



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OLC, MNDCT, RR, FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to comply with the Act pursuant to section 62;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Both parties attended and had opportunity to provide affirmed testimony, present evidence and make submissions. The agent AD testified he was the agent and property manager for the landlord who did not attend ("the landlord"). No issues of service were raised. The hearing process was explained.

#### 1. *Preliminary matter – service of Decision*

The parties provided the email addresses to which this Decision shall be sent.

*2. Preliminary matter – recording*

The parties confirmed they were not recording the hearing.

*3. Preliminary Issue – Landlord's Evidence Package of March 3, 2022*

At the beginning of the hearing, the landlord referenced evidence in his testimony that was not in the RTB evidence list. The landlord could not provide an explanation and testified he uploaded the evidence to the RTB on or about March 3, 2022. The landlord described the 3 items included in the package. The tenant acknowledged receipt of a copy of the evidence on March 3, 2022.

The parties discussed an adjournment as the Arbitrator had not had opportunity to review the evidence. The parties agreed to continue with the hearing. They agreed the landlord could upload the evidence by 4:00 PM on the day of the hearing and the Arbitrator would consider any subsequently uploaded evidence even if submitted after the hearing.

During the hearing, the landlord provided testimony regarding the evidence. The tenant had an opportunity to ask the landlord questions about the evidence and to reply. Each party agreed they had no further testimony with respect to the March 3, 2022, evidence.

My Decision includes consideration of all evidence filed including all the landlord's evidence submitted after the hearing.

I will not refer to all the evidence. Only key, relevant and admissible facts and my findings are referenced.

*4. Preliminary Issue – Settlement*

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both parties that I could not provide legal advice to them. I notified them that they could hire lawyers to obtain legal advice. I informed them that they could consult the Act, Regulation, Policy Guidelines and Rules of Procedures on the RTB public website. I notified them that they could settle their tenancy issues privately or at an RTB hearing.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or Order(s).

Before the conclusion of this 60-minute hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise, and achieved a resolution of one of the tenant's claims.

The parties agreed the landlord shall reimburse the tenant for cleaning expenses of October 15, 2021, in the amount of \$150.00.

Given the agreement reached between the parties during the proceedings, I grant an award in the tenant's favor for \$150.00.

#### *5. Withdrawal of Claim*

The tenant stated during the hearing that issues of repairs and maintenance have been resolved. Accordingly, the tenant withdrew her claim under section 62.

The tenant's claim under section 62 is therefore dismissed without leave to reapply.

#### Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

### Background and Evidence

This is an application by a tenant for a rent reduction and reimbursement of hydro fees because of the condition of the rental unit, a condo, for the first two months of occupancy. The landlord agreed to reimburse the tenant for cleaning fees incurred by the tenant two weeks after she moved in. The landlord requested all remaining claims be dismissed without leave to reapply.

The parties agreed the tenancy agreement was for a furnished unit and the landlord was to provide furniture, bedding and kitchen supplies. A copy of the agreement without the Addendum was submitted. The parties agreed as follows concerning the details of the tenancy agreement:

| INFORMATION                    | DETAILS                   |
|--------------------------------|---------------------------|
| Type of Tenancy                | Fixed term, furnished     |
| Beginning Date                 | October 1, 2021           |
| Fixed Term End Date            | June 30, 2022             |
| Vacancy Date                   | Ongoing tenancy           |
| Rent payable on first of month | \$2,200.00 plus utilities |
| Security deposit               | \$1,100.00                |

### *Condition Inspection Report*

The parties agreed they signed a Condition Inspection Report on moving and a copy was provided to the tenant. They agreed the report indicated the unit was in good condition in all material aspects.

The tenant acknowledged that she signed the Condition Inspection Report as described by the landlord. However, she stated she signed after a cursory inspection of the unit. When she later moved in, she discovered the unit needed cleaning, furnishings were not adequate, and the fireplace did not work.

The tenant testified she requested the landlord to resolve the problems with the unit and the landlord did not respond effectively in a timely manner. The landlord testified the

tenant overstated the conditions. Also, the landlord testified he made best efforts to resolve her concerns.

The tenant submitted written submissions about each complaint which was affirmed in her testimony. A summary of her version of events and the landlord's reply follows.

*Tenant's Claim – Unclean, Storage, Garbage*

The tenant testified as follows. As soon as she moved in, the tenant realized the unit was very dirty. There were many boxes and garbage bags filled with items of various kinds. The landlord acknowledged the unit needed cleaning and agreed to reimburse the tenant for the cleaning on October 15, 2022.

The parties also agreed that the boxes and garbage were removed at the end of October 2022 so they were in the unit for the first month of the tenancy.

The tenant testified that the lack of cleanliness, the heaps of boxes and garbage bags, and other conditions described later, disrupted her enjoyment of the unit for the first month. She wrote as follows in her written submissions (in part):

1.1-Since I was not able to unpack until the cleaning was done on Oct 15th, I had boxes of trash occupying my space the whole first month (my unit is small, so they were occupying a significant space)....

