



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNDC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant. The tenant had originally applied for monetary compensation of \$183.26 for loss of use of a refrigerator, reimbursement for spoiled food and an order that the landlord comply with the Act. However, the tenant amended the application to include a request to cancel a One-Month Notice to End Tenancy for Cause that was subsequently served on the tenant by the landlord, and an increase to the claim for compensation to \$2,543.26 that includes a retro-active rent abatement for alleged harassment by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Should the One Month Notice to End Tenancy for Cause be cancelled?

Is the tenant entitled to monetary compensation for loss of value to the tenancy?

Should the landlord be ordered to comply with the Act?

### **Background and Evidence**

The tenancy began in August 2012. The rent is \$750.00.

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The tenant testified that their refrigerator stopped working and some of their food spoiled and when they reported this to the landlord's agent immediately, on March 15, 2014, the landlord's agent merely stated, "*nothing can be done until Monday.*"

The tenant feels that the agent was purposely rude to them. The tenant stated that the landlord failed to address the repairs in an efficient and timely manner. The tenant stated that, as a result, they were without adequate refrigeration for numerous days.

The landlord's agent testified that the tenant had called to report the problem on a weekend. The agent acknowledged that assessing the problem and obtaining another refrigerator did take some time. However, the landlord's agent pointed out that the tenant was offered the use of an alternate refrigerator pending the repair or replacement of their appliance.

The tenant testified that the landlord did not offer them use of an alternate refrigerator when they first reported the problem. The tenant stated that they remembered that there was a spare refrigerator in the basement where they could possibly store their food temporarily, but they found it had been unplugged and warm, so was of no use for preserving the tenant's remaining food. The tenant pointed out that it had also been left open, exposing it to dirt and dust.

The tenant testified that on March 17, 2014, the landlord finally offered them use of a refrigerator in another unit. The tenant stated that their replacement fridge did not arrive until March 20, 2014. The tenant stated that she then requested reimbursement for the loss of food in writing. A copy of this communication is in evidence. The tenant testified that the landlord's agent refused to provide contact information to enable the tenant to deal with the owner but the request for compensation was denied and the tenant felt she had no choice but to take the matter to arbitration..

The tenant testified that the landlord's agent has been acting in a confrontational way towards the tenant and this conduct escalated more after the tenant filed for dispute resolution.

The tenant testified that the landlord's agent focused a security camera in the hall onto her door and when she left her unit the agent followed her through the building verbally abusing and taunting the tenant. The tenant also suspects that her apartment is being entered while she is not there.

The tenant stated that she feels threatened by the agent and has made a complaint directly to the owner about his unprofessional conduct. The tenant stated that the landlord's agent is attempting to drive her out of the building altogether. The tenant testified that she has felt it necessary to record her conversations with the landlord's

agent because of his threatening and abusive attitude during their exchanges. Copies of the recordings were submitted into evidence.

The tenant stated that the landlord has issued a One Month Notice to End Tenancy for Cause as a reprisal against her for asserting her rights. The tenant is asking that this Notice be cancelled.

The landlord's agent denied that he was acting in a hostile or confrontational way toward the tenant. The agent stated that the camera in the hall was placed there solely for security reasons and was not focused on the tenant's door.

The landlord's agent stated that he is the landlord's contact and the owner prefers it to be that way. However, the tenant has refused to accept this fact and subjected the agent to harassment demanding to deal directly with the owner.

The landlord testified that the tenant has no right to insist on payment for lost food as the tenancy agreement requires each tenant to have insurance and the losses suffered by the tenant should be claimed against the tenant's own insurance.

According to the landlord, the tenant has been acting in an aggressive and hostile way, by having her neighbor confront the agent and engaging in other harassment tactics such as yelling and verbally abusing him and recording their interactions with the agent without his permission. In regard to issuing the tenant with a One Month Notice to End Tenancy for Cause dated April 27, 2014, the landlord stated that the tenant interfered with and unreasonably disturbed the landlord and other occupants repeatedly.

The landlord testified that the tenant had accused him of stealing her recycling that was left in a common area in violation of the building rules.

The landlord also described an incident in which the tenant and her friend tried to provoke the landlord's agent when they were personally serving him with the Notice of Dispute Resolution Hearing. The landlord stated that, during this altercation, the tenant's friend from a neighboring building and the tenant heaped verbal abuse on the landlord's agent. The landlord testified that the tenant allegedly physically interfered with his sister when she tried to call police on her cell phone during the heated verbal exchange between the tenant and the agent. The landlord testified that he and his sister later contacted the police and made a report. The landlord's agent acknowledged that no charges were filed against the tenant or her friend. The agent's position is that the tenant has no right to involve her neighbor in conversations with the landlord's agent.

The landlord submitted a written witness statement from his sister, who did not attend the hearing, a written statement from the owner testifying about information that she received from her agent about what had transpired and some written character references from other occupants in the complex.

The landlord feels that the One Month Notice to End Tenancy for Cause is justified and should not be cancelled.

### **Analysis**

#### **One Month Notice to End Tenancy for Cause**

The One-Month Notice to End Tenancy for Cause was issued on the basis that the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

With respect to the cause of significant interference I find that, even if I did accept that the tenant interfered with the landlord's agent's sister, which the tenant denies, this one incident is not sufficient to warrant termination of the tenancy. Moreover, I find it clear that *both* the tenant and the landlord were likely engaged in what could be perceived as argumentative or aggressive conduct at the time.

