



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, MNDC, and FF

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

The Tenant stated that on December 30, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

### Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit and to compensation for deficiencies with the rental unit?

### Background and Evidence

The Tenant stated:

- this tenancy began on March 01, 2004
- that a security deposit of \$325.00 was paid on February 17, 2004
- that when this tenancy began she was paying monthly rent of \$650.00
- that when this tenancy ended she was paying monthly rent of \$750.00
- that this tenancy ended on December 31, 2012
- that the tenant mailed her forwarding address to the Landlord on, or about, January 09, 2013
- that the Tenant did not authorize the Landlord to retain the security deposit
- that the Landlord did not return any portion of the security deposit

- that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Tenant stated that sometime in 2005 or 2006 the refrigerator stopped working. She stated that when it was repaired the technician informed the Landlord that the refrigerator should be replaced. She stated that approximately 3 to 5 weeks later the refrigerator stopped working again. She stated that she immediately informed the Landlord, who did not replace the refrigerator until 17 days after it was reported. The Tenant is seeking compensation of \$170.00 for being without a refrigerator for 17 days.

The Tenant stated that because of the delay in replacing the refrigerator most of the items in the freezer and fridge were spoiled. She stated that most of the items in her freezer were seafood. She stated that she stores a large amount of food because she lives in a remote community and she cannot shop on a regular basis. She estimates that she lost approximately \$400.00 in food, which she is seeking to recover.

The Tenant submitted a bank statement which shows that she spent \$595.95 at grocery stores between February 18, 2004 and February 25, 2014. She stated that she submitted this document to show that she typically purchased a large amount of food at one time.

The Tenant stated that when she moved into the rental unit she noticed a blue tarp on the exterior of the residential complex. She stated she discussed the tarp with the Landlord and was told that mould had been discovered in the bedroom wall. She stated that the Landlord did not tell her the mould was dangerous nor did she tell her she could not use the bedroom.

The Tenant stated that black, toxic mould was visible on the interior of the bedroom so she opted not to use the bedroom, as she was concerned the mould may pose a health risk. She stated the walls were not repaired until October or November of 2005 and she is seeking compensation for being unable to use the bedroom for the first several months of the tenancy.

The Tenant stated that the rental unit sustained water damage on June 06, 2007 as a result of a damaged pipe, which she believes was damaged by contractors working at the residential complex. She stated that she was required to vacate the rental unit until August 07, 2007 so the resulting damage could be repaired. The Tenant stated that she paid rent for June, July, and August of 2004 and she is seeking to recover the rent for the period she was unable to occupy the rental unit, at a rate of \$162.50 per week.

### Analysis

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit

plus interest or make an application for dispute resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution and more than 15 days has passed since the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation. The definition of service or facility in the *Act* includes appliances. As it is generally accepted that a refrigerator is an essential item, I find that the Landlord had an obligation to ensure that the Tenant had a functioning refrigerator.

Although a landlord cannot ensure that an appliance will never malfunction, I find that landlords have an obligation to ensure malfunctioning appliances are repaired or replaced in a timely manner. I find that the Landlord breached section 27(1) of the *Act* in 2005 or 2006 when she did not repair or replace the refrigerator in a timelier manner. I therefore find that the Tenant is entitled to compensation for the 17 days she spent without a functioning refrigerator.

Section 65(1)(f) of the *Act* authorizes me to order that past or future rent be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. I find that living without a refrigerator for 17 days does reduce the value of the tenancy. Determining the amount the tenancy has been devalued is highly subjective; however I find it reasonable to determine that the value of the tenancy in these circumstances was reduced by 10%. This award is to reflect the fact that the Tenant still had possession of the entire rental unit and all the other services/facilities provided with the tenancy.

As the Tenant did not know when the rent was first increased, I find it reasonable to award compensation of 10% of the original amount of one month's rent, which **equates** to \$65.00.

Section 67 of the *Act* authorizes me to award compensation if a tenant suffers a loss as a result of a tenant breaching the *Act*. On the basis of the undisputed testimony and the bank statement submitted in evidence, I find that the Tenant lost approximately \$400.00 in food as a result of the malfunctioning refrigerator. As I have determined that the Tenant breached section 27(1) of the *Act* when she did not repair or replace the refrigerator in a timelier manner, I find that the Tenant is entitled to compensation for the spoiled food, in the amount of \$400.00.

I find that the Tenant has submitted insufficient evidence to show that she was unable to use the bedroom in the rental unit for any period of time as a result of mould. In

reaching this conclusion I was heavily influenced by the absence of expert evidence that establishes the mould posed a health risk and/or the absence of evidence, such as photographs that demonstrate the extent of the problem, which might help me conclude that the Tenant's health concerns were reasonable. As the Tenant has failed to establish that her decision to not use the bedroom was reasonable, I dismiss the claim for being unable to use the bedroom as a result of mould.

On the basis of the undisputed evidence, I find that the Tenant was required to vacate the rental unit between June 06, 2007 and August 07, 2007 to facilitate repairs to the rental unit. As the Tenant was unable to use the rental unit for this period, through no fault of her own, I find that she is entitled to a rent refund for the rent she paid for those 62 days. The Tenant is seeking compensation at a weekly rate of \$162.50, which is \$23.21 per day. I therefore find that she is entitled to compensation of \$1,439.02 for those 62 days.

I find the Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing this Application.

### Conclusion

The Tenant has established a monetary claim of \$2,615.53, which is comprised of double the security deposit (\$650.00), \$11.51 in interest on the original amount of the security deposit, \$1,439.02 for being unable to use the rental unit for 62 days, \$465.00 for compensation related to being without a fridge for 17 days, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. I grant the Tenant a monetary Order for \$2,615.53. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and 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: March 26, 2015

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Residential Tenancy Branch

