



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, PSF, OLC, 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 pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by an agent and the agent's family member.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Should the landlord be ordered to provide services or facilities required under the Act, regulations or tenancy agreement?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on November 1, 2019. The monthly rent is \$5,500.00 payable on the first of each month. The tenants paid a security deposit in the amount of \$2,750.00, and a pet damage deposit in the amount of \$2,000.00.

There has been a lengthy history of litigation between the parties under the file numbers on the first page of this decision. In the decision of November 5, 2021 the presiding arbitrator notes finds that there is an effective tenancy between the named parties with FNK as an agent of the landlord and writes:

I am satisfied that the tenants have been residing at the rental address since November 1, 2019 in exchange for monthly rent of \$5,500.00. I find that the authorization letter submitted by FNK simply shows that the landlord had authorized FNK to appear as agent on behalf of the landlord, and does not confirm that a sublease exists.

Both parties at multiple points throughout the hearing attempted to make submissions on the existence of a sublease, the true owner of the rental property and have the issue of whether the tenants are sublessees relitigated. I informed both parties repeatedly that the principles of res judicata prevents me from rehearing an issue that has been adjudicated and is the subject of a final decision.

The tenants submit that the rental property has been and continues to be in a state of disrepair with insufficient storage, appliances not functioning, water ingress, leaks in the plumbing, holes in the walls, presence of mold and ceiling tiling work incomplete. The tenants claim that due to the landlord's failure to provide them with all of the items provided on the tenancy agreement they have incurred significant costs and suffered a loss in the value of the tenancy and their quality of life. The tenant also testified about an incident where they say they were approached by a vehicle and the driver made verbal threats to the tenant on behalf of an unknown owner of the property. The tenants submit into evidence some copies of email correspondence, photographs and receipts and seeks a monetary award of \$35,000.00. The tenants submit that the actual value of their losses exceed the small claims limit of the Branch and intends to file additional claims through the courts.

The landlord disputes the tenant's claim in its entirety and says that they have provided all services or facilities agreed to in the signed tenancy agreement.

### Analysis

Residential Tenancy Rule of Procedure 6.6 provides that the onus of proof lies with the applicant on a balance of probabilities.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the present case it is evident that there is considerable animosity and disagreement between the parties as all present attempted to use much of the hearing time to make accusations and malign one another's character and complain about unrelated issues rather than provide testimonial evidence on the matters at hand.

The tenants' central complaint is that the landlord has failed to provide services or facilities agreed to in the tenancy agreement. The tenant testified that they have not been provided with storage space or working appliances. The tenant also gave

evidence about the unfinished rental building and issues with water ingress and black mold.

Viewed in its entirety, I find insufficient evidence in support of the tenants' claim. The signed tenancy agreement provided into evidence clearly shows that storage space is not included in the monthly rent. I find little evidence in support of the tenant's claim that the appliances of the rental unit are not, and have never been, functioning. There is few email correspondence between the parties where the issue is raised. I find it stretches credulity to believe that the tenants resided in a property with no working appliances since November 2019 and there to be so little documentary evidence of complaints.

I find the tenants' submissions regarding the state of the rental property to have insufficient evidence. I find that a handful of photographs to be insufficient to demonstrate that there are issues with the rental unit such that it could reasonably be seen to be a breach on the part of the landlord giving rise to a monetary award.

While I accept the evidence that the tenant commissioned a third-party plumber to do some work on the rental property, I find insufficient evidence that the issue was raised with the landlord and a request for repairs was made prior to the tenant taking unilateral action and arranging for the work. I further find that the summary of work on the part of the third-party done in 2021 to be insufficient evidence to show that the requirement for work arose due to a breach on the part of the landlord.

I find that the tenant has failed to establish any portion of their claim on a balance of probabilities. I find the tenant's testimony dealt with matters irrelevant to the present claim such as their past residences, suspicions about the ownership of the rental property and general complaints without substantive documentary evidence in support. I find no breach on the part of the landlord such that it gives rise to a monetary award or requires an order of compliance. I find insufficient evidence that there has been any service or facility denied to the tenants. I find the tenants have not met their evidentiary onus and consequently dismiss their claim.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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: March 29, 2022

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Residential Tenancy Branch