



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNSD, MNDC, MNR, OLC, FF

### Introduction

This hearing convened as a result of Tenants' Application for Dispute Resolution wherein the Tenants requested the following relief:

- monetary compensation from the Landlords;
- return of the security deposit paid;
- an Order that the Landlords comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement; and,
- to recover the amount paid for the filing fee.

The hearing was conducted by teleconference on November 27, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Tenant, S.Z., stated that he wished to appeal, or apply for review consideration of, a Decision made October 20, 2017 providing the Landlord with a Monetary Order in the amount of **\$4,804.71** as well as authority to retain the Tenants' security and pet damage deposit.

The Tenants were informed that they must make an application for Review Consideration pursuant to section 79 of the *Act*, or make an application for Judicial Review of the October 20, 2017 Decision, and that such relief was not available in the within hearing.

As the October 20, 2017 Decision dealt with the Tenant's security deposit, the Tenant's claim before me was reduced to \$1,575.00.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlords?
2. Should the Landlords be Ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement?
3. Should the Tenants recover the filing fee?

Background and Evidence

The Tenant testified that this fixed-term tenancy began on July 1, 2016, and was to end on June 30, 2017. The tenants moved out on December 31, 2016. Monthly rent was set at \$2,175.00, and the Landlords collected a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00.

In the within action the Tenants sought the following:

replacement of spoiled food due to broken freezer	\$800.00
laundromat costs due to broken washing machine	\$150.00
electricity costs to power and heat common areas	\$525.00
emergency repair costs for washing machine	\$50.00
emergency repair costs for freezer	\$50.00
TOTAL CLAIMED	\$1,575.00

A.Z. testified that the refrigerator stopped working in November of 2016. She stated that on November 2, 2016, after being away all day, they came home and the refrigerator door was wide open as the “seal had gone in both the doors”. She claimed that the entire contents of the fridge were spoiled and needed to be replaced.

A.Z. stated that they informed the Landlord by email dated November 4, 2016 (a copy of which was included) that the freezer seal was malfunctioning as well as informing the Landlord that the seal on the washing machine was also not working.

A.Z. stated that on November 15, 2016 they informed the Landlord that they had to throw out all the contents of their refrigerator and freezer due to the lack of seal. She stated that the Landlord, P.S., told them that he could not have a repair person attend to the repairs until later in November.

Introduced in evidence were the Tenants’ bank statements showing transactions totalling \$800.00 made on November 2, November 17, and November 28 which the Tenants claim were evidence of the costs of the replacement of food. The transactions were for stores in the United States and did not provide any specifics as to the items purchased. When I asked the Tenant whether the food costs were for unperishable items as well, she became upset and accused me of being rude to her.

A.Z. also claimed compensation for laundromat costs. She stated that when they moved into the rental unit there was a chunk out of the washing machine seal. She stated that when they asked the Landlord for it to be repaired, they were told not to use the washing machine and as such used a drop off laundromat service. She stated that they did not have receipts, but claimed to use their bank card and credit card to pay for this \$150.00 cost.

A.Z. stated that they sought the sum of \$525.00 for increased electrical costs as, following the end of the tenancy, they discovered that they were paying for electricity for common areas. A.Z. stated that they were unaware that the Landlord's garage and patio lights as well as the other occupant's exterior lights were being powered by their utility bill. A.Z. stated that the estimate is based on the time period July 31, 2016 to December 22, 2016. The estimated cost was \$75.00 per month, which they estimated as 33% of the total bill.

The Tenants also sought \$50.00 for the cost of emergency repairs to the washing machine. The Tenant stated that in July 2016 and October 2016 when the washer overflowed into their hallway closet her husband attempted to fix the washer with sealant and duct tape. She claimed these items cost \$50.00.

The Tenant S.Z. also testified. He confirmed that the \$800.00 claimed for food in the refrigerator and freezer was correct.

He further confirmed that they were without a washing machine for 23 days.

In terms of the increased electrical costs, he stated that he is trained as an estimator for project management and constructions projects, and he took the square footage of the common areas as well as the garage which he estimated as 33% of the total square footage of space with the same electricity.

He further stated that he attempted to fix the freezer with a lubricant and the washing machine with duct tape. He confirmed that one half of the cost claimed of \$100.00 related compensation for his labour.

The Landlord's spouse, M.S. testified as follows.

She confirmed that the Landlords were opposed to the Tenants' claim for the cost of spoiled food. She stated that her husband came by and looked at the fridge and determined there was nothing wrong. M.S. further confirmed that she did not observe the fridge although her husband did. She stated that he was not at the hearing as he was in the hospital. She further stated that her husband called an appliance repair company who stated that this is a common problem which occurs when the door shuts for either the fridge or freezer it creates an airlock and causes the other to open.

M.S. also confirmed that they have not made any repairs to the fridge or replaced it and that the new tenants have not complained about the fridge and that the fridge works fine.

M.S. also stated that at no time did the Tenants claim any loss of food, and only brought this up after the tenancy ended and they were made aware that the Landlord was seeking compensation for loss of rent. M.S. also stated that their claim that they incurred the cost of additional garbage bags for the spoiled food is not correct as she is the one who puts the garbage out.

M.S. submitted that the Tenants did not provide any original receipts and could have purchased clothes or other items as the stores they went to, Fred Meyer and Trader Joes, also carry other items. Further she noted that the Tenant testified that they replaced the food on those dates, yet the receipts are dated before the problem was apparently discovered (later in the day on November 2, 2016).

