



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding PROSPERO INTERNATIONAL REALTY  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, OLC, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant October 06, 2022 (the “Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant appeared at the hearing. J.C. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenant advised that they are only seeking \$1,616.00 in compensation and \$100.00 for the filing fee and nothing further. The Tenant is still living at the rental unit.

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 evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate.

The Tenant seeks \$1,616.00 in compensation for two issues, mice in the rental unit and the absence of a working fridge. The amount sought is one month's rent.

The Tenant states as follows in their written materials. On August 10, 2022, there were mice in the rental unit which was reported to the building manager. Pest control attended August 15, 2022, but no work was done. The proposed work was approved August 18, 2022, but pest control did not return until August 26, 2022. On August 22, 2022, the building manager set mouse traps. On August 26, 2022, pest control attended and set mouse traps. Nothing further was done as of September 04, 2022. On September 09, 2022, pest control attended and set new mouse traps. The mouse issue caused the Tenant's son to not be able to sleep. Mouse droppings were everywhere and the Tenant had to clean for three days. The Tenant had to throw dry food out because mice got into it.

The Tenant further states as follows in their written materials. The fridge in the rental unit broke down August 11, 2022. The food in the fridge and freezer spoiled. The building manager was contacted about this issue immediately. Two days later, the Tenant's son was given access to a fridge in another unit. As of September 01, 2022, the Tenant's son could no longer use the fridge in the other unit. On September 06, 2022, the Tenant received a mini fridge from the Landlord. The Tenant's son did not have access to a fridge from September 01 to 06, 2022. The mini fridge was later replaced with a temporary fridge.

The Tenant seeks compensation for the cost of food that spoiled, cost of dry food that had to be thrown out due to mice, loss of quiet enjoyment in relation to the issues raised and for having to clean the rental unit due to mice.

The Landlord provided a summary of events which states as follows. Issues with the fridge were reported August 12, 2022. The building manager contacted the fridge manufacturer about the issue. On September 06, 2022, the property manager delivered a mini fridge to the unit. On November 01, 2022, a replacement fridge was installed in the rental unit. The Landlord's written materials detail problems and delays with the fridge manufacturer and other stores in relation to replacing the fridge. The Landlord's emails show a replacement fridge was installed in the unit September 09, 2022.

The Landlord's written materials note that they changed pest control companies during the relevant time. The materials seem to indicate that the mouse issue was due to a construction deficiency which allowed mice to get into the rental unit.

J.C. submitted that there was a change in building management at the relevant time and J.C. did their best to address the issues as quickly as possible when they learned of them. J.C. said the Landlord would not agree to compensate the Tenant \$1,616.00 because the Tenant could not provide receipts showing this was the amount of their loss due to the issues. J.C. advised that the Tenant currently has a \$200.00 credit on their account due to the issues outlined. J.C. suggested that the mouse issue might have been caused by the Tenant but acknowledged this is not stated in pest control reports anywhere. J.C. acknowledged the fridge issue was a manufacturer issue and not due to misuse by the Tenant.

I have reviewed all materials submitted by the parties and will refer to them below as necessary.

### 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, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The fridge, as an appliance, is a “service or facility” as this term is defined in section 1 of the *Act*. Section 27 of the *Act* relates to services and facilities and limits when a landlord can terminate or restrict these. Section 27 of the *Act* contemplates a rent reduction when a service or facility is terminated or restricted.

Section 28 of the *Act* relates to tenants’ right to quiet enjoyment of the rental unit and I find the presence and use of a working fridge, that was present and working at the start of the tenancy, is captured by section 28 of the *Act*.

Further, section 32 of the *Act* outlines the Landlord’s responsibility to provide and maintain the rental unit to the standard set out in the section. Again, I find the presence and use of a working fridge is captured by section 32 of the *Act*.

There is no issue that the fridge and freezer broke down. There is no issue that the fridge and freezer broke down due to an issue with the appliance versus misuse by the Tenant or occupants of the rental unit.

