



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

On June 21, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Tenant attended the conference call hearing; however, the Landlord did not attend at any time during the 28-minute hearing. The Tenant testified that she served the Landlord with the Notice of Hearing by sending it via registered mail on June 22, 2018. The Tenant stated that the mail was signed by the Administrative Assistant for the Landlord and that was confirmed via the Canada Post website. I find that the Landlord has been duly served with the Notice of Hearing in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Landlord did not call into the conference, the hearing was conducted in their absence and the Tenants’ Application was considered along with the affirmed evidence as presented by the Tenant.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Should the Tenants receive a Monetary Order for compensation, in accordance with Section 67 of the Act?

Should the Tenants be reimbursed for the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

The Tenant provided the following undisputed evidence:

The one-year, fixed term tenancy began on August 1, 2015 and continued on as a month-to-month tenancy. The rent is currently \$1,081.00 and the Tenants paid a \$482.50 security deposit. A refrigerator was included as part of their monthly rent.

The Tenant testified that the Landlord was aware that the refrigerator in her rental unit needed to be replaced and that the Tenants were without a working fridge from May 15 to May 24, 2018. The Tenants claimed a loss of \$455.19 based on wasted food due to no refrigeration and the cost of dining out and restocking of food.

The Tenant stated that they didn't get a clear answer from the Landlord as to when the new fridge would be delivered, so the Tenants ended up dining out more than they would have. The Tenant acknowledged that they could have bought a cooler and kept it stocked with ice, but again, they expected that the fridge would have been replaced before ten days had passed.

The Tenant stated that they did not eat out at all times and felt like they were reasonable with the claim for losses.

### Analysis

Section 7(1) of the Act establishes that a Landlord who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Tenants for damage or loss that results from that failure to comply. Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the Tenant's testimony and evidence that the Landlord failed to provide a working refrigerator for 10 days during the month of May 2018, contrary to the Tenancy Agreement. The Tenant provided a Monetary Order Worksheet and receipts that detailed their claim and the related expenses they incurred as a result of not having a refrigerator. After reviewing this evidence, I find that the Tenant has established a monetary claim against the Landlord.

Before awarding a monetary claim to the Tenant, I have to consider Section 7(2) of the Act that states a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

Although the Tenant acknowledged that they could have bought a cooler and minimized the amount that they dined out, I also accept that the Tenants were adapting to life without a refrigerator and that not knowing the date when they would have a new refrigerator added to the expenses that the Tenants incurred. When I consider the per/day cost for food for two people over ten days, I don't consider the Tenant's monetary claim (that would work out to less than \$50.00 per day) unreasonable.

As a result of the above undisputed testimony, evidence and findings, I find the Tenants have established a monetary claim in the amount \$455.19 as compensation for their food expenses while their refrigerator was not working. As the Tenants' Application was successful, I find that Tenants should be reimbursed for the \$100.00 filing fee and have established a total monetary claim for the amount of \$555.19.

### Conclusion

I find that the Tenants have established a monetary claim in the amount of \$555.19, pursuant to Section 67 of the Act. I authorize the Tenants to deduct this amount from a future rent payment to the Landlord, in accordance with Section 72(2) of the Act.

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: October 11, 2018

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Residential Tenancy Branch