With respect to the allegation that the tenant seriously jeopardized the health, safety or lawful right of another occupant or the landlord, I find there is no evidence to support the landlord's allegation that the tenant's conduct consisted in a contravention of the Act in this regard.

Given the above, I find that the landlord has not submitted sufficient evidence to support the stated causes for ending the tenancy. Accordingly, I find that the One-Month Notice to End Tenancy for Cause, dated April 27, 2014, must be cancelled.

#### **Monetary Claim for Refrigerator Loss**

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or the tenancy agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act or agreement and a corresponding loss.

I find that the landlord is obligated under section 32 of the Act to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

Residential Policy Guideline 1 states that the landlord is responsible for all repairs to appliances provided under the tenancy agreement. This applies, unless the landlord can prove that the damage was caused by the deliberate actions or neglect of the tenant.

I do not find that the landlord breached section 32 of the Act, because the landlord did actively pursue the necessary repairs to restore the tenant's refrigerator, although this took several days to achieve.

However, with respect to the landlord's obligation under section 33 of the Act to address emergency repairs in a timely manner, I find that providing refrigeration in the suite should be considered by the landlord as an essential service. The urgency of this matter would necessitate providing a temporary appliance for the tenant's use by arranging and moving a temporary replacement refrigerator into the tenant's suite. I find that the landlord should not have imposed an expectation on the tenant to set up and rely upon a dormant refrigerator located

outside the rental unit in a basement area nor should a tenant be forced to enter a vacant suite on another floor to use the refrigerator for more than one day.

In addition to the above, I find that the landlord contravened implied contractual terms under the tenancy agreement. I find that this landlord and tenant had contracted for a tenancy that included functional refrigeration as an essential service. I find that, through a malfunction of the refrigerator not caused by either party, the tenant's use of the suite was temporarily compromised and devalued for a period of five days due to lack of refrigeration.

I find that for the duration, the tenant was still required to pay full rent in compliance with their obligation under the Act. However, at the same time the tenant clearly suffered a loss of value to the tenancy contract and a diminished quality of life for a time.

As the tenant was subjected to substantial inconvenience, I find that the tenancy was devalued by 65% during those 5 days. Based on daily rent calculated at \$24.66 discounted by 65% for the five-day period, I find the tenant is entitled to be compensated for \$80.15 for devalued contract.

In regard to the tenant's loss of food due to the failure of the appliance, I grant the tenant compensation of \$75.00 towards food purchases.

I find that the tenant's claim for dining out costs is not supported by sufficient evidence.

#### Monetary claim for Harassment

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

While I accept that security of the premises is essential, I find it necessary to order that the landlord comply with the Act and cease monitoring this tenant in any way and specifically avoid aiming the security camera in the direction of the tenant's suite such that the tenant's door can be filmed.

I find that the landlord is at liberty to direct the camera towards the entry door or his own door if the tenant's door is not also in view as well. In monitoring the hallway for security purposes, I caution the landlord that this still does not entitle the landlord under the Act to monitor the tenant's entry or exits from the building or that of her guests, nor should the landlord's agent use the camera access to time his own activities in order to confront or follow the tenant when she is in the common areas.

In regard to the tenant's allegation that the landlord has been entering the suite without her knowledge, I find that the tenant has not met the burden of proof to establish that this is occurring.

However, the landlord is cautioned to comply with section 29 of the Act, which states that a landlord must not enter a rental unit for any purpose unless the tenant gives permission at the time of the entry or at least 24 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;
- or an emergency exists and the entry is necessary to protect life or property

I find that the relationship between the landlord and the tenant has become combative with both parties exhibiting an inability to discuss landlord and tenant issues without matters escalating into a full-blown argument.

For this reason, I find it necessary to order that both parties refrain from communicating verbally in person or by telephone and that they restrict all future communications to written form unless not possible.

In regard to tenancy issues that may arise in future, I find that the tenant is required to deal with only the landlord's agent and is not entitled to contact the owner directly. However, I order that the tenant is at liberty to send the owner

copies of any written communications that are sent to the landlord's agent about bona fide tenancy matters.

The tenant's request for monetary compensation for loss of quiet enjoyment due to alleged harassment by the landlord is dismissed with the expectation that the landlord will act in a professional manner from now on. It is also expected that neither party will confront the other, use rude language or raise their voices. Written communication should prevent such incidents.

Based on the testimony and evidence discussed above, I hereby order that the tenant is entitled to total compensation of \$205.15, comprised of \$80.15 for loss of a refrigerator in the suite for 5 days, \$75.00 towards food replacement purchases and the \$50.00 cost of the application. I order that the tenant deduct \$205.15 from the next month rent owed.

Based on the testimony and evidence discussed above, I hereby order that the landlord and tenant restrict all communications between them to written form if possible. The landlord is ordered to follow section 29 of the Act for accessing the tenant's unit and comply with the tenant's right to privacy by not overtly monitoring the tenant or her guests.

Finally I hereby order that the One-Month Notice to End Tenancy for Cause is cancelled and of no force nor effect.

### **Conclusion**

The tenant is partially successful in the application and the One-Month Notice to End Tenancy for Cause is cancelled. The tenant is also granted a retro-active rent abatement and compensation for loss of food and refrigeration. The parties are ordered to communicate in written form only and the landlord is ordered to comply with sections 28 and 29 of the Act in respecting the tenant's right to quiet enjoyment and privacy.

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: June 12, 2014

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Residential Tenancy Branch



