



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Preliminary matter

This hearing was convened as a Review Hearing resulting from the Landlord's request for a review consideration of the Tenant's original hearing of January 10, 2018 and decision of January 11, 2018. The Landlord's review consideration application dated January 25, 2018 was approved in a decision dated January 31, 2018. The review consideration decision found that the Landlord established grounds to show that they were not served the Tenant's hearing package for the original hearing, so the Landlord was unable to attend the hearing.

This Review Hearing will be heard as a new hearing and the previous hearing and review consideration decisions are not up for review. The previous order has been set aside.

### Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, regulation and tenancy agreement.

The Landlord said she served the Tenants with the Review Consideration Decision and Notice of Hearing (the "hearing package") by registered mail on February 14, 2018. The Tenant confirmed receiving the hearing package. Based on the evidence of the Landlord and Tenant, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in represented.

Issues(s) to be Decided

1. Have the Tenants had a loss or damage caused by the Landlord?
2. Are the Tenants entitled to compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started in March 1, 2017 as a one-year fixed term tenancy with an expiry date of February 28, 2018. Rent is \$1,300.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$650.00 at the start of the tenancy.

The Tenant said that they were unable to move into the rental unit on March 1, 2017 as agreed because the unit was not ready for them. As a result, the Landlord paid for a hotel for the Tenants for the night of March 1, 2017. The Tenant continued to say they moved in on March 2, 2017, but the rental unit was still not move in ready. The Tenant said the unit was dirty and many things needed repair or replacement. The Tenant submitted the move in condition inspection report as evidence that the kitchen was in the need of repair. The report says the Landlord will replace kitchen cabinets, the kitchen countertop, the stove, hood and fan as well as the sink and taps and the refrigerator. The Tenant said some of these things were do soon after they moved in, but the work was not completed until June 9, 2017. The Tenant said this caused a great inconvenience to them and they loss the use of ½ of their rental unit. The Tenant said because of the construction work and workers coming and going they were unable to unpack their belongings and have full use of the rental unit. The Tenant said as a result of the unit not being move in ready and the Landlord not completing the work with in 10 Days as agreed, the Tenants have made the following claim for compensation for loss of use of the rental unit and for extra costs they incurred. The Tenant said their claim is as follows:

1. Loss of use of ½ unit for 3.5 months	
\$1,300.00 X .5 X 3.5 months =	\$2,275.00
2. Rent Recovery for March 1, 2017	\$ 45.00
3. 2 days of loss wages while moving	\$ 280.00
4. Cleaning work done to the unit 6 hours @ \$35.00/hour	\$ 210.00
5. Cost of eating out for 4 days while repairs were done.	\$ 300.00
6. Recover the filing fee	<u>\$ 100.00</u>
 Total	 <u>\$3,210.00</u>

The Landlord said they do not dispute the rent return of \$45.00 or the food costs of \$40.00 per day for 3 days totally \$120.00. As well the Landlord said they paid the hotel cost for the night of March 1, 2017 and they paid for the extra cost of the U-haul trailer because the move in was delayed one day. The Landlord said they are disputing that the Tenants loss use of ½ the rental unit because of the unfinished kitchen work. The Landlord said they moved the new stove and refrigerator into the unit on March 2, 2017 and the counter top and cabinets although in poor condition were useable. The Landlord said the Tenant's claim for \$2,275.00 for loss of use of the unit is not valid. Further the Landlord said the Tenant has not proven any lost wages, so this claim should not be allowed. The Landlord continued to say they have submitted cleaning tickets for the rental unit, so the Tenants claim for cleaning the unit of \$210.00 is not valid either. The Landlord said the Tenants now have an upgraded rental unit with new appliances and although the work took longer than first expected the Tenants did not loss the use of the rental unit.

The Tenant said he submitted both Tenants pay slips and the slips show the Tenants missed work on March 2, 2017. The Tenant said the pay slips show a loss of wages of \$120.32 and \$160.32 for each Tenant for March 2, 2017.

The Landlord said she submitted a cleaning receipt for \$183.75 dated March 21, 2017 for cleaning the rental unit. The Landlord said the cleaning was actually done earlier in March, but the invoice was received on March 21, 2017. It should be noted that there is no indication on the invoice when the work was done.

