



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCL-S, FFL**

**CNC, OLC, MNDCT**

### Introduction

This hearing dealt with cross applications filed by both the landlord and the tenant pursuant the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72

- The tenant applied for:

An order to cancel a 1 Month Notice to End Tenancy for Cause pursuant sections 47 and 55;

- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62; and
- A monetary order for damages or compensation pursuant section 67.

The tenant attended the hearing, and the landlord attended the hearing accompanied by her children BL and JL who acted as the landlord’s agents. As all parties were present, service of documents was confirmed. Each party acknowledged being served with the other’s Notice of Dispute Resolution Proceedings package and stated they had no issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*.

Section 63 of the *Act* allows an arbitrator to assist the parties in settling their disputes and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. At the commencement of the hearing, the parties agreed that the tenancy should end. As a result of the parties' compromise, I made the following orders pursuant to section 63 of the *Act*:

1. The parties mutually agreed to end the tenancy at 1:00 p.m. on December 31, 2021 by which time the tenant and any guests of the tenant will have vacated the rental unit.
2. The rights and obligations of the parties under the *Act* continue until the tenancy ends.
3. To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is to serve this Order of Possession upon the tenant immediately and enforce it as early as 1:00 p.m. on December 31, 2021, should the landlord be required to do so.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settles this aspect of the dispute. As the parties resolved this matter by agreement, I make no findings of fact or law with respect to the reasons for ending the tenancy.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Is the landlord entitled to a monetary order?

Can the landlord recover the filing fee?

#### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on June 1, 2021 with rent set at \$700.00 per month payable on the first day of each month. "Storage" is included in the rent, however the nature of the storage is not expressly indicated. A security deposit of \$350.00 was collected by the landlord which the landlord continues to hold. The tenancy agreement indicates there is a one-page addendum, however neither party provided a copy of it for this hearing.

The parties agree that the rental unit is located in the lower (basement) unit of a house with an upper and lower unit. The upper unit is comprised of three rooms with three tenants under three separate tenancy agreements. This lower unit has the same setup: this tenant rents one of the rooms in the lower unit which has three "rooms": room 4, room 5 and room 6. The tenant occupies room 4 and the other two rooms are currently unoccupied.

The landlord seeks compensation for the vacant rooms, testifying that the tenant's hostile behaviour and lack of consideration for the others sharing the space has caused the occupant of room 5 to flee to an upstairs room. Further, the tenant blocked the entrance to room 6 when the landlord tried to show it to a potential tenant. The landlord alleges the tenant got hostile and "drove away" the potential tenant. The tenant filed a police report alleging the potential tenant assaulted her however no charges arose from that complaint.

The landlord testified that the occupants of the lower unit are meant to share a kitchen, bathroom and laundry room. The hallways and stairways are also common areas meant to be shared by all the occupants. The landlord alleges that the tenant has filled up all the kitchen cupboards with her possessions, not leaving any room for the other occupants. The tenant leaves her personal possessions all around the common areas instead of keeping them in her room. The landlord notes that the tenant piled up her personal belongings in the staircase and hallways and then began to block the entrance to room 6 with her possessions. The landlord testified he sent the tenant multiple emails to remove her goods and keep the common areas clear however the tenant refused to cooperate.

The landlord acknowledges that when it was accessible, the landlord (the actual landlord, not the agent in this hearing providing testimony) used room 6 as an office space. She no longer has the ability to access it due to the blockade of the tenant's possessions.

On October 1<sup>st</sup>, the occupant of room 5, LN got so irritated and afraid for her safety that she moved upstairs. The basement unit is currently solely occupied by the tenant in this proceeding. The landlord seeks to recover \$100.00 per month from October 1<sup>st</sup> to the end of the tenancy because the room that LN relocated to is worth \$800.00 per month, although the landlord only charge LN \$700.00 per month. The landlord also seeks to recover \$650.00 per month for the now vacant room that LN used to occupy. The landlord also seeks to recover \$550.00 per month from the beginning of August however it is unclear to me how the landlord arrived at this.

