



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Korecki Real Estate Services  
Inc. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$6,075.00 for damage or compensation under the Act for the Tenant; and to recover the \$100.00 cost of her Application filing fee.

The Tenant and an agent for the Landlord, C.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the fixed-term tenancy began on November 1, 2018, and was to run to October 31, 2019; however, the Tenant ended the tenancy early, vacating the rental unit on May 31, 2019, because the electricity bills were much higher than expected. They agreed that the Tenant was required by the tenancy agreement to pay the Landlord a monthly rent of \$2,025.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,012.50, and a pet damage deposit of \$1,012.50. They agreed that the Landlord returned the deposits to the Tenant, less \$25.00. The Tenant applied for dispute resolution on May 30, 2021 or two years less a day from the last day of the tenancy.

The Parties agreed that they conducted inspections of the condition of the rental unit at the start and at the end of the tenancy. Further, they agreed that the Landlord provided the Tenant with a copy of the condition inspection report ("CIR") at the start.

The Tenant submitted a monetary order worksheet with her Application, from which we reviewed the claims set out therein. The Tenant's claims include the following:

Loss of use of property	→ \$2,025.00
Over 40 hours of working	→ \$2,025.00
Four additional months of...	→ \$2,025.00
Application filing fee	→ <u>\$ 100.00</u>
Total	<u>\$6,275.00</u>

**#1    LOSS OF USE OF PROPERTY → \$2,025.00**

The Tenant said:

We did not have use of the kitchen for our first week. It was not cleaned before we moved in. See emails that [the Agent] knew it, said it was an oversight; he thought the Owners would have cleaned it. We couldn't use it until it was properly cleaned.

I asked the Tenant why not, and she said:

There were dozens of pictures we sent to [the Agent]. When you opened up the oven door, it was full of grease, and it was caked on the rack - food and grease. When you opened the fridge – see the pictures – food from the previous tenant or owner was caked in there. When the cleaner came and took out the drawers, she found a lot more. There was grease all underneath cupboards near stove. And the shelves – we didn't want to put things in the fridge and the cupboards, and have to take things out.

I discovered a leak from the upstairs. The stains on the carpet were there already; and mould had developed already in the carpet. They had to fix the leak in the dining room and pull the carpet out halfway from kitchen to balcony door. We couldn't use the dining room for the month of November. And parts of the living room. The furniture was in the living room for the month of November.

Also, we had ongoing issues, like the burner knob on the stove not working. It was not fixed until March.

The basket in the dishwasher was broken, so you couldn't put the utensils in the dishwasher - had to wash them by hand those four months.

There was a loss of use of property: the kitchen, dining room, living room, upstairs bathroom for two days – not allowed to use it or shower. We had ongoing issues with appliances until March.

The Agent responded, as follows:

I don't dispute a few things over this – we had a cleaner come in two days after the move-in inspection. It's in our evidence – a building services invoice – they

were there on November 3<sup>rd</sup>. So, saying it was not usable for a month is inaccurate.

The other items she mentioned, as in the fridge being dirty in the trays - yes, I agree - but they were taken care of. The oven - also taken care of by the cleaner. It's not a brand-new oven; you can't get every stain out, because it was used before, but after it was cleaned, it was more than capable of being used.

The Tenant said:

The kitchen was only unusable for the first week. The first cleaner actually called me on my cell phone. She said she got off the bus too soon, and that she wouldn't come if we didn't pick her up. She didn't have any oven cleaner. She was there 2 to 2½ hours. She was told it would be a quick touch up. An additional cleaner had to come to finish the work a few days later.

I asked the Tenant how she arrived at the amount claimed for this matter, and she replied: "Because we were not able to use a large portion of the suite, so the townhouse was not ready for most of November [2019]."

The Agent said that her amount "seems random", and that he did not agree to any amount for that claim.

I asked the Landlord about the leak, and he said that it happened on November 6<sup>th</sup> or 7<sup>th</sup>. He said:

The Strata plumber fixed the leak. They weren't able to use the upstairs bathroom for a couple days. And a small portion of the carpet had to be pulled back to dry. It was first brought to my attention on the 6<sup>th</sup> or 7<sup>th</sup>.

We repaired the drywall. There is a statement from my contractor of what he saw the Tenants doing during his repair work.

The Landlord submitted a statement from the contractor who invoiced the repair work, which said:

[Contractor  
Address  
Telephone number]

November 9, 2021

To whom it may concern,

I, [M.C.], owner and operator of [the construction company]. was contracted by [the Landlord] in November/December of 2018 to complete repairs to drywall and carpet areas in the living room area of [rental unit address]. I would like to provide my witness account of my experience onsite while completing the repair work. I can confirm [the Agent], the rental property manager with [the Landlord] was readily available to provide access to the unit on multiple occasions to minimize inconvenience to the tenants.

While carrying out the work in the unit, the tenant, seemed relaxed and unbothered by all the work being done. During the majority of the repairs, I observed the tenant watching TV in the living room area while going back and forth at times to the kitchen. Based on my eye witness accounts during the repairs, the tenant seemed to have reasonable use of the living room and kitchen areas with minimal interruption or inconvenience.

