



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LIGHTSTONE DEVELOPMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, RP, FFT

### Introduction

This hearing pursuant to the Residential Tenancy Act (the “Act”) dealt with the tenant’s application for:

- A monetary award for damages and loss pursuant to section 67;
- An order that the landlord perform repairs pursuant to section 33; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties appeared and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The corporate landlord was represented by its agent JL (the “landlord”).

As both parties were present service of documents was confirmed. The landlord testified that they were served with the tenant’s application and evidence. The landlord said they had not filed any evidence of their own. Based on the undisputed testimony I find that the landlord was served with the tenant’s application package in accordance with sections 88 and 89 of the *Act*.

During the hearing the tenant said that the issue requiring repairs had been dealt with and an order that the landlord perform repairs is no longer necessary. The tenant withdrew the portion of the application seeking an order that the landlord perform repairs.

During the hearing the tenant testified that the amount of the monetary award sought, recorded in the application is incorrect. The tenant said that the actual amount they are seeking is \$1,132.37. As correcting an error is reasonably foreseeable, pursuant to

section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the tenant's application to decrease the monetary claim from \$1,790.00 to \$1,132.37.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee for the application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began approximately 16 years ago and is currently on a month-to-month basis. The monthly rent is \$895.00 payable on the first of each month.

The tenant submits that in November, 2016 they began experiencing issues with their refrigerator. The tenant testified that the landlord did not respond to their concerns in a timely manner and as a result much of their food spoiled. The landlord provided a replacement refrigerator unit but the unit provided also did not function properly. The tenant said that the replacement refrigerator was noisy and prevented her from sleeping soundly. The tenant said that as a result she needed prescription sleeping pills. The landlord provided a second replacement refrigerator on March 5, 2018. The tenant said the second refrigerator worked better but there were still issues with its ability to control temperature. The tenant requested a technician examine the second refrigerator by an email on March 13, 2018. The tenant said that she hired a technician herself when the landlord would not make arrangements and a technician examined and adjusted the refrigerator on March 21, 2018.

The tenant seeks a monetary award in the amount of \$1,132.37 for the following items:

Item	Amount
Filing Fee	\$100.00
Registered Mail on Landlord	\$10.50
Medical Costs for Sleeping Pills	\$34.62
Cost of Spoiled Groceries	\$200.00

Loss of Quiet Enjoyment and Sleep	\$740.00
Technician Attending and Fixing Fridge	\$47.25
<b>TOTAL</b>	<b>\$1,132.37</b>

The landlord disputes the tenant's claims. The landlord states that they responded in a reasonable timeframe, that the replacement refrigerators were in working order and that any expenses incurred by the tenant were not a result of the landlord's negligence or actions.

### Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

While the tenant claims a monetary award of \$1,132.37 I find there is insufficient evidence to support the tenant's full claim. I find that the tenant has not met their evidentiary burden to show on a balance of probabilities that the full losses claimed arose as a result of the landlord's breach of the *Act*, regulations or tenancy agreement.

The tenant hired a technician to attend and inspect the second replacement refrigerator. I find that there is insufficient evidence that this was a cost borne as a result of the landlord's breach. The tenant informed the landlord by email dated March 13, 2018 that the refrigerator cooling function seemed to not be functioning. The tenant then contacted a technician directly and had them attend on March 21, 2018. I find that the landlord was not provided a reasonable opportunity to make arrangements. I do not find that a malfunctioning refrigerator to fall under the statutory definition of an emergency repair as it is neither urgent nor necessary for the health and safety or preservation of the rental property. It may certainly be an inconvenience, but I find that the tenant had no authorization under the *Act* or from the landlord to make arrangements for a technician to attend. Consequently, I find that this was an expense incurred by the tenant and not recoverable from the landlord under the *Act*.

I find there is insufficient evidence to support the tenant's claim for the cost of spoiled groceries. I find that the documentary evidence submitted by the tenant, including photographs and letters to be insufficient to determine that the tenant suffered a loss as a result of the landlord's violation and that the monetary amount of the loss is \$200.00 as claimed. I dismiss this portion of the tenant's application.

I accept the evidence that the tenant took sleeping pills and reported that they were necessitated by the noise created by the refrigerator. However, I do not find there is sufficient evidence in support of this portion of the application. While the tenant has submitted correspondence and letters from witnesses stating they heard the refrigerator noise I find this to be insufficient to determine that the noise was so intrusive that it affected the tenant's sleep. The tenant provided little evidence on the objective level of the noise caused by the appliance. The note from the physician simply recites what the tenant reported to the doctor as the reason for requiring sleeping pills and I find it is of little value in determining the level of noise. Furthermore, an applicant also has the onus to take reasonable steps to mitigate their losses. The tenant did not give evidence of other methods they attempted before turning to sleeping pills. Based on the evidence provided I am unable to determine that the sleeping pills were the only reasonable solution or that no other means were available. As I find that I am unable to conclude that the tenant's expenses for sleeping pills was necessary due to the noise nor that it was a reasonable loss I dismiss this portion of the tenant's application.

The tenant seeks a monetary award in the amount of \$740.00 for the loss of quiet enjoyment and disruption of sleep. The tenant calculates that she suffered 37 nights of restlessness at a rate of \$20.00 per night ( $37 \times \$20.00 = \$740.00$ ). As outlined above I do not find that there is sufficient evidence in support of the full amount of the tenant's claim. I accept the evidence that the refrigerator was malfunctioning and caused some disruption to the tenancy. I accept the evidence that the tenant reported the issue to the landlord and the landlord was not able to provide an adequate solution for several months. While I accept that there was a malfunctioning refrigerator in the rental unit which caused some intermittent noise I find there is insufficient evidence to show that the level of the noise was such that it caused major disruption in the tenancy.

The evidence provided indicates that the tenant was able to continue residing in the rental unit, entertain guests and continue her routine with only minimal disruptions. I find that there is insufficient evidence that the intermittent noise was substantial or that there was a significant impact on the tenant's quiet enjoyment. The tenant points to her disrupted sleep patterns but I find that there is insufficient evidence to link that to the malfunctioning appliance. Based on the totality of the evidence I find that a nominal

amount for loss of quiet enjoyment in the amount of \$100.00 is appropriate in these circumstances.

The tenant claims the cost of registered mail and serving the application and materials on the landlord. I find that this is not a loss incurred as a result of the landlord's violation but simply the cost of serving an application in accordance with the *Act*. The *Act* does not provide that the costs of service are recoverable and accordingly I dismiss this portion of the claim.

As the tenant's claim was partially successful I allow the tenant to recover the \$100.00 filing fee for this application from the landlord.

### Conclusion

I issue a monetary award in the tenant's favour in the amount of \$200.00 against the landlord. As this tenancy is continuing, I allow the tenant to recover the monetary award by making a one-time reduction of the next monthly rent payment to the landlord by that amount.

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: May 7, 2018

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Residential Tenancy Branch