



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 607492 BC LTD DBA Abernathy  
Contracting and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNRT, FFT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46;
2. A Monetary Order for emergency repairs - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that they have copies of the Tenant’s evidence provided to the RTB for this dispute. The Landlord confirms that they provided no evidence to the RTB for this dispute.

### Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reason?

Is the Tenant entitled to costs to replace a fridge?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed or undisputed facts: there is no written tenancy agreement. The tenancy started in 2008. Rent of \$500.00 is payable on the first day of each month. No security deposit was collected. On November 26, 2021 the Landlord gave the Tenant a 10-day notice to end tenancy for unpaid rent dated November 26, 2021 (the

“Notice”). The Notice sets out an effective date of December 6, 2021 and for \$2,000.00 in unpaid rent.

The Landlord states that the unpaid rental amount on the Notice is comprised of unpaid rents for June, July, August, and November 2021. The Landlord states that the Tenant has made some payments at the end of the month as opposed to the first of the month. The Landlord did not provide any ledger or accounting evidence of the Tenant’s rental payment history.

The Tenant agrees that no rents were paid for June and July 2021 as the Tenant deducted these rents for the purchase of a fridge. The Tenant is not sure if August 2021 rent was paid. The Tenant states that rent was paid for November 2021 and provides a banking receipt indicating a payment made on October 29, 2021.

The Tenant states that a fridge was provided with the tenancy and that the fridge stopped working in June 2021. The Tenant states that the Landlord was called three times and informed by voice mail that the fridge was not working. The Tenant states that the Landlord did not respond so the Tenant purchased a used fridge at the end of June 2021. The Tenant claims \$800.00 and provides a receipt for this cost.

The Landlord states that they purchased the rental unit in November 2020. The Landlord states that the sale contract did not include any appliances. The Landlord denies that the Tenant informed the Landlord by voice mail or otherwise of any problems with the fridge. Had the Landlord been informed the Landlord had a fridge on hand for replacement. The Landlord states that the first they heard of a problem with the fridge was when they gave the Tenant the Notice. The Landlord argues that the Tenant’s receipt does not indicate that it was for a fridge.

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given the undisputed evidence that no rents were paid for June and July 2021, the Tenant's vague evidence for the payment of August 2021 rent and the Landlord's evidence that rent for August 2021 was not paid, I find on a balance of probabilities that the rents for June, July, and August were not paid. Given the Tenant's supported evidence of a payment made on October 29, 2021 for November 2021 rent and considering the lack of any supporting evidence from the Landlord of the rental payment history I find on a balance of probabilities that rent was paid for November 2021. I find therefore that at the time the Notice was served only \$1,500.00 in rental monies were unpaid.

Section 46(1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. As the Notice sets out unpaid rent of \$2,000.00, I find that the Notice does not set out the correct amount of unpaid rents. For this reason, I find that the Notice is not valid. The Notice is therefore cancelled, and the tenancy continues.

Section 33 of the Act provides that "emergency repairs" means repairs that are

- (a)urgent,
- (b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c)made for the purpose of repairing
  - (i)major leaks in pipes or the roof,
  - (ii)damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii)the primary heating system,
  - (iv)damaged or defective locks that give access to a rental unit,
  - (v)the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

As a fridge is not included in the definition of emergency repairs, I find that the Tenant is not entitled to compensation for the purchase of a replacement fridge under this section of the Act. However, I otherwise consider this claim as set out below.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the Tenant's evidence that a fridge was provided with the tenancy and as the Landlord provided no supporting evidence that a fridge was not provided to the Tenant at the onset of the tenancy, I find on a balance of probabilities that a fridge was provided to the Tenant. However, as the Tenant did not provide any supporting evidence of informing the Landlord of a problem with the fridge, such as a letter in writing, and given the Landlord's evidence that the Tenant did not inform the Landlord of the problem, I find on a balance of probabilities that the Landlord was not informed and therefore given an opportunity to repair or replace the fridge. Further, the receipt provided by the Tenant does not indicate that the receipt was for the purchase of a fridge and I therefore find this evidence to be insufficient to support the costs claimed for a replacement fridge. For these reasons I find that the Tenant has not provided sufficient evidence to substantiate an entitlement to compensation for the replacement of the fridge and I dismiss this claim.

As the Tenant claims have met with some success, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from rents still owed in full satisfaction of this claim.

### Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: January 12, 2022

---

Residential Tenancy Branch