During our repairs, the most inconvenient time would have been when the carpet was lifted and 1-2 blower fans were installed in the area the size of a dining room table. They would have been there for approximately 5 days to allow the floor and wall to dry out.

Yours truly,  
[signature]  
[M.C.]

The Agent continued:

Regarding the other repairs to the stove and dishwasher, to me, those do not seem like absolute repairs, because they were still functional. Cutlery tray and detergent not working? We had a cutlery basket to them a couple months later.

As for the dishwasher not working, a report from the contractor said it was a use issue, not that it wasn't working properly. There was nothing actually wrong with the dishwasher, other than the missing cutlery basket, which I had put in.

Requesting a monetary order for time spent letting contractors in? For the majority of this work , I either gave keys for access or let them in myself to

minimize inconvenience to her. See her page 10 – I will provide them with keys.... On page nine they thank me for my prompt responses. On page 12, she mentions, her partner, that he will be home for most of the points during the week to provide access. On her page 13, I ask what date and time will work best for them – to minimize the inconvenience for the Tenants.

The Tenant said:

Regarding the dishwasher, the contractor cleaned inside the dishwasher and problem-solved on why the soap was not working – he said it may not be dissolving properly. We were not doing anything improper with the dishwasher – he cleaned the filters.

Re access to the unit, my number was given to the stove contractors. They called me without my knowing they would be calling. We wanted to work with [the Agent], and we were willing to work together, but the issues were ongoing.

We were not comfortable having contractors without him or us present. He had worked with the carpet contractor for many years. They came, and the cleaner had our key for over a month and a half. I said, [Agent], we never got our keys back. So many ongoing issues and hours.

Speaking of contactors - arranging appointments, being present, doing quality control.... Things were not done properly, as is in the evidence We treated the place as our own. The carpet was not lifted up after the leak. Only when we noticed a musty mouldy smell, we lifted up the carpet carefully and found mould. There were stain in the carpets already – this development was already in the carpet. We were just the ones to discover it.

We alerted [the Agent] to the leak and the Strata called me at work for access to the unit. They said, 'We will be breaking down the door because a leak is serious.' There were so many instances for needing to meet contractors over the time of our tenancy.

The email that the Agent referred to was sent to him by the Tenants dated November 11, 2018. This email states:

On Sun, Nov 11, 2018, 3:02 PM [Tenant], > wrote:  
Hello [Agent],

First of all we would like to thank you for your prompt responses and your willingness to help us fix all of the arising issues. Unfortunately, there are still significant issues that need to be fixed.

1 - the cleaner showed up to clean however she came with no cleaning supplies for the oven and the back and racks are still unclean. Please see attached pictures.

2 - one of the big drawers track is coming off and we cannot use it

3 - the microwave grill is broken in a few places and needs replacing along with a new filter. Please see pictures.

4 -we smelt a musty smell from the carpet and lifted the edges carefully. There is severe mold development under the carpet due to the leak that was present long before we moved in. Please see attached pictures.

5-the drywall needs to be repaired.

We have new furniture arriving December 08th and request that the carpet be replaced and other repairs/cleaning be completed as soon as possible. We thank you for helping us in being comfortable in our new home.

Regards,  
[Tenants]

## **#2 OVER FORTY HOURS OF WORKING → \$2,025.00**

In initiating this claim, I noted that 40 hours of work for \$2,025.00 equates to working at \$50.63 an hour. I asked the Tenant what they were doing that could reasonably be charged to the Landlord for this much?

The Tenant said:

All the work we did over the five months. We took dozens of pictures, and sent them to him, as well the amount of work that we must do. \$25.00 an hour each was what we charged. These were hours we could be working. Instead, we were dealing with issues in the unit that were not our responsibility.

I asked the Tenant if she had kept track of these hours to come to this total. She said:

No, just from the evidence of emails sent, and numerous texts. In addition, there is a lot of evidence not presented here. Each of these emails must take 10 to 15

minutes to write. The time with the contractors: 2 to 2½ hours for the cleaner and contractors – a lot of work.

The Agent said:

Getting back to what I mentioned before, we were trying to be accommodating to the Tenant. The leak – Strata calling her – that's the standard process. And that specific one – I came up the same day to let them in.

Another thing noted in emails, I was more than happy to provide access to the unit myself or give a key to contractor, and give the Tenant proper notice. We were trying to minimize their inconvenience, since they're working.

They were actually home some of the time, as she mentioned in her email submitted.

She has provided no back up of the hours spent; I don't agree with that or any of this compensation.

**#3    FOUR ADDITIONAL MONTHS OF \_\_\_\_\_ → \$2,025.00**

The Tenant did not provide a complete description of this claim, so I asked her to fill in the rest of the sentence, and how she calculated this claim. She said:

The issues were ongoing. We calculated the amount of \$125.00 per week of not having use of the property. The carpet extended into December. The dishwasher, the microwave above the stove was not replaced – it was greasy and clogged. There was a crack in the microwave. They came twice to look at that. The issues were ongoing. We had an ant infestation in March. So all of these things were ongoing issues to March [2019].

