



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding QUADREAL PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP, OLC, MNDCT, FFT

### Introduction

On August 10, 2022, the Tenants applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking a repair order; an order for the Landlord to comply with the Act; and a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

The matter was scheduled for a teleconference hearing. The Tenant M.E. and Landlord’s agent (“the Landlord”) attended the hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. The parties provided affirmed oral testimony and made submissions during the hearing.

### Preliminary and Procedural Matters

At the start of the hearing the Tenant clarified that she is no longer seeking a repair order or an order for the Landlord to comply with the Act because the refrigerator in the rental unit has been replaced. The Tenant clarified that she is only seeking to proceed on her monetary claim for money owed or compensation for damage or loss.

The Landlord acknowledged that he received the Tenants’ Notice of Proceeding and documentary evidence. The Landlord provided the Residential Tenancy Branch with 45 pages of documentary evidence in response to the Tenants’ claims. The Landlord testified that he sent a copy of his documentary evidence to the Tenant on two occasions using Canada Post registered mail. The Landlord sent the registered mail on November 2, 2022, and December 12, 2022. The Landlord testified that registered mail was sent to the Tenants’ address and the mail was returned as unclaimed by the Tenant. The Landlord provided copies of the registered mail receipts and tracking numbers in his documentary evidence.

The Tenant testified that she did not receive a copy of the Landlord's documentary evidence. She testified that on August 16, 2022, she noticed a note attached to her mailbox indicating her rental unit was vacant and submits that Canada Post stopped delivering mail to her. She stated that she removed the note on August 16, 2022, but there was another note attached to the back of her mailbox that not accessible to her. She stated that she did not contact the Landlord about a note placed on her mailbox. The Tenant did not provide any documentary evidence of any note that was placed on her mailbox. The Tenant further testified that she receives all her bills and mail through email, and she only checks her mailbox once per month.

The Landlord testified that he never left a note on the Tenants' mailbox, and he has no knowledge of any note being left on the Tenants' mailbox.

I accept the Landlord's testimony and evidence that he sent a copy of his documentary evidence to the Tenant using registered mail sent on November 2, 2022, and on December 12, 2022. I find that the Landlord complied with the service of documents requirements in accordance with section 88 of the Act. The Landlord sent his documents to the address contained within the Notice of Dispute Resolution Hearing for service of his documents. It is not reasonable to allow the Tenant to avoid service of tenancy documents by only checking her mailbox once per month after serving the Notice of Dispute Resolution Hearing. In addition, the Tenant took no steps to ensure she would receive mail after becoming aware of possible delivery issue due to a note on her mailbox. In accordance with section 90 of the Act, I find that the Landlord's mail was deemed received by the Tenants on November 7, 2022, the fifth day after it was mailed.

Both the Tenants' and the Landlord's documentary evidence will be considered in this Decision. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

- Are the Tenants entitled to a monetary order for damage or loss?

#### Background and Evidence

The Tenant and Landlord testified that the tenancy began on March 1, 2021, as a one-year fixed term tenancy that has continued thereafter on a month to month basis. Rent in the amount of \$1,760.00 is due to be paid to the Landlord by the first day of each

month. A security deposit in the amount of \$900.00 was paid by the Tenants to the Landlord.

The Tenant is seeking to recover costs associated to a loss of use of a refrigerator for approximately 26 days. The Tenants are seeking compensation in the amount of \$2,000.00 for the costs to rent temporary accommodation.

The Tenant testified that she noticed the refrigerator in the rental unit was not working properly and she reported the issue to the Landlord via email on July 14, 2022. On July 19, 2022, the Tenant received a message from the Landlord that the refrigerator was working fine and the work order is closed.

The Tenant testified that the temperature of the refrigerator was warm and smelled bad. On July 21, 2022, the Tenant called the Landlord again and requested further maintenance on the refrigerator. The Landlord arranged for a repair technician to look at the refrigerator on July 26, 2022. The Tenant left on a trip out of the country from July 21, 2022, until August 5, 2022, and gave permission for the Landlord to enter the unit to deal with the refrigerator repair while she was away.