The unit was not professionally cleaned, it looked okay initially, but as soon as I moved in and started opening drawers, shelves and cabinets, I noticed lots of very dirty and non-sanitary scenes, e.g., used masks, extremely dirty pillows, broken dishes, loads of hair, spider webs, old letters with different names on them, etc. (I have photos and videos).

I had to live with boxes as I was unable to unpack due to dirty spaces. Despite my multiple requests, the agent did not send a cleaner to clean and remove dirty items and I waited till mid-month, then I called a professional cleaner as I could not continue living with boxes and taking everything in and out of the boxes constantly. The agent rejected my reimbursement of the money.

The cleaners collected more than 10 boxes and packages (of trash), but the agent did not take care of them and they have been occupying my space (photos

attached). He told me to pack them properly and keep them safely (trashies that did not belong to me, belong to people who lived here before me)

The tenant submitted many photographs in support of her claim. The landlord acknowledged the pictures accurately depicted the condition of the unit.

The landlord acknowledged the unit needed cleaning when the tenant moved in. However, while not professionally cleaned, he believed the unit was “clean enough”. Nevertheless, as stated, the landlord agreed to reimburse the tenant for the cleaning costs.

About the boxes and bags in the unit, the landlord testified he did his best to have them removed in a timely manner. The landlord expressed the opinion that the condition of the unit was not as bad as the tenant reported.

#### *Tenant’s Claim – Inadequate Furnishings*

The parties agreed the unit was rented furnished and that furniture, bedding and kitchen items were to be provided by the landlord.

The tenant testified as follows. . Before she moved in, the landlord promised a new sofa. The tenant submitted a picture of what was promised to her. The new sofa did not arrive for a month and then it did not match the picture provided by the landlord. Until the sofa was replaced, the sofa in the unit was unusable as it was dirty, broken, and old. The tenant submitted a photo of the sofa covered with a cloth which she said was dirty and uncovered which supported her claim of the age.

As well, the parties agreed the unit was supposed to contain bedding. The tenant testified that the bedding was filthy and unusable. Photos of stained, dirty linens were submitted. The landlord acknowledged that he warned the tenant not to use the bedding in the unit because of the pandemic.

As a result, the tenant purchased her own bedding.

The parties agreed the unit was supposed to contain adequate dishes and kitchen supplies. The tenant testified the dishes were broken and unusable. She purchased her own.

The tenant stated in her written submissions (in part):

1.2-When I decided to rent this unit (on Sep 20th 2021), the agent said he will bring in a new sofa. I received the sofa after one month and did not have one to sit on until the second month.

I did not have the sofa for the first month (although I rented a furnished unit).

The new sofa that I received is extremely different from what he initially showed me and what I received is a very low quality and different from the original photos.

There are many more points, for example, the agent told me the house has dishes, but I got very old broken dishes and only very few of them were usable. So, I ended up buying lots of dishes (despite his words that we said it is a fully furnished unit and everything including dishes is provided).

The landlord testified as follows. He agreed that the tenancy included furnishings. He testified that he did his best in the circumstances to provide a properly furnished unit.

The landlord acknowledged that before the tenant moved in, they agreed to replace the sofa. However, through no fault of his own and because of pandemic-related supply difficulties, he was unable to deliver a sofa in a timely manner and of the promised description.

Regarding the bedding, the landlord acknowledged the condition of the bedding which he advised the tenant not to use for health reasons. He confirmed the tenant's testimony regarding inadequate kitchen supplies.

#### *Tenant's claim – Fireplace*

The landlord stated he knew the fireplace did not work when the tenant moved in. The parties acknowledged the landlord fixed it after two months. The tenant claimed additional heating expenses.

The landlord testified he did everything possible to fix the fireplace quickly but had unexpected delays through no fault of his own. In any event, he stated the unit has baseboard heating and the tenant would not have incurred additional heating costs.

### *Summary of Claims*

The tenant requested a rent reimbursement of 80% for the first month's rent stated in the Monetary Order Worksheet to be \$1,760.00. She claimed compensation for extra hydro of \$76.00 incurred until the landlord fixed the fireplace.

As stated, the landlord agreed to compensate the tenant for cleaning fees.

Otherwise, the landlord denied that the tenant was entitled to any rent reduction.

### Analysis

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

### *Burden of Proof*

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The claimant (the tenant) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities all the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act

*Policy Guideline 1 - Landlord and Tenant – Responsibility for Residential Premises* states in part as follows:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards”



established by law, and are reasonably suitable for occupation given the nature and location of the property.

Sections 7, 65 and 67 address compensation as follows:

**7** (1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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**Director's orders: breach of Act, regulations or tenancy agreement**

65 (1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

- (a)...
- (b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;
- (c) that any money paid by a tenant to a landlord must be
  - (i) repaid to the tenant,
  - (ii) deducted from rent, or
  - (iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

...

**Director's orders: compensation for damage or loss**

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

### *Quiet Enjoyment*

The tenant's claim for rent reduction is akin to a claim for compensation for loss of quiet enjoyment.

Section 22 of the Act deals with the tenant's right to quiet enjoyment. The section states as follows:

22. A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- a. reasonable privacy;
- b. freedom from unreasonable disturbance;
- c. exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- d. use of common areas for reasonable and lawful purposes, free from significant interference.

