



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC INVESTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: RP RR MNSD FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord repair and maintain the property pursuant to section 33;
- b) Compensation or a rent rebate pursuant to section 65 for loss of a working refrigerator for extensive periods of time;
- c) To return the security deposit; and
- d) To recover filing fees for this application.

Service:

The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution personally and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

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

Has the tenant proved on the balance of probabilities that the landlord has not maintained the property contrary to sections 32 and 33 of the Act? Is the tenant entitled to compensation for loss of a working refrigerator and if so, how much? Is the tenant entitled to a refund of his security deposit and to recover the filing fee for this application?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced November 1, 2013, rent is \$730 a month and a security deposit of \$325 was paid.

The tenant described his ongoing problems with the refrigerator in his unit. A new refrigerator was delivered to his unit on October 20, 2014 according to the delivery records. There is a written record of him complaining about refrigerator problems on November 7, 2013 and on September 9, 2014, he notes on the repair request form that

he has had ongoing issues and has had to throw out food several times since November 13, 2013. He asks that he not be given another moldy refrigerator as temporary replacement for he has had to clean out them three times. On August 29, 2014, he notes he had to throw out \$100 of groceries. He notes that he did not keep records of his maintenance requests between November 13, 2013 and July 2014. He made multiple notifications of the refrigerator not working to the caretaker in July 2014 i.e. July 5, 10 and 26.

The caretaker said he had to defrost the refrigerator manually and turn it on each time and let it cool down to temperature so this might take a day. He said this started in July according to his notes but two other persons were working prior to July and they may have dealt with other issues. He said after he put in another working refrigerator in November 2013, he thought there was no problem until July 2014. The manager stated she ordered a new refrigerator on September 22, 2014 when she received the notification; for the prior request on September 9, she said that parts were ordered and the caretaker was to install them. The tenant said the caretaker is not a refrigeration professional and the fixes did not work. He did his best but had to resort to a heat gun and remove the back panel to thaw out the coils to keep the old refrigerator working after it stopped (about every month). The tenant thinks it was the timer problem. A note in the landlord's evidence shows a temporary fridge replacement on July 28, 2014 and a timer, thermal fuse and defrost element ordered on August 29, 2014; it seems from a shop note on the bottom that the parts would not be available for 2-3 weeks.

The tenant totals his costs of replacing spoiled groceries, mainly dairy products, and eating in restaurants while his refrigerator was not working at approximately \$788 and enclosed bank statements and bills to support his claim.

Included with the evidence are statements from the parties, the tenancy agreement, the time line of correspondence, emails, and correspondence between the parties.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

According to sections 32 and 33 of the Act, it is the landlord's responsibility to maintain residential property in a state of repair that complies with health, safety and housing standards. While the manager maintained in the hearing that they acted promptly on requests and were not negligent in their duties, I find the weight of the evidence is that the caretaker was dealing with the issues of the refrigerator breakdown for months before the official notification to the manager. It appears that the general policy was to

provide tenants with another temporary replacement when their refrigerators stopped working and this was done for the tenant in November 2013. I find the tenant had to clean these replacements and it happened at least twice prior to July 2014 with some resulting food spoilage each time. I find his evidence credible that he had issued upwards of 10 notifications prior on the standard repair request forms (as he noted on his request on September 9, 2014). I find his evidence credible that the fixes did not work and parts were slow in coming. His evidence is supported by the order for temporary fridge replacement on July 28, 2014 and a timer, thermal fuse and defrost element ordered on August 29, 2014; it seems from a shop note on the bottom that the parts would not be available for 2-3 weeks. I find it credible that he was without a working refrigerator for 15 days in September 2014 and a significant time in July and August 2014. I find the weight of the evidence supports his statement that he lost approximately \$186.00 in food spoilage from August to September 2014. In addition, he had to eat in restaurants for he could not keep food to prepare in the refrigerator and I find his evidence of approximately \$252 in restaurant costs to be well supported by his evidence.

I find he also lost the use of an important facility, the refrigerator, in his unit for three weeks in September and for a few days each month when it would not defrost. I find it credible that this added stress to his life as he could not reliably count on being able to host anyone and it was considerable work to clean out old replacement refrigerators. I estimate adding two days for interrupted use in each month from January to August 2014 (16 days) plus three weeks for lost use in September and October, the use would have been lost for a total of approximately 5 weeks. I find it reasonable to award the tenant \$25 for each week of lost use or \$125 plus \$75 for his stress and effort to clean out old temporary replacements. I find insufficient evidence to support his further claims for recovery of fax and letter costs and furthermore, costs of this process are limited to the filing fee of \$50 as set out in section 72 of the Act. In respect to his request for the return of his security deposit, I find he has not vacated the unit and recovery of this deposit is limited by section 38 of the Act so I dismiss this portion of his claim.

While I find the landlord did try to address the problems through the caretaker or manager, I find the preponderance of the evidence is that the tenancy was significantly devalued for the tenant by the continual problems of the refrigerator and loss of its use.

### **Conclusion:**

Pursuant to sections 65 and 67 of the Act, I find the tenant entitled to a monetary award or rent rebate and to recover the filing fee as follows:

Food spoilage reimbursement	186.00
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Restaurant reimbursement	252.00
Loss of use and stress	200.00
Filing fee	50.00
Total monetary award/rent rebate to tenant	688.00

**I HEREBY ORDER THAT the tenant's rent for January 2015 is reduced to \$42.00 to recover the ordered rebate.**

I dismiss other claims of the tenant without leave to reapply.

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: November 20, 2014

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Residential Tenancy Branch

