



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Urban City Rentals Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This is an application brought by the tenant requesting a monetary order in the amount of \$490.32, and recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

### Background and Evidence

The parties agree that this tenancy began on July 1, 2016 with a monthly rent of \$1900.00 due on the first of each month.

The applicant testified that the rental unit was not ready for the tenant to move in to on July 1, 2016 as there were some repairs required, and the rental unit was very dirty.

The applicant further testified that, the main concern was how dirty the unit was, and it is their belief that it was not inhabitable, until the landlord had it professionally cleaned on 8 July 2016.

The applicants further testified that the applicants son had taken time off work to help his mother move into the rental unit at the beginning of July 2016, however since the unit was not in habitable condition, that move was postponed until later in August 2016.

The applicants further testified that, when they discover the condition of the rental unit, they informed the property manager of the condition, and the property manager agreed that the rental unit was left in poor condition, and, in an e-mail dated July 5, 2016, the property manager stated:

- We will repair the wall with the heavy scratch along the kitchen/living area (I believe it was red color wall)
- We will deliver a microwave for use at the suite.
- We will repair the nonworking hot water tap.
- We will coordinate a full professional cleaning of the entire suite (to be completed after the above repairs)

The applicant further stated that, in that same e-mail, the landlord had stated that he realized that they had legitimate concerns.

The applicants further testified that in a subsequent e-mail dated July 6, 2016, the landlord stated:

- Just an update for you that the earliest time we've been able to secure for a cleaning crew to come in is on Friday afternoon so will coordinate along with the plumbing and handyman. You'll be able to move in any time after Friday.

The applicants further stated that Friday was July 8, 2016, and therefore the unit was not ready to move in to until July 9, 2016, and by then her son had no more time off to help move.

The applicants are therefore requesting an order for the return of the rent paid for the 8 days of July 2016, during which the rental unit was not in livable condition.

The landlord testified that he has two main points in response to the tenants claim.

The landlord further stated that the first point is, he does not believe the rental unit was uninhabitable, and although he agrees that some work was required in the rental unit, he fails to see why the tenant could not have lived in the rental unit while that work was ongoing.

The landlord further stated that during the move-in inspection he does not recall the rental unit being extremely dirty and grimy, as described by the tenants.

The landlord further stated that, his second point is, that the tenants are required to book a move-in date with the strata and pay the move-in fee, however the move-in date they booked was for August 20, 2016, and the fee was not even paid until August 1, 2016. They therefore believe that, even if the rental unit did require some work at the

beginning of the tenancy, the tenant suffered no loss of use of the rental unit as, they she not planning to move into the rental unit until August 20, 2016.

The landlord therefore does not believe that any rebate of rent should be ordered in favor of the tenant.

In response to the landlord's testimony the tenant argued, why would the landlord in his e-mail state that they have legitimate complaints, and then now say that the rental unit was not uninhabitable.

Further the tenants stated that, originally the move had been planned for the beginning of July 2016, and her son had taken time off to assist with that move. Further, they had been informed by the strata that no reservation time was needed, nor was any fee required to be paid if they did not require the elevator to be locked, and since they were planning to move in a bit at a time they decided they did not need the elevator locked.

The tenants further stated that because they were unable to move in at the beginning of July 2016, her son was no longer able to assist them and they had to book the move for August 20, 2016.

### Analysis

Section 32 of the Residential Tenancy 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.

In this case it is my finding that the tenant has shown that the rental unit was not suitable for occupation at the beginning of the tenancy, and in fact was not ready for occupation until July 9, 2016.

The landlord has testified that he does not believe the rental unit was uninhabitable, however the fact that in his own e-mail he states "*Just an update for you that the earliest time we've been able to secure for a cleaning crew to come in is on Friday afternoon so will coordinate along with the plumbing and handyman. You'll be able to move in any time after Friday*", indicates to me that the rental unit was not ready for the tenant to move in to until after Friday, which would make the unit ready for July 9, 2016.

Further, I do not accept the landlord's argument that the tenants were not planning to move in until August 20, 2016 anyway, as the tenants have testified that they had planned to move in at the beginning of July 2016 by moving just a bit at a time, thereby not requiring a move in reservation.

It is my decision therefore that, since the rental unit was not ready for the tenant to move in to, the tenant is not required to pay rent for the first eight days of July 2016 and I have ordered that the rent totaling \$490.32 be returned to the tenant.

I also allow the tenants request for recovery of the \$100.00 filing fee.

### Conclusion

Pursuant to sections 67 and 72 of the Residential Tenancy Act I have issued a monetary order for the respondent to pay \$590.32 to the applicant.

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: February 28, 2017

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Residential Tenancy Branch