Finally the Landlord stated that at their last hearing the Tenant admitted he was so frustrated that he hit the freezer door. She suggested that if it was popping open, it was likely a result of the Tenant hitting the door.

The Landlord also stated that the freezer was very small, as it had an ice maker. She also noted that the Tenants testified that there was a wedding cake in there such that it is not possible that they had \$800.00 worth of food in the refrigerator and freezer.

In response to the Tenants' claim that they did not have a washing machine for 23 days, M.S. stated this was incorrect as in reality they were without a washing machine for six days. She stated that on November 4, 2017 her husband went to the rental unit and discovered it was broken. She stated that the Tenants then went on holidays on November 7, 2017 until November 15, 2017 such that the machine could not be fixed while they were away, and it was fixed on the first day the Tenants returned: November 16, 2017.

M.S. stated that the chunk out of the seal was caused by the Tenants' rescue dog. In evidence was a photo of the rip in the rubber seal. She stated that the repair person told her that a human cannot rip the rubber as it is too strong and informed her it would have been done by a dog.

In response to the Tenants claim for \$525.00 for the additional electricity costs, M.S. confirmed that the three pot lights in the "common areas", was in fact for the Tenants' parking. She also stated that they used the garage for storage as did the Tenants such that the Tenants also benefitted from this electricity.

M.S. further stated that the cost to light the parking with the lights was 39 cents per month for all three lights. She provided in evidence a copy of the package for the lightbulbs as well as the "cost calculator" from B.C. Hydro which showed the cost as 13 cents a month for each light.

The Landlords also provided the electrical cost of opening and closing the garage door from an internet source suggesting the cost of 90 cents per month to open and close the door 30 times a month.

In response to the Tenants' claim for the cost to repair the freezer, S.M. stated that there was no repair needed.

In response to the Tenants' claim to fix the washing machine, S.M. stated that the Tenants stated that it was leaking as of July 2016, yet they never told the Landlord until November 2016. She also stated that she did the move out condition inspection on June 30, 2016 with the former occupants and there was nothing wrong such that the damage was caused by the Tenants.

In reply to the Landlord's response, and in particular to the Landlord's concerns about the timing of the grocery purchases, S.Z. stated that they got home about 6:00 p.m. and when they saw the fridge was ajar they immediately drove down to the U.S. to purchase groceries and spent about \$300.00. He stated that the fridge malfunctioned again on November 15, 2016 and on November 17, 2016 at which time they again drove down and spent approximately \$300.00.

S.Z. further stated that their dog is a Chihuahua and has no teeth. He also stated that the rescuer dog is a Jack Russell terrier who had zero access to the laundry room.

S.Z. further that they moved in on June 25, 2016 such that the Landlord did not do a move out inspection on June 30, 2016 with the former occupants.

### Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenants have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I dismiss the Tenants' claim for \$800.00 for the cost of replacing their food. I find they have failed to prove the refrigerator and freezer doors malfunctioned to the extent that all their food was spoiled. More importantly, I find the Tenants have failed to provide evidence to support their claim that the \$800.00 spent was for perishable foods alone. The Tenants bear the burden of proving their claim and failed to provide receipts to support their claims. I agree with the Landlord that the stores in which the groceries were allegedly bought also sell a variety of non-food items as well as non-perishable food and I find it more likely, based on the amounts spent, that the Tenants purchased items which were unrelated to those stored in their refrigerator/freezer. I also find it inconceivable that they would immediately drive to the U.S. to replace their food upon discovering the refrigerator and freezer doors ajar. In doing so, they

potentially exposed themselves to further losses if the appliance was truly not functioning. For these reasons I dismiss their claim for \$800.00 for the cost to replace food.

I find the Tenants were without a washing machine for a period of time during their tenancy. I accept the Landlords' evidence that the repair was delayed to some extent due to the Tenants' holidays; however, I find the lack of a washing machine resulted in the Tenants incurring additional laundry costs. I find the Tenants are entitled to the **\$150.00** claimed for laundry services.

I find the Tenants have failed to prove the \$525.00 claimed for electricity costs to light the parking area and the garage as well as powering the garage door. I accept the Tenants' evidence that they were paying the costs of electricity in these areas, but I find the 33% claimed to be excessive based on the electrical needs of those areas as opposed to living areas in their rental unit. I also find the lights and garage door opener were used by the Tenants in addition to benefitting others. The Landlord submitted compelling documentary evidence to support a finding that the cost of powering the lights and garage door opener was significantly less. I therefore award the Tenants the nominal sum of **\$100.00**.

I find the Tenants have failed to prove their claim for the emergency repair costs for the washing machine and freezer. The Tenants failed to provide any documentary evidence to support their claim for \$100.00, stating they used sealant and duct tape and attempted the repairs themselves. In all the circumstances I find they have failed to prove this claim.

Having been only partially successful in their claim, I award the Tenants **\$50.00** of the filing fee paid.

#### Conclusion

The Tenants are awarded the sum of **\$300.00** for the following:

laundromat costs due to broken washing machine	\$150.00
electricity costs (nominal amount)	\$100.00
one half of filing fee	\$50.00
<b>TOTAL AWARDED</b>	<b>\$300.00</b>

The Tenants are granted a Monetary Order in this amount and must serve the Order on the Landlords. If necessary the Order may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: December 27, 2017

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**Residential Tenancy Branch**