



# 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 the tenant's Application for Dispute Resolution seeking a rent reduction and a monetary order. The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

At the outset of the hearing I confirmed with the landlord's agent that he had received all of the tenant's evidence. However, there was no evidence submitted by the tenant in the Residential Tenancy Branch file. As the landlord's agent had received the evidence I allowed the hearing to commence.

At the same time the tenant had his evidence faxed directly to me and it arrived part way through the hearing. The tenant provided very detailed testimony during the time that the evidence was not in front of me and I have considered all of that testimony and all of the documentary evidence submitted.

After hearing all testimony regarding the tenant's claim he asked for an adjournment so that he could provide submissions related to case law on the requirement to use insurance as a form of mitigation. I granted the tenant could provide written submissions on this specific issue.

I ordered the tenant must submit his written submission to the Residential Tenancy Branch and to the landlord's agent no later than the end of business on August 29, 2014. I also ordered that the landlord's agent could provide written submissions to the tenant and the Residential Tenancy Branch no later than September 12, 2014.

I note that on August 29, 2014 the tenant submitted 71 pages of additional evidence and written submissions. I also note that some of the tenant's submissions included additional arguments regarding the purchase of a mini fridge and the requirement under the tenancy agreement to purchase insurance (different than the issue of using insurance as form of mitigation).

The tenant also provided additional evidence regarding potential costs for the purchase of a mini fridge (obtained after the hearing) and additional evidence regarding costs and terms of tenant's insurance (obtained after the hearing).

As I only granted the tenant an opportunity to provide submissions related to case law on the requirement to use insurance as a form of mitigation I have not considered any of his additional evidence or submissions, with one exception.

The tenant has submitted a proposal to reduce the amount of his claim. He notes that his determination of \$1,000.00 per month for the loss of enjoyment of the property was arbitrary and without conceding that his original claim was unreasonable he is prepared to reduce this portion of his claim to \$500.00 per month for a total of \$1,000.00. The tenant provided no information as to how he determined \$500.00 per month for this value.

The tenant also submits that he had failed to deduct the amount of expenses he would have incurred had he not had to eat out in restaurants during the relevant time period from the amount of his claim. The tenant suggests \$300.00 per month or a total deduction of \$600.00 reducing his meal claim to \$610.87.

I concur with the tenant's submission that the landlord is not prejudiced by this reduction in claim and I accept the tenant's reduction of his total monetary claim from \$3,714.76 to \$2,114.76.

The landlord did not provide any written submissions prior to September 12, 2014.

#### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation; to a rent reduction; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 67, and 72 of the *Residential Tenancy Act (Act)*.

#### Background and Evidence

The parties agreed the tenancy began on December 15, 2011 as a 1 year fixed term tenancy that converted to a month to month tenancy on December 15, 2012 for the current monthly rent of \$1,680.00.

A copy of the tenancy agreement was provided and includes Clause 15 which states tenants are required to carry adequate insurance coverage for fire, smoke and water damage and theft on their own possessions and may be held liable for accidental injury, accidental damage, or accidental breakage arising from the Tenant's abusive, willful or negligent act or omission or that of his guests, in his use of the Landlord's services and property. If requested, the tenant must provide a copy of insurance.

The parties agree that on September 10, 2013 the tenant informed the landlord by email that the fridge in the rental unit was broken. The parties agree that the fridge required a special order and that the landlord had arranged for a new fridge. The parties agree the

supplier had originally indicated it would take several weeks for the replacement to arrive and be installed.

There is no dispute that a replacement fridge was installed that also failed to work properly and a new replacement was provided. The total process took approximately 7 weeks with the 2<sup>nd</sup> replacement fridge being installed on November 1, 2013.

When it was determined that it may take several weeks for the new fridge to be installed the landlord offered, in an email dated September 13, 2013, to have the tenant purchase a mini fridge and that they would reimburse him \$150.00.

The tenant submitted another email dated October 14, 2013 stating that he did not purchase a mini-fridge because he could not find one within the budget required and he could not wait for delivery as it would not fit in his car. He stated in this email that he decided to wait until the new fridge was installed.