The tenant testified that she seeks compensation in the amount of \$2,000.00 for the following:

1. Compensation for a loss of quiet enjoyment. The rental unit became less enjoyable due to being unable to sleep from noises upstairs and the co-tenant LN living in the basement with her. The tenant also stated there were problems with LN's cleanliness and the landlord's breaches of the tenant's privacy by using the third unoccupied room (room 6).
2. Threatening her physical safety. The tenant's belongings were threatened by the landlord, according to the tenant. The tenant also alleges the landlord illegally entered the rental unit and allowed LN to harass her.
3. Breach of a material term of the tenancy for not providing storage as required by the tenancy agreement and allowing the landlord to use room 6 as an office space.
4. Hardship and losses for having to look for a new accommodation and moving costs.

The tenant alleges that her complaints against LN were not investigated by the landlord or that the landlord sided with LN in disputes. The tenant also alleges that the landlord's son went into the unit to film her and that this was reported to the police. The landlord countered saying the son was in the unit to test the internet speed only. The tenant also alleges the actual landlord spent a week in room 6, doing office work, cleaning bathrooms, wiping floors and using the kitchen sink. The tenant argues that the landlord's use of one of the rooms in the basement unit was never stipulated on the tenancy agreement.

The tenant argues that the tenancy agreement includes "storage" however the "storage" was a shed in the yard that was in unusable condition without a lock and lacking space for her possessions. This is the reason why the tenant had her possessions stored in the common areas of the lower unit.

The tenant also submits that the upstairs tenants keep her up at night by making noise.

When asked about how she arrived at compensation in the amount of \$2,000.00, the tenant responded that she didn't have any basis for arriving at this amount. She felt that the arbitrator could decide how much she should be compensated.

### Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The landlord seeks compensation from the tenant because of her behaviour in making it difficult for co-occupants to live alongside her in the basement unit which led to vacancies in the house. This includes the tenant taking up too much room in the kitchen cabinets, not keeping the common areas clean, not keeping her possessions confined to the room she rents and fighting with LN, the co-occupant of the basement unit.

In this case, I find the landlord has created a situation whereby it would be difficult for any person to abide by the strict conditions the landlord wants the tenant to adhere to. A reasonable observer would expect conflict arising from three strangers co-occupying a small space including the common kitchen, bathroom and laundry facility. The potential for conflict is especially increased when the six individual unrelated co-occupants are expected to share a laundry facility.

Further, I turn to the tenancy agreement which doesn't clearly state that the tenant rents out room #4 of the basement unit of the house. There is no indication on the tenancy agreement that the tenant would be required to share the space with two unrelated co-occupants, one of which was the landlord, herself at times. I note here that such an arrangement whereby the landlord retains a room in the basement has the potential to

violate the tenant's right to exclusive possession of the rental unit under section 28 of the Act.

Even if I were to accept that the tenant understood that the space would be shared with other co-occupants, the potential for conflict to arise based on this arrangement ought to have been anticipated by the landlord. While I accept that the motive for renting the rooms individually is to maximize the rents derived from the property, the landlord has to accept that the consequence for this setup is the discord between these individuals.

To appease LN, the occupant sharing the basement unit with the tenant, the landlord moved LN to a room upstairs. I find the landlord's actions reasonable, given the hostility between the two. However, simply because the landlord took such an action does not mean that the tenant is responsible for compensating the landlord for the vacant room. In order for me to grant an award to the landlord, I must find there has been a violation of the *Act*, regulations or tenancy agreement. While it may be argued that the tenant potentially breached the quiet enjoyment of another occupant (LN) contrary to section 47 of the *Act*; the same may be said of LN breaching the tenant's right to the same. I accept the tenant's testimony that there were things about LN that the tenant found irritating and worthy of the landlord's investigation after being sent written complaints. To be clear, by renting individual rooms to unrelated people who may or may not get along, I find it is the landlord who created the situation where conflict was bound to arise.