The Agent responded, as follows:

Getting back – I am accessible to let the contractors in, and to observe repairs that happen in a unit, as it's being lived in. Reporting the repair to a Landlord is not included as work on the unit. That comes along with any tenancy – report what's wrong to the Landlord.

Dishwasher, microwave, ants – I had contractors out for all of these things. These items were still functional. Even the leak – I also believe the Landlord has



the right to make repairs in the unit. As a Landlord I don't like when things go wrong, as well, but I did everything I could to get that process going as soon as possible. Providing access myself. ... having to have the Tenant present or me present? That drags on the process, which is not good, as well. I tried to do as much as possible and tried to provide keys to prevent delay and inconvenience.

On the notice to vacate that the Tenants provided, their comment specially notes: 'We've enjoyed living at the townhouse.' If compensation is due – why not ask when signing the CIR – not two year later. Nothing was addressed at the end of the tenancy, and their notice to vacate said they've enjoyed living here.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenants must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenants to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenants did what was reasonable to minimize the damage or loss.

("Test")

### **#1    LOSS OF USE OF PROPERTY → \$2,025.00**

When I consider the evidence before me overall in this matter, I find that the Tenants had to tolerate a number of undisputed deficiencies in the rental unit in the first month of their tenancy. The kitchen was dirty, the dishwasher cutlery basket was missing, the stove knob was broken, and the cleaner was problematic. There was also a leak in the living room/dining room area that prevented them from using these rooms fully. It also required having contractors and fans in the rental unit.

The Tenant has claimed a full month's rent for the inconveniences endured during the first month. This implies that the Tenants were unable to use the rental unit at all during November 2018. However, the evidence before me is that they were sheltered there, slept there, worked there, and ate there, although, without full use of the kitchen. Further, I find from both Parties' evidence before me that the Agent was conscientious in addressing the issues faced by the Tenants in a prompt, attentive manner. This is evidenced in the Tenant's email, in which they express gratitude for the Agent's "prompt responses and your willingness to help us fix all of the arising issues." In addition, the Tenant indicated in the hearing that the reason they ended the tenancy early, was because the electricity costs were much higher than anticipated, rather than anything the Landlord or agents did, or anything having to do with repairs to the rental unit.

When I consider this matter overall, I find that the Tenants have provided sufficient evidence to prove their entitlement to half a month's rent from the Landlord for the condition of the rental unit at the beginning of the tenancy. I, therefore, award the Tenant with **\$1,012.50** from the Landlord, pursuant to sections 7, 32 and 67 of the Act.

## **#2 OVER FORTY HOURS OF WORKING → \$2,025.00**

The Tenant said she did not keep track of the time that they spent attempting to get deficiencies repaired in the rental unit throughout the course of the tenancy. Further, she did not cite an authority in the Act pursuant to which a tenant may claim compensation for having to register complaints about the rental unit to the Landlord's agents.

The Agent's evidence is that he attended the rental unit to let the contractors in and/or provided them with keys, if he or the Tenants could not be there. I find that the Tenants have not provided sufficient evidence that arranging to have deficiencies fixed entailed work for them that could be compensated pursuant to the Act.

Based on the evidence before me overall on this matter, I find that the Tenants have not provided sufficient evidence to meet the burden of proof on a balance of probabilities for this claim. Accordingly, I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

## **#3 FOUR ADDITIONAL MONTHS OF \_\_\_\_\_ → \$2,025.00**

The Tenants seems to have made three claims for the same thing. They want compensation for the inconvenience of having deficiencies in the rental unit during their

tenancy. I have awarded the Tenants with half a month's rent as compensation for living without a completely operational rental unit in November. But I find that the Tenants failed to articulate the difference between this claim and the others, which have been granted or dismissed above.

Based on the evidence before me overall, I find that the Tenant has failed to provide sufficient evidence to prove this claim on a balance of probabilities. I, therefore, dismiss this claim without leave to reapply.

### Summary

#1	Loss of Use of Property → \$1,012.50 awarded
#2	Over 40 Hours Working → \$ 0.00
#3	Four Additional Months → \$ 0.00
<b>TOTAL</b> <u>\$1,025.00</u>	

Given that the Tenants were unsuccessful in two-thirds of their claim, I decline to award them with recovery of the \$100.00 Application filing fee. I dismiss this claim without leave to reapply.

I grant the Tenant a Monetary Order in this matter for **\$1,012.25** from the Landlord, pursuant to section 67 of the Act. This Order must be served on the Landlord as soon as possible.

### Conclusion

The Tenants are partially successful in their claim for compensation from the Landlord in this matter, as they provided sufficient evidence to support their burden of proof on a balance of probabilities for their first claim, and were awarded \$1,012.50. The Tenant's other claims are dismissed without leave to reapply pursuant to section 62 of the Act, as the Tenants failed to provide sufficient evidence to prove these claims on a balance of probabilities.

The Tenants are granted a Monetary Order from the Landlord of **\$1,012.50**, pursuant to section 67 of the Act. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 09, 2021

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Residential Tenancy Branch