In this same email the tenant proposed to the landlord that even though he had lost a substantial amount of food he would be willing to accept “a full painting of the interior of the apartment, including trim and the ceiling in the living area; and reimbursement for the blinds I had installed in the bedroom (I have receipts – approximately \$300, I believe)” as compensation.

The tenant submitted also a string of emails dated October 21, 2013 to October 26, 2014 regarding the first replacement fridge. In this string of emails the landlord offers to purchase the tenant a mini fridge while waiting for the second fridge replacement for which the tenant declines referring to his previous offer to accept painting and payment for blinds. The landlord's response dated October 26, 2013 states: “The Owner would agree to do the touch up paint, if that's what you prefer”.

Several more emails were submitted into evidence that show an ongoing discussion regarding whether or not the parties had agreed to the compensation suggested by the tenant and whether or not it was completed. The emails show that the landlord had authorized “touch up painting” only but did not agree or complete anything else requested by the tenant.

The tenant seeks compensation as amended in his written submission of August 29, 2014 as follows:

Description	Amount
Replacement of spoiled foodstuffs	\$503.89
Restaurant meals	\$610.87
Reduction in Rent \$500.00 per month for 2 months	\$1,000.00
<b>Total</b>	<b>\$2,114.76</b>

The tenant submits that he had been planning on entertaining several guests and had already purchased a substantial amount of food specifically for this event. He submits that as a result all of this food was destroyed. The tenant did not provide any receipts or any other evidence of any foods purchased prior to September 10, 2013. He did provide several receipts for purchases made on December 29, 2013 (4 receipts) and January 5, 2014 (1 receipt). The total amount of the receipts was substantially higher than the amount claimed.

The tenant submits that in addition to the loss of food in his fridge he had to eat out every meal (breakfast, lunch, and dinner) every day for the period while he was without a fridge. The tenant has submitted copies of two "Master Card Details" with all personal information severed but showing transactions at restaurants; fast food restaurants; coffee shops; bakeries; pubs; and grocery stores.

The tenant indicated that he should not be expected to go to the store in his pajamas to buy his breakfast and even if he did he had no place to store any unused milk. He also submits that even if he had picked up food for a dinner meal he had no place to store any condiments so he could not prepare meals at home.

The tenant also originally sought compensation for the inconvenience of not having a fridge in his rental unit in the amount of \$1,000.00 per month for two months, recognizing that rent at the time was \$1,650.00. The tenant reduced this claim to \$500.00 per month as noted above. The tenant submits that the fridge is the most important appliance in the rental unit and without it he could not enjoy the full value of the rental unit.

The landlord submits that even if the tenant has suffered these losses he should have insurance that would cover any such losses. The tenant submits that he does not have insurance and even if he did he should not be required to access as a result of the landlord's failure to maintain the fridge.

### Analysis

Despite the email discussion between the parties regarding the tenant's offer to forego all the issues related to compensation for the lack of fridge if the landlord completed some painting and reimbursed the tenant for blinds, I find that no actual agreement was reached on the proposal and as such the issue of compensation was not finalized between the parties.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; **and**

4. Steps taken, if any, to mitigate the damage or loss.

In regard to the requirement for the tenant to have insurance as a condition of the tenancy agreement and the use of that insurance as a form of mitigation, I note that the tenancy agreement is very specific as to what the landlord expects the insurance to cover.

The most relevant section of the clause requires the tenant to have insurance that will cover: "accidental breakage arising from the Tenant's abusive, willful or negligent act or omission or that of his guests, in his use of the Landlord's services and property".

As there is no evidence before me that the tenant or his guests were abusive, or committed a willful or negligent act or omission in use of the fridge, I find the requirement of insurance for this circumstance was not required under the tenancy agreement. I therefore find the tenant cannot be compelled, in this instance, to be required to make an insurance claim as a form of mitigation.

Section 27 of the *Act* states a landlord must not terminate a service or facility if it is essential to the tenant's use of the rental unit or its provision is a material term of the tenancy agreement. The Section goes on to state that a landlord may terminate or restrict a service or facility by other than one noted above if the landlord gives the tenant 30 day's notice and reduces the rent by an amount equivalent to the reduction in value of the tenancy agreement.

