



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$800 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord attended the hearing. Tenant CS attended the hearing on behalf of the tenants. Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

CS and the landlord each acknowledged that they had received the other's documentary evidence and required documents.

Issues to be Decided

Are the tenants entitled to:

- 1) a monetary order of \$800; and
- 2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting May 1, 2019. Monthly rent is \$1,600 and is payable on the first of each month. The landlord did not collect a security or pet damage deposit. The rental unit came equipped with a refrigerator.

The facts of this case are not in dispute. The tenants' claim stems from their refrigerator breaking down. The landlord agrees the refrigerator broke. Neither side suggested it broken due to the actions of the tenants.

CS testified that the tenants noticed the refrigerator was broken on the evening on March 3, 2021. She testified that the food inside had begun to spoil, so they surmised it broke the day prior. She testified that the tenants did not use the refrigerator the morning on March 3, 2021 before they left the rental unit for the day.

CS emailed the landlord on March 3, 2021 at 9:28 pm as follows:

Hi our refrigerator isn't working. Please let me know what can be done as soon as possible

The landlord replied the next morning at 6:35 AM:

What is wrong. How old is the fridge (is the fridge under warranty)

CS replied 2 minutes later:

Hi, not sure how old it is. Do you know where I could get that information? Everything in the fridge was warm/gone bad but the light is still on.

6 minutes later the landlord replied:

Shall order a new fridge. Require the exact height. Exact width. Can the fridge be higher and wider and still fit in through the front door of [the rental unit address]? And the kitchen of [rental unit address]. Also is the swing from the left to right or right to left.

The tenant replied with the requested information shortly thereafter.

At 7:05 AM on March 4, 2021, the landlord replied:

Thank you and will advise you when for you to accept delivery and removal [...] of old fridge.

At 11:53 AM, the landlord emailed the tenants:

[...]cannot deliver your size to a March 11, 2011 [sic] at latest. Will call you in advance.

On March 10, 2021, at 2:25 PM, CS emailed the landlord:

Just wanted to check if the fridge will be coming tomorrow, if you know?

[KD] and I work during the day, so if it is arriving we'll be home after 5:00 pm.

On March 11, 2021, at 5:33 AM, the landlord replied:

I'll check on it.

On March 12, 2021 the tenant responded

Can you provide me with some sort of timeline? It was said we'd have it replaced by March 11th at the latest.

We now have been without a working fridge for 10 days. According to our rental agreement you must provide us with a working, good condition fridge.

I am also asking for monetary compensation according to the RTB policy guidelines 16, due to all of our food going bad (about \$150 worth) and \$50 for each day we have gone without a working fridge as we have had to eat out every day.

The landlord replied shortly thereafter:

I ordered as soon as you requested. The confirmation number is [redacted] and their phone number is [redacted]. I do the utmost best I can. Why not give me notice if you are not happy?

CS replied 11 minutes later:

They will not give me any information because I did not place the order. All she told me was it hadn't been shipped.

When I emailed you on March 3 about my fridge is broke I was told you'd contact me with the day and time it will arrive, but latest March 11. Then I never heard from you

Can you please call them and see if it can get expedited? I know you requested the order as soon as you could and I appreciate that very much. There's anything else you can do to help please let me know.

CS sent a follow up email on March 13, 2021:

When will the fridge be here? I have asked several times and still you won't tell me anything.

On March 15, 2021 the landlord replied:

Have been told this morning by [redacted] which was promised by [redacted] on March 4, 2021 to be delivered March 11, 2021 will only be arriving in Calgary on April 6, 2021. The reason being the size.[...]

The landlord testified he called a refrigerator repair company on March 15, 2021, who sent a technician to the rental unit that day. The technician inspected the refrigerator and reported back to the landlord advising him that it has a “sealed system issue” and “may be uneconomical to repair”.

The landlord testified that he decided to purchase a refrigerator from the repair company who could be able to deliver a unit promptly, as opposed to wait for the refrigerator he had ordered previously. He testified that the repair company provided and installed a new refrigerator in the rental unit on March 17, 2021.

At the hearing, CS argued that the tenants should be compensated for the replacement cost of the food which had to be discarded as a result of the refrigerator breaking down. She submitted an invoice dated February 21, 2021 which she testified showed the items that the tenants had to throw out as follows:

Description	Amount
Bacon	\$17.99
Unsalted butter	\$4.39
Cheddar Cheese	\$12.99
Greek Yogurt	\$13.99
Angus Beef Burger	\$15.99
Chicken breast	\$11.99
Nutri shake	\$27.99
Ground beef	\$23.25
Spinach	\$2.99
Brussel Sprouts	\$4.99
Mushrooms	\$4.99
Total	\$141.55

The tenants also seek \$50 per day they did not have an operable refrigerator, representing the recovery of the amount they spent eating out.