The Landlord was responsible for replacing the broken fridge and should have done so immediately. Issues with the manufacturer, delivery timelines, changes in property

management and the like do not change the Landlord's responsibility to provide and maintain a fridge in the rental unit, in my view, at all times. When the fridge broke, the Landlord should have purchased a new fridge immediately, installed the new fridge in the rental unit immediately and then dealt with the manufacturer of the original fridge separately. The Landlord cannot fail to comply with their obligations under the *Act* based on issues with third parties, delivery times, staffing or the like.

In relation to the mini fridge, this was not a reasonable resolution of the issue. The Tenant rented the unit with a full-size fridge, pays rent for a unit with a full-size fridge and should have been provided a full-size fridge August 12, 2022.

Nor is allowing the Tenant's son to use a fridge in another unit a reasonable resolution of the fridge issue. I find it unreasonable to expect the Tenant's son to go to another unit to use a fridge.

I find the Landlord breached sections 27, 28 and 32 of the *Act* by not immediately installing a full-size fridge in the rental unit on August 12, 2022, when they learned of the fridge issue. The Tenant did not have a full-size fridge from August 11, 2022 to September 09, 2022, basically one month. I note that it is somewhat unclear to me when the full-size fridge was installed; however, it appears it was installed September 09, 2022.

I acknowledge that the Tenant did not provide receipts for food lost due to the broken fridge and freezer; however, I find it reasonable to accept that there was some food in these because this is more likely than the fridge and freezer being completely empty at the time. Further, the Tenant noted food was spoiling in one of their emails to the Landlord. I also accept that not having a working full-size fridge for one month is a huge inconvenience. I do note that the Tenant and their son could still live in the rental unit and use all other aspects of the rental unit. In the circumstances, I award the Tenant **\$600.00** being approximately \$150.00 per week for the absence of a working full-size fridge in the rental unit. I find this amount is a balance between the huge inconvenience but also the fact that the Tenant and their son could still use most of the rental unit.

As stated, the Landlord's obligation to provide and maintain the rental unit is set out in section 32 of the *Act*. I find the issue with the mice resulted from an issue with the building and not anything done by the Tenant or occupants of the rental unit. There is no evidence to suggest the Tenant or occupants caused the mouse issue and there is evidence to suggest the building construction was the issue. I find the Landlord

breached section 32 of the *Act* by providing a rental unit with deficiencies that allowed for mice to get into the rental unit.

I accept that the mice got into dry food in the rental unit and that this food had to be thrown out because the Tenant provided compelling evidence of the mice chewing items in the rental unit. I also accept that the mouse issue caused stress and required extra cleaning because I find these to be obvious results of the mouse issue. However, I do find based on the timeline provided by the Tenant that the Landlord did what they could to have the mouse issue resolved as quickly as possible. I acknowledge that it took a few weeks to have the mouse issue addressed; however, I do not find this unreasonable given the nature of the issue. Resolving pest issues takes time. It is not reasonable to expect a pest issue to be resolved immediately because it usually takes a number of steps and necessarily involves time between those steps.

In the circumstances, I award the Tenant **\$100.00** for the mouse issue because I do agree the Landlord is responsible for providing a rental unit that had deficiencies which allowed mice to get into the rental unit and that this resulted in damage and loss to the Tenant and occupants. However, I also find the Landlord did what they could to address the mouse issue once alerted to it.

Given the Tenant has been partially successful in the Application, I award them **\$100.00** as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is entitled to \$800.00 for the mouse and fridge issues. The Landlord has already credited the Tenant \$200.00 and so I deduct this from the amount owing. The Tenant can deduct a further **\$600.00** from their next rent payment as compensation for the mouse and fridge issues pursuant to section 72(2) of the *Act*.

### Conclusion

The Tenant can deduct **\$600.00** from their next rent payment.

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: March 22, 2023

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Residential Tenancy Branch