



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CECILE- EVERGREEN ESTATE  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

FFT, MNDCT, OLC, PSF, RP

### **Introduction**

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on December 27, 2019 (the "Application"). The Tenants applied as follows:

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- For a repair order; and
- For reimbursement for the filing fee.

The Tenants filed an amendment seeking \$636.00 in compensation.

The Tenants appeared at the hearing. The Agents appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenants proceeded with their request for \$636.00 in compensation and withdrew their remaining requests, other than for reimbursement for the filing fee. The Tenants withdrew the request for a repair order for the fridge because they had purchased their own replacement fridge which is in part what they sought compensation for.

M.N. confirmed the name of the Landlord which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the evidence pointed to during the hearing. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?

### Background and Evidence

The Tenants sought the following compensation:

Item	Description	Amount
1	Fridge	\$336.00
2	Running furnace and fridge	\$200.00
3	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$636.00</b>

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started December 01, 2019 and is for a fixed term ending November 30, 2020. Rent is \$2,000.00 per month.

### ***Fridge***

The Tenants sought compensation for purchasing a used working fridge for \$336.00. The Tenants testified that the fridge in the rental unit did not work as it did not get cold enough. Tenant S.L. testified that the fridge did not get below four or five degrees and was currently six degrees and empty. The Tenants submitted that the fridge temperature is not safe. The Tenants testified that they contacted the Landlord about this, but the Landlord did not fix the fridge. The Tenants testified that they purchased a used fridge because they needed a fridge for food for their family.

The Tenants relied on section 32 of the *Residential Tenancy Act* (the “Act”) and the tenancy agreement in relation to the Landlord’s obligations to maintain the rental unit. The Tenants also relied on the emergency repair section of the tenancy agreement.

The Tenants submitted photos showing the temperature of the fridge. Tenant S.L. confirmed the fridge was empty when the photos were taken.

M.N. testified as follows in relation to the fridge. The Tenants first contacted the Landlord about the fridge December 17, 2019. The Landlord sent a technician to look at the fridge on December 17, 2019. The technician found the airflow holes allowing cold air into the fridge were blocked as shown in the photos submitted. The Tenants were advised to unplug the fridge to defrost it and were told this would solve the problem. The Tenants did this. The Landlord received an email from the Tenants saying the problem was solved and the fridge was getting colder. The Landlord then received an email from the Tenants about them purchasing a fridge and deducting the cost from rent. The Landlord did not permit the Tenants to do this.

M.N. testified that the technician did not find any issue with the fridge other than the blocked airflow.

M.N. took the position that the thermometer used by the Tenants to show the temperature of the fridge, as shown in the photos, does not work for a fridge.

Both parties agreed four degrees was an appropriate temperature for the fridge.

### ***Running furnace and fridge***

The Tenants claimed compensation for having to pay to run heaters and two fridges due to issues with the furnace and the fridge. The Tenants testified and provided evidence about the furnace not working. The Tenants sought compensation for having to run heaters while the furnace did not work. The Tenants also sought compensation for having to run two fridges, the fridge they purchased and the original fridge.

The Tenants did not submit bills showing the cost associated with running the heater and two fridges.

M.N. took issue with how the Tenants calculated the \$200.00 claimed.

## Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenants as applicants who have the onus to prove the claim.

## ***Fridge***

Section 32 of the *Act* states:

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.

Policy Guideline 1 at page three states:

The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

I accept based on the photos submitted by the Tenants showing the temperature of the fridge that the fridge was eight degrees and above. I accept this was after the technician attended to look at the fridge because the Landlord's written submissions support this. I accept the fridge was empty when the photos were taken as the photos support this. I do not accept that the issue with the fridge is due to items in the fridge given the temperature is high even when empty.

I do not accept that the Tenants confirmed the fridge was working after the technician attended. The email relied on by the Landlord does not support this as it specifically states that the fridge was still warmer than the average fridge.

I am not satisfied a qualified technician attended the rental unit and confirmed the fridge works properly. If this occurred, I would expect the Landlord to have submitted some evidence to support the testimony that this occurred such as a report or witness statement from the technician. I acknowledge that the Tenants have the onus to prove the claim. The Tenants have done so by providing photos showing the temperature of the fridge.

Pursuant to section 32 of the *Act* and Policy Guideline 1, it is the Landlord's responsibility to maintain the fridge such that the temperature is safe for food, which the parties agreed is four degrees. I am satisfied based on the photos of the temperature of the fridge that the Landlord has failed to comply with section 32 of the *Act* and Policy Guideline 1. I accept there has been a breach of the *Act*.

I accept that the Tenants suffered loss or damage as a result of the fridge not working as I accept that they could not keep food in the fridge. Therefore, I accept the Tenants are entitled to some compensation for loss of use of the fridge.

I do not accept that the Tenants are entitled to reimbursement for the purchase of a fridge pursuant to the tenancy agreement or emergency repair section of the *Act* as emergency repairs are defined in both and do not include a broken fridge.

Nor do I accept that the Tenants are entitled to recover the full cost of purchasing a replacement fridge. I am not satisfied this was the appropriate course of action to deal with the fridge issue. I find the appropriate course of action was to seek a repair order through the RTB. I acknowledge that the Tenants did this; however, the Tenants did not wait for the hearing for a repair order, the Tenants purchased a fridge prior to the hearing. I acknowledge the importance of a working fridge in a rental unit; however, I do not accept that the only course of action was for the Tenants to purchase a fridge without permission from the Landlord to do so. Nor do I accept that the Landlord is now required to reimburse the Tenants for the fridge they chose to purchase.

Given I am satisfied the Landlord has breached the *Act* and the Tenants have suffered loss or damage, but am not satisfied of the amount claimed, I award the Tenants nominal damages in the amount of \$150.00 for the fridge issue.

In relation to the replacement fridge, this was purchased by the Tenants and is not part of the tenancy agreement. It is the original fridge that is part of the tenancy agreement. I have found the original fridge does not work properly as it is not cold enough. I have found the Landlord has failed to comply with section 32 of the *Act*.

Section 62(3) of the *Act* states:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Pursuant to section 62 of the *Act*, I order the Landlord to have a qualified technician attend the rental unit and fix the original fridge or replace the original fridge with a properly functioning fridge. The Landlord is ordered to do so immediately upon receiving this decision.

***Running furnace and fridge***

I decline to award the Tenants compensation in the amount of \$200.00 for running the heater and two fridges as the Tenants have not provided sufficient evidence justifying the amount sought such as bills showing the cost of running these appliances.

This aspect of the claim is dismissed without leave to re-apply.

***Filing fee***

The Tenants were partially successful in this application and therefore are awarded reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to compensation in the amount of \$250.00. The Tenants can deduct this from one future rent payment pursuant to section 72(2) of the *Act*.

**Conclusion**

The Tenants are entitled to compensation in the amount of \$250.00. The Tenants can deduct this from one future rent payment.

The Landlord is ordered to have a qualified technician attend the rental unit and fix the original fridge or replace the original fridge with a properly functioning fridge. The Landlord is ordered to do so immediately upon receiving this decision.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 29, 2020

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Residential Tenancy Branch