



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      mndc, rp, rr, o

### Introduction

The tenant applies for an order for repair to the fridge and bedroom paint, as well as a monetary order for lost food, harassment, and loss of quiet enjoyment of the premises.

### Issue(s) to be Decided

Is the tenant entitled to an order for repair or replacement of the fridge?

Is the tenant entitled to an order for painting of patched areas on the bedroom walls?

Is the tenant entitled to monetary compensation from the landlord?

### Background and Evidence

This tenancy began August 1, 2014. Monthly rent is \$850.00. A security deposit of \$425.00 was paid.

Key components of the tenant's evidence are as follows:

- The tenant's fridge leaks water. She requires a freezer in addition to the fridge, which is only a small, bar style fridge. When she first moved in she had to discard some food that spoiled due to water leaking from the fridge. She now has addressed the issue by using paper towel to contain the water, and keeping food in plastic so that it does not spoil from the water that leaks.
- The bedroom has areas that are patched but need to be painted.
- Rather than attend to these various issues, the landlord harasses the tenant. The worst occasion occurred when the tenant tried to speak to the landlord about the problems, but rather than deal with them, the landlord called the police. The landlord requires all correspondence in writing.

Key components of the landlord's evidence are as follows:

- The rented unit has only a convenience kitchen, not a full kitchen, as the tenant was aware when she rented the premises. The fridge was working normally for the previous tenant, with no complaint. The tenant knew or should have known, that the fridge did not have a freezer, yet came to the premises at the start of the

tenancy with frozen food that required freezing. The landlord offered a new fridge to the tenant and one was selected by the tenant. The fridge took weeks to arrive because it was back-ordered. The tenant refused to accept it when it arrived, and has used the original fridge throughout the tenancy.

- The unit had paint stored in it, but the tenant moved the paint out when she took possession. The landlord needed this paint to do the requested touch-up work to the patched areas in the bedroom. The tenant brought the paint back into the unit at the landlord's request, but left it there with the lids open, ruining the paint.
- The landlord called the police after the tenant stopped her vehicle while she was trying to leaving, and after the landlord was able to drive off the tenant followed up with numerous angry and abusive phone messages.
- It is not the landlord that is harassing the tenant, but rather the tenant that harasses the landlord and other tenants.

### Analysis

Some degree of culpability lies with each of the parties in this dispute. The landlord denies the fridge requires repair, on the advice given by a plumber that all fridges "sweat" to some degree. This is not a sufficient response by a landlord to an allegation of a leaking fridge. The landlord is obliged on such advice to have the fridge inspected by someone qualified in fridge repair, and to repair or replace the fridge if there is any evidence of leakage. Notwithstanding this, the landlord did offer a new fridge to the tenant, and in fact ordered a new fridge for her. The tenant's refusal to accept the fridge that was ordered demonstrates a lack of willingness to cooperate with the landlord or accept the terms of her tenancy which does not require that a freezer be provided by the landlord.

Having considered these factors, I accept that the fridge is not working properly, and that the landlord remains responsible to provide the tenant with a properly working fridge. I therefore order that the landlord repair or replace the fridge. If replaced, there is no requirement that the landlord consult with the tenant as to the nature of the fridge that is provided, as long as the fridge is at least of the same size and quality as the prior fridge, and has at minimum the same features as the former fridge. The landlord can purchase a new fridge for the tenant, and arrange (with proper written notice) a time for delivery and installation and removal of the old fridge. Alternatively, the landlord can arrange to have the old fridge repaired. Again, the landlord must give the required written notice for entry to the premises, for a certified fridge repairer to enter the premises and effect the necessary repair to the fridge.

I make no order for monetary compensation for loss of food. The tenant acknowledges the fridge remains functional on a short basis, and I find no reason as to why that solution was not made immediately. Section 7 of the Act required that the tenant do whatever was reasonable to minimize any loss, and the tenant should have taken the steps she now takes from an early date. Further, the tenant's refusal to accept the replacement fridge was unreasonable under the circumstances.

I accept that the landlord was willing to do the paint work, but that the conduct of the tenant has now made that work impossible without new paint being purchased. If the tenant still wishes the painting to be done by the landlord, the tenant must either first purchase the necessary paint, or alternatively must pay the landlord the cost of such paint. Once that has occurred, the landlord must immediately attend to the painting.

The tenant claims she has suffered loss of quiet enjoyment, and in particular that the landlord has harassed her. The burden of proof that the landlord has harassed the tenant lies with the tenant. That burden is not met in this case. While it is possible that the tenant has been harassed by the landlord, it is equally possible that the reverse is true, as contended by the landlord. Under these circumstances no compensation for loss of quiet enjoyment will be made.

### Conclusion

The landlord must repair or replace the fridge. No order can be made as to the painting repair, and no monetary award is awarded to the tenant.

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: October 27, 2014

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Residential Tenancy Branch