The *Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* provides guidance in determination of claims for loss of quiet enjoyment.

The Guideline states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected and defines a breach of the entitlement to quiet enjoyment as substantial interference with the ordinary and lawful enjoyment of the premises. The Policy Guideline states that this includes situations in which the landlord has directly caused the interference, as well as situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

The Guideline states in part as follows:

*A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.*

*This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.*

*Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*

*In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.*

...

*A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).*

*In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.*

[emphasis added]

### *Credibility*

I have considered evidence submitted by both parties. I find the tenant's testimony to be supported in all material aspects by documentary evidence and to be the more credible. As she lived in the unit, I find her description of the conditions to be direct, accurate and believable. Her testimony was well supported by photographs. I do not accept the landlord's evidence that the tenant's evidence was overstated or exaggerated.

Therefore, I prefer the tenant's version of events. Where their evidence differs, I give greater weight to the tenant's testimony.

### *Findings*

Considering the testimony and evidence, in consideration of the Act, and pursuant to *Policy Guideline 6*, I find as follows.

The tenant has met the burden of proof on a balance of probabilities that the landlord breached section 28 (b) of the Act by failing to act reasonably and expediently in protecting the tenant's right to quiet enjoyment.

I accept the tenant's evidence and I find the condition of the unit when she moved in was not in keeping with the tenant's reasonable expectations, the agreement and the Act. That is, I find that the unit was dirty contained boxes/bags and was not suitable for occupation. I accept the tenant's testimony that she attempted to have the landlord clean the unit and finally took matters into her own hands and hired a cleaner. The landlord failed to removed the boxes/garbage bags until the end of the first month of the tenancy.

The parties agreed the unit was rented furnished and included furniture, bedding and kitchen supplies. I accept the tenant's evidence that the included items, such as bedding, dishes, a sofa and a fireplace, were broken, dirty or unusable. The landlord acknowledged the tenant's frustration but stated her did the best he could. The landlord acknowledged that the tenant bought bedding and kitchen supplies herself.

I find the landlord did not meet the landlord's obligations to provide a furnished unit in keeping with the Agreement and the tenant's reasonable expectations. I also accept the tenant's testimony that for the first month, she spent consideration time and effort to get the landlord to remedy the situation. I find the landlord failed to correct the deficiencies in a timely manner.

I accept the tenant's evidence that her quiet enjoyment of the living space was disturbed by the conditions she described and which I accept. I find the conditions had a negative impact on her daily life. The tenant testified to her frustration and distress during the first month which I find credible in the circumstances.

I am satisfied, on a balance of probabilities, that the conditions of the unit had a significant detrimental impact the tenant, the value of the tenancy and her ability to have quiet enjoyment of the property. I find this impact was experienced by the tenant primarily in the first month of the tenancy and to a lesser extent in the second month. I do not accept the landlord's evidence that he made best efforts to resolve the tenant's concerns in a timely manner and therefore the tenant's claims should be dismissed without compensation.

I find the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps or comply with their obligations to correct these and to ensure the tenant had a suitable place to live in keeping with the agreement and the Act where she could live peacefully.

I am satisfied that the tenant has met the evidentiary burden to demonstrate that they have suffered a loss of quiet enjoyment and a loss in the value of the tenancy.

Based on the totality of the evidence, I find that this loss was significant in nature for the first month, and to a less significant for the second month. While I accept the evidence that the tenant was able to reside in the rental unit during the first month when the conditions were worse, I find the occupancy was accompanied by concern, worry, and frustration.

In consideration of the quantum of damages, I refer to the *Residential Tenancy Policy Guideline # 6* which states:

*In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.*

I have considered the history of this matter, the testimony and evidence, the Act and the Guidelines. I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment for the first month of the tenancy, and, to a lesser extent, for the second month.

I find the tenant is entitled to a reduction in rent for the first two months of the tenancy. I award the tenant 30% of the first month's rent which I find is \$660.00 and 10% of the second month's rent which I find is \$220.00.

I do not award the tenant reimbursement for hydro bills. I find the tenant has not met the burden of proof with respect to this aspect of the claim as the parties agreed the unit had baseboard heaters.

As the tenant was successful in their application, they are entitled to recover their filing fee from the landlord in the amount of \$100.00.

A summary of the Monetary Order of **\$1,130.00** follows.

| ITEM                                       | AMOUNT            |
|--|-------------------|
| Agreed award for compensation for cleaning | \$150.00          |
| Rent reduction – October 2021              | \$660.00          |
| Rent reduction – November 2021             | \$220.00          |
| Reimbursement of filing fee                | \$100.00          |
| <b>TOTAL</b>                               | <b>\$1,130.00</b> |

I direct the tenant may deduct this amount of **\$1,130.00** from rent on a one-time basis.

#### Conclusion

The tenant's application under section 62 is dismissed without leave to reapply.

The tenant is granted an award of **\$1,130.00** for the balance of their claims which may be deducted from rent on a one-time basis only.

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 23, 2022

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Residential Tenancy Branch