current tenant has no issue with the dryer.

*Food costs*-The tenant contended that she is entitled to costs for food spoilage, due to the gap in the refrigerator door.

*Service interruption*-The tenant contended that as the dryer and refrigerator were never repaired during the length of the tenancy, she was entitled to costs associated with increased shopping for fresh food and increased utility costs.

In response, the landlords said they received no evidence of increased utility costs and further denied the appliances were not functioning properly.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenantss in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

*Prorated rent, moving costs and expenses*-I accept that the rental unit was not empty on the first day of the tenancy due to beds being left by the previous tenants, and that the beds were not removed by the landlords before July 5, 2013. I find that the tenants were entitled to have an empty rental unit in which to move; however I find the tenants submitted insufficient evidence to prove they sustained a loss for moving costs and expenses.

I find the tenants are entitled to a loss of use of the rental unit for the first five days of the tenancy, but I am unable to award the tenants for a complete loss of use of the rental unit as the tenants had the use and access to the majority of the rental unit.

I find a reasonable amount to award the tenants for the inconvenience of not being able to set up and use the bedrooms to be \$125 and I therefore award them this amount.

*Quote for the refrigerator and dryer*-I dismiss the tenants' monetary claim for recovery of the costs of quotes for repair to these two appliances as I find the tenants failed to prove that the landlords violated the Act in not obtaining a quote. I find that obtaining quotes for repair was a choice made by the tenants, which are not recoverable under the Act.

I therefore find the tenants submitted insufficient evidence to support their monetary claim for \$73.35 each for the two quotes and it is therefore dismissed.

*Food loss*-I find the tenants submitted insufficient evidence that they sustained a food loss and I dismiss their claim for \$25.

*Service interruption*-In reviewing the evidence, I was not convinced by the tenants that the refrigerator/freezer was not functioning correctly by keeping their food cold or frozen. In reaching this conclusion, I looked at the quote for repair, which did not indicate the refrigerator or freezer was not working. I also find the tenants submitted insufficient evidence that the food was not cold and that they were making additional grocery shopping trips to accommodate a lack of a refrigerator.

I also find that the evidence supports that the dryer did work on one setting, as admitted by the tenants, even if the timed setting was not functioning. I therefore find that the tenants did have the use of a working dryer.

I was further persuaded by the landlords' evidence that they did address the repair requests of the tenants, were not neglectful to the requests, and found that no repair was necessary as the refrigerator/freezer was keeping the tenants' food either cold or frozen and the dryer worked on the sensory setting.

There was also insufficient evidence that the tenants utility costs increased as a result of the appliances.

I therefore dismiss the tenants' monetary claim for service interruption.

As I have found that the tenants' application contained partial merit, I award them recovery of their filing fee of \$50.

Due to the above, I find the tenants are entitled to a total monetary award of \$175, comprised of partial loss of use for \$125 and the filing fee of \$50.

I note that I have not dealt with the matter of the tenants' security deposit or pet damage deposit, as these issues were not before me. I, however, remind both parties of their rights and requirements under section 38 of the Act in dealing with the two deposits.

### Conclusion

The tenants' application for monetary compensation is granted in part.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$175, which I have enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

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* and is being mailed to both the applicants and the respondents.

Dated: January 06, 2014

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Residential Tenancy Branch