The landlord argued that he acted reasonably and promptly throughout the whole process. He stated that he was not responsible for the initial replacement refrigerator’s delay, and that once it became clear that the tenants were not content to wait for it to arrive he acted promptly to secure a replacement.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

Section 32(1) of the Act states:

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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, as this is the tenants' application, they must prove it is more likely than not that the landlord breached section 32(1) of the Act, that they suffered a quantifiable loss because of the breach, and that they acted reasonably to minimize this loss.

I will deal with each of these in turn.

1. Breach of the Act

The parties agree that the tenant's refrigerator broke. The landlord did not suggest that this was due to any action (either negligent or intentional) of the tenants. His actions

following his learning of the broken refrigerator indicate that he accepted that it was his responsibility to repair or replace the refrigerator.

Accordingly, I find that when the refrigerator broke, the landlord breached section 32(1) of the Act by failing to maintain the rental unit in a state of repair that makes it suitable for occupation. I also find that this amounted to a breach of the tenancy agreement, which stated that the rental unit came equipped with a refrigerator.

I must note that by making this finding I do not suggest that the landlord acted unreasonably when dealing with the issue. Quite the contrary. The landlord demonstrated a level of responsiveness to the initial problem that is rare among landlords. That being said, the quick response time does not insulate him from the requirement to compensate the tenants, should they have suffered loss as a result of the breach. The tenants are entitled to live in a rental unit with an operable refrigerator. In the event of it breaking down, it is the landlord who bears the ultimate burden of the effects of this up to and including any losses suffered by the tenants as a result of the break-down.

However, this does not mean that the tenants are automatically entitled to compensation for the entire time they are without a refrigerator. The tenants must show that they suffered financial loss as a result of the break-down.

2. Tenants' Financial Loss

The tenants claim compensation on two different grounds: loss of groceries due to spoilage; and cost of eating out during the time without an operable refrigerator.

a. Groceries

The tenants have submitted a receipt listing \$141.55 in groceries they claim to have gone bad as a result of the refrigerator breaking down. However, this receipt was dated February 21, 2021, over a week prior to the date of the break-down. As such, I cannot accept that the tenants suffered loss equal to the full amount listed on the receipt. Some portion of the food would have been consumed prior to March 3, 2021. I cannot say how much of the food this would be. However, I think it reasonable to conclude that at least half of it would have been consumed. As such, I assess the tenants' loss for spoiled groceries at \$70.

b. Cost of eating out

The tenants did not submit any documentary evidence supporting their assertion that they ate out every day between when March 3 and March 17, 2021. I would have expected receipts or credit card statements evidencing the transactions for at least some of these meals to have been available to be submitted into evidence. Additionally, I cannot say how often, prior to the break-down, the tenants ate out. I infer from the fact

the tenants did not use the refrigerator the morning of March 3, 2021, that they do not prepare breakfast or lunch with food that requires refrigeration (as if they did, they would have noticed the broken refrigerator the morning or afternoon of March 3, 2021). So I cannot say that they suffered the loss of the cost of breakfasts or lunches as the result of the break-down.

As such, while I am satisfied that the tenants suffered a loss as the result of having to eat out more often due to their not having an operable refrigerator, I am not satisfied that they have proved the *amount* of loss they suffered.

3. Mitigation

I find that there is little the tenants could have reasonably done to save the groceries that had spoiled. I accept CS's testimony that by the time they discovered the problem with the refrigerator, it was too late to save the food. It is not unreasonable for the tenants to have discovered the problem when they did. There is no requirement in the Act for the tenants to proactively monitor the performance of their appliances.

However, I do not think the tenants acted reasonable to minimize their loss incurred as a result of not having an operable refrigerator. For at least some of the days they were without a refrigerator, the tenants could have purchased shelf-stable food for their dinners. They could have purchased fresh groceries the day they were going to be prepared, thus eliminating the need for refrigeration. As such, I find that the tenants failed to fully mitigate their loss.

In the circumstances, I find that nominal damages in the amount of \$130 (\$10 per day the tenants were without a refrigerator, excluding March 3 and 17, 2021) is appropriate compensation for the tenants' loss of use of the refrigerator. RTB Policy Guideline 16 defines nominal damages:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

4. Filing Fee

As the tenants were partially successful in their application, they may recover half of their filing fee (\$50) from the landlord.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the landlord pay the tenants \$250, representing the following:

Description	Amount
Nominal damages	\$130.00
Loss of groceries	\$70.00
Filing fee	\$50.00
Total	\$250.00

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: September 29, 2021

Residential Tenancy Branch