



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC LRE MNDCT OLC PSF FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47; a monetary order for compensation for damage or loss under the Act pursuant to section 67; an order requiring the landlord to comply with the Act pursuant to section 62; an order that the landlord provide services or facilities required by law pursuant to section 65; an order to set conditions on the landlord's right to enter the rental unit pursuant to section 70; and authorization to recover the filing fee for this application pursuant to section 72.

Both the landlords and the tenant attended for this hearing. The tenant provided two witnesses to testify. Both parties were given a full opportunity to be heard, to present their affirmed testimony, and to make submissions. At the outset of the hearing, the tenant testified that she had vacated the rental unit: she withdrew her application to cancel the landlord's 1 Month Notice, for an order that the landlord comply with the Act, that the landlord provide facilities (a refrigerator), and that the landlord have conditions on his right to enter the unit. The tenant proceeded with her application for a monetary award against the landlords for \$1050.00 and her \$100.00 filing fee.

The landlord confirmed receipt of the tenant's application for dispute resolution package as well as the accompanying evidence submitted by the tenant.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order against the landlord for failure to provide a service or facility (refrigerator) agreed upon during the course of the tenancy?  
Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

This tenancy began on May 6, 2017 as a one year fixed term tenancy. A copy of the residential tenancy agreement was provided as evidence for this hearing. The tenant had paid a monthly rental amount of \$1250.00 and provided a \$625.00 security deposit at the outset of the tenancy. The tenant vacated the rental unit on April 28, 2018. At that time, the parties agreed that the landlords would retain \$250.00 of the tenant's security deposit. The landlord returned \$375.00 of the tenant's security deposit to her.

At the end of the tenancy, after the condition inspection report was completed at move-out, the parties both agree that they discussed the issues during the course of the tenancy and that an agreement was reached regarding the division of the security deposit. The landlord submitted that they did not file a claim seeking additional damage costs or rental loss from the tenant because this matter had been resolved in person on the move-out inspection date. The tenant submitted that the issue of the provision of a functioning refrigerator during the tenancy could not be resolved between the parties.

At this hearing, each party testified with respect to a variety of issues that occurred during this tenancy. However, the sole issue remaining unresolved between the parties as of the date of this hearing was whether the tenant is entitled to recover the cost of spoiled food and additional compensation for the landlord's failure to ensure she had a functional refrigerator during her tenancy.

The tenant testified that she notified the landlord that her refrigerator was not working on February 17, 2017. At that time, she also contacted her brother to help her try to repair her refrigerator. She testified that her brother was unable to fix the refrigerator and that the landlords said they would replace the refrigerator but they never did replace the refrigerator.

The tenant's brother testified that he both tried to fix the tenant's refrigerator and contacted the landlords on the tenant's behalf. The landlords supplied copies of the text correspondence between the tenant's brother and the landlords – the tenant's brother ("Witness EC") confirmed that the text correspondence submitted was accurate. The correspondence included a message from the tenant's brother to the landlords on the evening of February 17, 2017 indicating that he has fixed the refrigerator. In Witness EC's testimony he confirmed that he was able to repair the refrigerator on that evening and that he wrote to the landlords to tell them no further action was necessary.

The tenant testified that, while her brother was able to get the refrigerator working on the evening of February 17, 2017, the refrigerator would stop working regularly. She testified that she enlisted an advocate to help her in asking the landlords to replace the refrigerator.

The tenant's advocate ("Witness CL") testified that she contacted the landlords and sent messages to the landlords on a number of occasions. She testified that she only worked with the tenant on this one issue and did not know her before assisting her with this tenancy issue. She testified that the landlords would often agree to put a new refrigerator in the rental unit but would never actually do so.

Witness CL also testified that she was present on more than one occasion when the tenant had to empty out the contents of her refrigerator and throw away the contents because the food had gone bad. She testified that, because the tenant is a single mother, her agency purchased replacement food for the tenant on one occasion. She testified that she was not able to get the landlords to replace the refrigerator during the tenancy and has not been able to get them to compensate the tenant now that the tenancy has ended. She testified that there was a variety of contentious issues between these two parties during the tenancy.

The tenant submitted a photograph of a garbage bag full of food. She testified that the food had to be thrown out after the refrigerator did not stay cold and, as a result, her food was rotten. The tenant testified that she had to empty out and throw out the contents of her refrigerator at least three times. The tenant testified that each time, she lost approximately 2 weeks of groceries. She testified that, for her entire family, her 2-week groceries cost approximately \$150.00. The tenant produced one receipt reflecting a large purchase of groceries. She testified that she did not keep her other receipts and did not have photographs of the other rotten food.

The landlords' testimony was equivocal. At one point, the landlords both testified that they did replace the refrigerator. At another point, the landlords both testified that the refrigerator was not replaced because it continued to work. At another point, the landlords testified that they purchased another, used refrigerator for the tenant but that she would not allow them to deliver it to the property.

### Analysis

With respect to the provision of services or facilities agreed upon or required to be

provided during the course of the tenancy, section 27 addresses the landlord's obligation to the rental premises and a tenant. Section 27 states,

- 27     (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
  - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
  - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that the provision of a refrigerator was a service or facility that was material to the agreement between this tenant and these landlords. I find that the refrigerator was an essential part of the tenant's use of the unit, given that she has two children. Finally, I find that her communication and the communication of the tenant's advocate show that she required a functional refrigerator. The landlords never suggested that the refrigerator was not a service or facility that was a key element of this tenancy.

Based on all of the evidence submitted for this hearing as well as the testimony of all parties, that by March 1, 2017, the landlords were aware that the tenant's refrigerator was not functional. I find that, prior to March 1, 2017, based upon the communication of the tenant's brother who advised the landlords he had repaired the refrigerator, the landlords were not aware that a refrigerator was not functioning and a new refrigerator was required.

Pursuant to section 65 of the Act, when an arbitrator finds that a landlord has not complied with the Act, regulations or the tenancy agreement, an arbitrator will ensure that any monetary owed by the landlord to the tenant will be paid, by a rent reduction or direct payment from the landlord to the tenant. I find that the landlords did not comply with the Act by: failing to provide the refrigerator to the tenant once notified that it continued to function poorly. I find that the tenant is entitled to some compensation as a result of the landlords' failure.

In her application, the tenant sought \$1050.00 – she sought \$150.00 for loss of food in February and \$300.00 for each of the months March 2017 and April 2017. The tenant

has not provided sufficient evidence (in receipts, photographs or other materials) to support her claim for \$1050.00. However, I find that the tenant is entitled to \$125.00 for March 2017 and \$125.00 for April 2017 – this reflects 1/10<sup>th</sup> of the rent paid by the tenant for March 2017 and April 2017 – a significant portion of the rent for this essential feature of the tenancy. As stated, I find that the landlords were not sufficiently notified of the refrigerator issue in February 2017.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee for her application.

### Conclusion

I issue a total monetary award to the tenant in the amount of \$400.00.

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: May 10, 2018

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Residential Tenancy Branch