The Tenant testified that she received an email from the Landlord stating that the refrigerator could not be repaired and that the Landlord would replace the refrigerator.

The Tenant stated that she told the Landlord that she could not live without a refrigerator and stated that she has diabetes. The Tenant booked a temporary place to live for 7 nights from August 5, 2022, to August 12, 2022. The Tenant is seeking to recover the cost of the temporary accommodation in the amount of \$1,200.00. The tenant stated that she had no other option but to move. She stated that she refused the Landlord's offer of a temporary replacement refrigerator and did not want another broken refrigerator. The Tenant testified that the Landlord installed a new refrigerator on August 10, 2022. She stated that by then she had already booked the Airbnb accommodation.

The Tenant is also seeking to recover an additional \$850.00 that her co-tenant paid for additional accommodation from July 21, 2022, to July 28, 2022. The co-tenant was not present at the hearing to provide testimony on this part of the monetary claim.

The Tenants provided copies of the invoices for the additional accommodation.

In reply, The Landlord provided testimony that they received a work order from the Tenant and attended the rental unit on July 18, 2022, with a technician; however, there

was no answer and no permission to enter the unit. On July 19, 2022, the Landlord called the Tenant and got no answer.

On July 19, 2022, the Landlord received another work request from the Tenant including permission to enter the unit. On July 20, 2022, the Landlord entered the unit and observed that the refrigerator was cold, and the freezer was frozen.

On July 21, 2022, the Landlord received another work order from the Tenant and the Landlord attended the unit on July 22, 2022, with an appliance repair technician. The technician found a problem with the fan and advised the Landlord a few days later that a replacement part was not available.

The Landlord testified that he offered the Tenant a replacement refrigerator on August 8, 2022, and the Tenant refused it. The Landlord ordered a new fridge on August 5, 2022 and installed a new refrigerator in the rental unit on August 10, 2022.

The Landlord stated that he is not agreeable to have to pay compensation to the Tenants. He stated that he did his due diligence in dealing with the issue.

### Analysis

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises is intended to help the parties to an application understand issues that are likely to be relevant and may also help parties know what information or evidence is likely to assist them in supporting their position. The policy guideline provides that a 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.

Section 7 of the Act provides,

*if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. 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.*

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that the Landlord has an obligation under the tenancy agreement to provide an operable refrigerator to the Tenant and the Landlord is responsible for repairs / maintenance to the refrigerator. I find that the Landlord responded and took action to deal with the Tenant's complaints about the refrigerator in a diligent and timely manner.

I find that the Tenant had limited use of the refrigerator for a period of approximately 26 days. I note that the Tenant M.E. was out of the country for 15 days during this time period. The other Tenant was not present to testify about any loss.

I find that it would be reasonable to compensate the Tenants if they suffered a loss due to their limited use of the refrigerator. With respect to loss, the Tenants are required to provide proof of loss and proof of the actual amount required to be compensated for the loss. While the Tenant mentioned that she had to dispose of some food, she did not provide any details. While the Tenants provided a grocery receipt dated July 14, 2022, in the amount of \$69.29 the Tenants' application did not include a claim to be compensated for the replacement cost or purchase of any food.

I find that the Tenants have a responsibility to minimize the loss being claimed. I find that aside from limited use of the refrigerator, the Tenants had full use of the remainder of the rental unit. There was no testimony given or documentary evidence that the Tenants informed the Landlord that they were going to rent temporary accommodation

due to the refrigerator issue. The Tenants did not give the Landlord an opportunity to offer alternate accommodations prior to them booking the Airbnb.

I find that Tenants' claim to recover \$2,000.00 for the cost of temporary accommodation is not reasonable. The Tenants could have minimized the loss by purchasing food, or by eating out at restaurants during this period and kept receipts.

The Tenants' claim to be compensated for temporary accommodation costs and recovery of the filing fee is dismissed in its entirety.

### Conclusion

The Tenants were not successful with their claim to recover the cost of renting temporary accommodation.

The Tenants' application is dismissed without leave to reapply.

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: January 13, 2023

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Residential Tenancy Branch