



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IVANHOE HOTEL  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            OLC, RR

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 27, 2018, wherein the Tenant requested monetary compensation from the Landlord for the cost of replacing a refrigerator and mattress at the rental unit and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on January 10, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to 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 parties confirmed their email addresses during the hearing and their understanding that this Decision would be emailed to them.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or the tenancy agreement?

### Background and Evidence

The Tenant testified that his tenancy began November 2016. He confirmed that the rental unit is a semi furnished room in a multi-unit dwelling; the Landlord provides a bed, a refrigerator and a bathroom sink.

The nature of the Tenant's Application relates to his request for monetary compensation for the cost he incurred to replace the mattress and the refrigerator. Additionally, on his application the Tenant requested that the Landlord repair one of the toilets on his floor.

The Tenant testified that there are three bathrooms on each floor, two which are for men and one for women. He estimated that there are between 26 and 27 people living on each floor.

The Tenant stated that within 2-3 days of filing his application the Landlord replaced the toilet such that it was no longer at issue although he did confirm that the toilet was not functioning from May until the day it was replaced, which was approximately six months.

The Tenant claimed that the refrigerator in his rental unit made noise and smelled. He stated that it was dumping a lot of water outside the door and the bottom was filling up with water. He said when he first moved in he was working as a long haul truck driver and when he would return after a few days the floor would be soaking wet.

The Tenant stated that he could not recall exactly when he first brought this to the Landlord's attention, but estimated it was in December of 2016. He stated that he spoke with the Hotel Manager, M., on that date and M. was evasive and said "he would come look at it". The Tenant stated that to his knowledge M. never came to look at the refrigerator.

The Tenant confirmed that he never made a formal written request for the Landlord to address the issue of the refrigerator. The Tenant stated that he had just moved in and didn't want to "make waves" because it was cheap rent and he didn't want to have any problems.

The Tenant confirmed that he replaced the refrigerator in February of 2017. He stated that he and D., who is the part time maintenance person at the building, took the old refrigerator downstairs. He was not able to provide a copy of the receipt, although he did provide a photo of the same refrigerator at the store in which he purchased the refrigerator. The Tenant confirmed that he paid \$248.00 plus tax (\$277.76) and sought monetary compensation for this amount in the hearing before me.

In terms of the mattress, the Tenant stated that he also spoke to M. numerous times about the fact that the springs in the mattress were broken and were jabbing into him. The Tenant tried to flip the mattress and put a thin piece of foam but this did not resolve the issue.

The Tenant testified that in November of 2018 the mattress did a major “drop” such that it was not possible to sleep on it anymore. At this time, the Tenant says he told M. that the mattress was “completely finished”. In response, M. told the Tenant to go buy another one. The Tenant went to several places and found a deal for \$220.00 including taxes; a copy of the receipt was provided in evidence.

The Tenant further testified that he purchased the mattress on a Saturday and when he gave the Landlord the receipt on the following Tuesday M. said “you wore it out it is your responsibility to pay for it”.

The Tenant confirmed that he is seeking the sum of \$530.00 in monetary compensation for the cost of the refrigerator and the mattress.

In response to the Tenant’s claim the Landlord’s Property Manager, N.N. testified as follows. He confirmed that he manages the building on behalf of the property owner. He confirmed there are 104 units in the rental building.

N.N. also confirmed that the Landlord provides the Tenants with a mattress and refrigerator; he stated that when the tenancies begin the Landlord replaces any refrigerators or mattresses as needed.

N.N. stated that the only request he received from the Tenant was for the bed. He claimed that the first time he heard about the Tenant’s request for compensation for the refrigerator was at the hearing.

N.N. stated that he spoke with M.S., who claimed that he didn’t know anything about the refrigerator.

M.S. also testified. He confirmed that he is the front desk manager and has worked in this capacity for 13 years.

M.S. confirmed that he knows the Tenant. M.S. stated that he was not aware that the Tenant replaced his refrigerator in 2017. He further stated that he was not aware that the Tenant’s refrigerator required replacement.

M.S. stated that some tenants put their refrigerators in the hallway and if this had happened, the Landlord would have moved it to storage.

M.S. stated that he was aware of the Tenant’s request for a new mattress. He claimed that he told the Tenant that they had beds and fridges in storage, but they were not new, and that if he wanted a *new* bed he could go purchase one.

M.S. testified that if the mattress was indeed broken they would replace it; that said, he also confirmed that he did not inspect the bed to see if it was indeed broken.

M.S. confirmed that he could not testify as to when the Tenant first brought the toilet issues to their attention although he stated that it was likely 4 months before it was repaired. He stated that there are 13 other toilets in the building for people to use and another one on that floor such that the Tenants were not without a toilet.

In reply to the Landlord's submissions, the Tenant stated that M.S. told him to go buy a new mattress. The Tenant also denied that M.S. told him there were other mattresses in the building which could have been given to him as a replacement.

The Tenant stated that he could simply retain the mattress and refrigerator, but the rental unit is supposed to be furnished and the Landlord should be providing these items and not relying on Tenants to purchase them.

### Analysis

In this section reference will be made to the *Residential Tenancy Act, Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at: [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 Tenant has 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.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

**Landlord and tenant obligations to repair and maintain**

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

- 8** (1) Landlord's obligations:
- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

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

I find that the rental unit is semi furnished and includes a mattress and refrigerator which are to be provided by the Landlord and maintained by the Landlord for the Tenant's benefit.

I accept the Tenant's evidence that he spoke to the Landlord's representatives in December of 2016 regarding his refrigerator. I further accept his evidence that the refrigerator was leaking and required replacement. While it would have been preferable for the Tenant to put his requests in writing, I find that the Landlord was aware his refrigerator stopped working and required replacement. I am persuaded by the Tenant's testimony that one of the Landlord's staff assisted him in moving the broken refrigerator to the storage area when the Tenant purchased a replacement. I find it likely that the Landlord was aware the Tenant purchased a refrigerator, and simply "turned a blind eye" to the obvious fact that the Tenant paid for this included item from his own funds.

Similarly, I accept the Tenant's evidence that he spoke to the Landlord about the condition of his mattress. The Landlord's representative, M.S., testified that if a bed is broken they will replace it; yet, at the same time he confirmed he did not in fact inspect the Tenant's bed. Again, this suggests to me that the Landlord dismissed the Tenant's concerns regarding his mattress as to inspect might result in the Landlord having to incur the cost of replacement.

Although the toilet on the Tenant's floor was fixed prior to the hearing, the evidence confirms it took the Landlord between four to six months to complete this repair. Considering the number of people on each floor, I find this to be unacceptable and in violation of the Landlord's obligations pursuant to section 32 of the *Act* and section 8 of the *Regulations*. I also find this to be indicative of the Landlord's approach to repairs and maintenance of the rental unit.

I therefore find the Tenant is entitled to compensation for the cost of the refrigerator and mattress. I accept his evidence as to the costs incurred, which notably were not disputed by the Landlord.

Although not argued during the hearing, the Tenant indicated on his application the Landlord fails to provide rent receipts. The parties are reminded that a Landlord must provide receipts for rent payments made in cash pursuant to section 26(2) of the *Act*.

Conclusion

The Tenant is entitled to monetary compensation in the amount of **\$530.00** for the cost to replace the refrigerator and mattress in his rental unit.

Pursuant to section 72(2) of the *Act* I authorize the Tenant to deduct the sum of \$530.00 from any rent due to the Landlord.

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: February 1, 2019

---

Residential Tenancy Branch