As I stated earlier in this decision, by housing three unrelated strangers in a small basement suite with un-designated storage spaces for each occupant, the landlord has created a situation where such conflicts could be reasonably anticipated. As such, I find that the landlord has not provided sufficient evidence to satisfy me that the tenant violated the *Act*, regulations or tenancy agreement [point 2 of the 4-point test]. Consequently, I dismiss the landlord's claim for compensation without leave to reapply.

The tenant seeks \$2,000.00 for what can be grouped as a general claim for breach of quiet enjoyment by the landlord. With the exception of the claim of disturbance by the landlord for being in the unit, the majority of the claims are related to the friction caused by living alongside other unrelated occupants in the unit or in the unit above her. These include claims for being unable to sleep due to noises from upstairs and not receiving enough storage space from the landlord. On the first point, I would expect the tenant to anticipate that there would be noise coming from the three individuals living in the unit above her. They are three adult individuals each operating on their individual schedules: walking around, cooking, entertaining and sleeping. If the tenant didn't want

to hear noises coming from above, the tenant shouldn't have entered into a tenancy in a basement unit. The same could be said for living with a stranger within the basement unit which, on a balance of probabilities, I believe the tenant understood would be the arrangement from the beginning of her tenancy.

Likewise, I would anticipate the tenant would confirm with the landlord the specific storage arrangements and have them put into writing before entering into a tenancy agreement with the landlord. At the very least, if the tenant felt that her belongings were unsafe in the storage area provided, she could have asked the landlord for greater security of her goods with a lock. Simply telling the landlord that the storage he provided was inadequate after entering into the tenancy is not a reason to be compensated for not having proper storage. Given that the tenant likely knew the basement unit would be shared with at least one other co-occupant, the tenant likely understood that her personal belongings would be less secure than if she had rented a fully self-contained single person rental.

As I indicated, both parties entered into a tenancy agreement whereby they understood that the basement unit would be shared with one or maybe two other occupants. Given the testimony of the parties and the evidence before me, it was unclear whether the parties had an agreement that room 6 would be retained for the landlord's occasional use. Consequently, I cannot make a finding that the landlord breached the tenant's right to quiet enjoyment for not providing exclusive possession of the rental unit under section 28.

I find that the tenant has failed to provide sufficient evidence to satisfy me that she has sustained a damage or loss or that any such damage or loss was the result of a violation of the *Act*, regulations or tenancy agreement by the landlord. [ points 1 and 2 of the 4-point test].

Second, the tenant did not provide any reasoning for how she arrived at compensation she seeks in the amount of \$2,000.00. She did not provide any case law or previous decisions with a similar set of facts where a party was successfully awarded a similar award. Nor did the tenant provide any scale for me to calculate a figure to award her, had she been successful. Consequently, I find the tenant has not provided sufficient evidence regarding the value of the damage or loss [point 3 of the 4-point test]. For these reasons, the tenant's application for monetary compensation is dismissed without leave to reapply.

The parties mutually agreed to end the tenancy effective December 31, 2021. As such, neither party gave submissions regarding the tenant's application seeking an order that the landlord comply with the Act. Given that there is less than a month left to the tenancy, pursuant to section 62(4), I dismiss this portion of the tenant's application as there no longer exists a dispute that may determined under part 5 of the Act.

The decision to order payment of the filing fee is discretionary upon the arbitrator and in accordance with section 72 of the *Act*, the filing fees of the parties will not be recovered.

#### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord effective December 31, 2021 at 1:00 p.m.

The remainder of the landlord's application and the tenant's application are both dismissed without leave to reapply.

This decision is legal, final and binding and 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 06, 2021

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Residential Tenancy Branch