Section 32(1) of the *Act* requires a landlord 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, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

From the above noted sections of the *Act* I find that there is no specific requirement that a landlord must provide a fridge for a tenant in a rental unit. However, the tenancy agreement signed by these parties does require the landlord to provide a fridge as a part of the tenancy.

Based on the testimony of both parties I am satisfied that for the period of September 10, 2013 to November 1, 2013 the subject rental unit's fridge was not working through no fault of either party.

Despite the provision of no evidence to confirm what, if any, food the tenant had in his fridge at the time the original fridge broke down or that any of the food that was in the fridge was spoiled, I find based on a balance of probabilities that the tenant did suffer a loss of some food products resulting from the breakdown.

While the tenant has provided receipts for foods he purchased a couple of months after he had the new fridge I find that these receipts do not provide evidence that he lost these foods on or before September 10, 2013.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award “nominal damages”, which are a minimal award. These damages may be awarded where no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

As such, in regard to the tenant’s claim for spoiled food I grant the tenant \$50.00, subject only to his obligation to mitigate any losses. As there was no evidence before me that the tenant was aware of the potential of the breakdown of the fridge, I find there is no expectation the tenant could have taken any steps to mitigate this loss.

Section 65 of the *Act* stipulates that should I determine the landlord has failed to comply with the *Act*, regulation or tenancy agreement I may authorize a reduction in past or future rent in an amount that is equivalent to a reduction in the value of the tenancy agreement.

I concur with the tenant’s position that as a result of not having a fridge the value of the tenancy would have been reduced for the period that he was without a fridge. However, despite his submission to reduce the amount of this portion of his claim from \$1,000.00 per month to \$500.00 per month from a total rent of \$1,650.00 per month I find the tenant has provided insufficient justification for this amount.

Despite the tenant’s submission that the fridge was “the most important appliance in a rental unit” I find that suggesting that the value of having a fridge in the rental unit is close to 1/3 of the value of the rental unit is not supported by any evidence submitted by the tenant. The lack of fridge does not prevent the tenant from sleeping; toileting; bathing; cooking food; dining, cleaning dishes; lounging, entertaining, watching television or other activities that tenants may enjoy in a rental unit.

Based on the above, I grant the tenant nominal damages as a reduction in rent in the amount of \$100.00 per month for the loss in value of the tenancy during this period. As per the tenant’s submission he was without a fridge from September 10, 2014 to November 1, 2014 or 7 weeks (1 week less than 2 months) and is therefore entitled to \$175.00, subject only to his obligation to mitigate any losses.

As there was no evidence before me that the tenant was aware of the potential of the breakdown of the fridge or any control over how long it took the landlord to replace the fridge, I find there is no expectation the tenant could have taken any steps to mitigate this loss.

In regard to the tenant’s claim for \$610.87, while I accept that the tenant may not have been able to store perishable products that required refrigeration I find the tenant has not provided any evidence that he could not store non-perishable foods or that he could not purchase food items on an as needed basis.

I accept that this may have restricted the tenant from his usual diet but I find the lack of a fridge did not prevent him from eating at home through his own grocery purchases. As examples, the tenant provided no evidence as to why he could not buy fresh or canned fruit and vegetables that did not require refrigeration; or why he could not have bread; pastries or other breakfast foods and beverages.

Further, while I accept the tenant may not have been able to find a mini-fridge within the \$150.00 day range that the landlord had offered, I find the tenant made no attempt to inform the landlord that he could not find one until his email dated October 14, 2013. This was at least one month after the landlord made the offer.

In addition, the tenant completely rejected the landlord's offer made on October 25, 2014 to get a mini-fridge when the first replacement fridge was also not working. I note that the tenant responded the same day and said that he could use the first replacement fridge for meat; cheese; and condiments.

Based on this, I dismiss the portion of the tenant's Application seeking compensation for the purchase of meals during the relevant period of time.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$250.00** comprised of \$50.00 compensation for lost food; \$175.00 rent reduction for the period without a fridge; and \$25.00 of the \$50.00 fee paid by the tenant for this application, as he was only partially successful in his claim.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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*.

Dated: September 18, 2014