The Landlord said in closing the Tenants have an upgraded rental unit at a good rental rate and they had full use of the rental unit from March 2, 2017 onward except when the cabinets were installed from June 7 to June 9, 2017.

The Tenant said in closing that they could not unpack their belongings because the kitchen was under repair and as a result they lost use of approximately half of the rental unit for 3.5 months. The Tenant continued to say the Landlord said the unit would be move in ready on March 1, 2017 and the repairs would be done in 10 days. This did not happen as it took until June 9, 2017 for the unit to be move in ready. The Tenant said they loss the use of half the unit for 3.5 months and they are requesting to be compensated.

### Analysis

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.

Both parties agree the rental unit was not ready for the Tenants to move in on March 1, 2017. This is a breach of the tenancy agreement. The Landlord did compensate the Tenants by paying for a hotel and the extra cost of the moving trailer. This is commendable and shows the Landlord is responsible for their actions. The move in condition inspection report shows that the kitchen was to have significant repair and replacement of appliances. The Tenant said this was to happen within 10 days of moving in and it was not completed until June 9, 2017 three and a half months later. It is apparent from receipts submitted by the Landlord that cleaning, painting and some renovations were completed in the rental unit in February 2017. The question is whether the Landlord has breached the tenancy agreement by not providing service and facilities as agreed in the tenancy agreement or if the parties had an agreement for repairs to the unit that took longer than agreed and this inconvenienced the Tenants. I find that the Tenant did have use of the rental unit as they had the new appliances and there were countertops and cabinets in the kitchen. Consequently, I find the Landlord did not breach the tenancy agreement.

However, the parties had an agreement to complete the kitchen renovations in 10 days. I understand that the 10 days is an estimate, but three and a half months is not even close to 10 days. Therefore, I find the Landlord has inconvenienced the Tenants by not providing repairs to the kitchen in a timely manner that the Landlord agreed to. As a result and pursuant to section 7 of the Act, I award the Tenants the equivalent of one month rent in the amount of \$1,300.00 for the inconvenience of not having the kitchen

completed on time and for not being able to unpack some of their belongings because of the renovations not being completed.

In addition, as both parties agree to the rent return of \$45.00 for March 1, 2017 I award \$45.00 to the Tenants as a rent reduction for March 1, 2017.

Further I accept the Tenant's testimony and evidence of pay slips in support of the Tenant's claim for lost wages in the amount of \$280.00. I award the Tenants \$280.00 for lost wages.

With respect to the Tenant's claim to be paid for cleaning the unit I accept the Landlord's testimony and cleaning invoices dated February 14, 2017 and March 24, 2017 as evidence to support the Landlord's position that the unit was cleaned. I dismiss the Tenant's claim for \$210.00 for cleaning.

Further the Tenants have claimed \$300.00 for eating out for 5 days (March 1 & 2 and June 7, 8 & 9) while they could not use the kitchen in the rental unit. The Landlord has agreed to \$40.00 per day for food expensed for 3 days (June 7, 8, & 9). I accept that the Tenants lost the use of the kitchen in the rental unit because of the actions of the Landlord for 5 days during the tenancy. I also accept the Landlord's estimate of \$40.00 per day as a food allowance. Consequently, I award the Tenants 5 days at \$40.00 per day as a food allowance in the amount of \$200.00.

As the Tenants have been partially successful I also order the Tenants to recover the filing fee from the Landlord in the amount of \$100.00.

The Tenants will receive a monetary order in the amount of \$1,925.00 which represents the following:

Inconvenience for the loss of use of the kitchen	\$1,300.00
Rent return for March 1, 2017	\$ 45.00
Lost wages for March 2, 2017	\$ 280.00
Food allowance for loss of use of the kitchen	\$ 200.00
Recover filing fee	<u>\$ 100.00</u>
Total	<u>\$1,925.00</u>

### Conclusion

I grant the Tenant a monetary order under Section 67 of the Act for the amount of **\$1,925.00**. The Tenant may deduct this amount from future rent payable in full satisfaction of the claims. 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 *Residential Tenancy Act*.

Dated: April 4, 2018

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Residential Tenancy Branch