



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFL, MNDL, MNDCL-S**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fee from the other party pursuant to section 72;
- A monetary order for damages caused by the tenant or the tenant's guests pursuant to sections 7 and 67; and
- 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.

The landlord and the tenant RL attended the hearing. The tenant acknowledged service of the landlord's Notice of Dispute Resolution Proceedings package and the landlord acknowledged service of the tenant's evidence. The tenant testified that he was unsure how to exchange the video evidence with the landlord and consequently did not do so. The video evidence provided by the landlord was excluded from consideration in this decision as it was not exchanged with the landlord pursuant to Rule 3 of the Residential Tenancy Branch Rules of Procedure.

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") and 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 and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages and compensation?

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.

The parties agree that the rental unit is a cabin located on the landlord's property and that the landlord lives in a separate structure on the property.

The landlord gave the following testimony. The tenancy began in September, 2019 with rent set at \$1,300.00 per month. The landlord and the tenants had an agreement that the tenants would perform chores around the property to get a reduction in rent monthly. The chores would include doing maintenance around the property and assisting with the horses. A variable deduction would be taken off the rent each month. The landlord testified that there was an addendum or separate contract regarding this, however it was not provided to me for this hearing. The landlord testified that shortly after moving in, one of the tenants became pregnant, making her less able to perform her chores.

The landlord testified that she did not do a condition inspection report with the tenants at the commencement of the tenancy. When I asked her why, the landlord responded, saying that she had good faith in the tenants, she knew what the pre-existing damage to the property was and she had paperwork from when the former tenant left. The landlord testified she was satisfied the rental unit was in "perfect" shape except for the fridge.

During the tenancy, the landlord never inspected the rental unit. The landlord testified that the tenants recently had a baby and that they never had any guests in the rental unit due to fears of Covid. The tenancy ended on July 1, 2021. At the end of the tenancy, the landlord, a witness, and the tenant RL inspected the unit. The landlord

declined to call the witness during the hearing, although she was given the opportunity to do so.

The landlord claims the tenants did damage to the unit. The landlord testified that the tenant used anchor bolts to put up structures and shelving without her permission. Prior to the tenants moving in, the landlord had the unit painted and when they left it was unrentable due to damaged walls and needing repainting. The window screens weren't washed, and the landlord hired a professional to come clean them. The landlord alleges the floors were not washed or vacuumed. There was debris between the spaces in the plank wooden floors. The toilet was filthy, and it took days to remove mold in the unit.

When they moved out, the tenants didn't take their garbage to the landfill. Instead, it was left out where animals could get at it, an issue in the rural setting where the property was. The tenants left the garbage cans full, so the next tenant had no place to put hers. The lawns were left uncut, with the edges of the lawn growing into the garden. The eaves were full of growing plants. The tenants agreed that taking care of the exterior would be their responsibility and the tenants failed to uphold their agreement.

The tenants were supposed to do chores to justify using wood the wood pile they shared with the landlord. They stopped doing chores in April and the landlord estimates the tenants used about a half cord of wood. The landlord alleges that she purchased soaker hoses for the property and the tenants took them when they left.

Lastly, the landlord seeks to recover the cost of a lost the mail key.

The tenant gave the following testimony. He will pay the \$35.00 replacement mail key fee. He acknowledges the landlord returned his security deposit pursuant to an order of the Residential Tenancy Branch.

The landlord never did a condition inspection report with him at the commencement of the tenancy, although the landlord brought a move-out one for the move out. The tenant took photos of it, but it was not signed by the landlord and the landlord never provided him with an actual copy. The tenant alleges that the landlord did not note any damage to the unit in the condition inspection report. The tenant testified that the landlord gave him no restrictions on what was permissible to be hung on the walls. He patched and repaired all the holes from the anchors, and the walls were "paint ready". In his submissions, the tenant provided a text from the landlord dated April 5<sup>th</sup> indicating

the landlord has touch up paint and that she will not be repainting the unit after such a short tenancy.

The condition of the rental unit was filthy upon move in and the lack of a condition inspection report when they moved in is evidence of that. There was pre-existing mold in the unit from low-quality construction and the window screens the tenant says are dirty were already in such a state.

The tenant provided photos of the exterior of the unit, taken the day before he left, depicting a cut lawn with trimmed hedges. Cleaning of the eavestroughs are not the tenant's responsibility. The tenant argues that he shouldn't be required to compensate the landlord for yard work or lawn care. The soaker hoses were brought by him from the community garden and he took them back at the end of the tenancy. The tenant notes that the landlord cannot prove she purchased the hoses, citing a lack of a proof of purchase for them.

Regarding the garbage disposal, the tenant testified that the bin supplied by the landlord was full when they left. They were instructed by the landlord to leave excess garbage near the bins and question why the landlord couldn't wait until the next pickup to get rid of it.

Lastly, the tenant testified that the parties verbally agreed that he would do work for casual use of some firewood. There was no pre-set measurement of what work would be done in exchange for what amount of wood and the wood pile was shared between the parties. The landlord declined every time he offered to help with wood related chores. During the 2 year tenancy, the landlord never once expressed concerns over the cost or use of firewood.

### Analysis

Section 14 of the Residential Tenancy Regulations ("Regs") state:

*the landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [condition inspections] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.*

Sections 17 and 18 of the Regs indicate it is the landlord's responsibility to schedule the inspections and provide a copy to the tenant.

Pursuant to section 21 of the Regs:

*in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.*

Both the landlord and the tenant testified a condition inspection report was not completed at the commencement of the tenancy, contrary to Section 14 of the Regs. Sections 17 and 18 of the Regs indicate that this is the landlord's responsibility. For the landlord to succeed in proving the tenants damaged the rental unit, the landlord must first prove to me the condition of the rental unit at the commencement of the tenancy, as prescribed in Section 21. Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put herself in a position where she cannot prove, on a balance of probabilities, the existence of the damages caused by the tenant when the tenancy ended. Though her testimony bears some weight, she has not met the burden of proof to show me the difference in condition between move-in and move-out.

When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, pursuant to section 37(2) of the Act. Regarding the landlord's claim to repair, prime, and paint the rental unit and to purchase supplies, I find the landlord has not proven, on a balance of probabilities, that the rental unit was left damaged by the tenants beyond reasonable wear and tear. This portion of the landlord's claim is dismissed.

Residential Tenancy Branch Policy Guideline PG-1 states:

*the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. **The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).** (emphasis added)*

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at

this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord.

The landlord provided neither a condition inspection report for me to determine the cleanliness of the rental unit at the end of the tenancy, nor specific photographs of the windows or window screens to corroborate her testimony that the rental unit was left unclean. Moreover, the landlord has not satisfied me that the mold on various surfaces of the rental unit, as shown in her evidence, wasn't already there at the commencement of the tenancy. As it is the applicant's onus to prove their claim on a balance of probabilities, I find the rental unit was left reasonably clean and undamaged except for reasonable wear and tear. I decline to award the landlord a monetary award for cleaning.

The same applies to the landlord's claim to cut the lawn, trim edges, sweep and clean the patio and eavestroughs. I reviewed the photos of the exterior of the property taken by the tenant the day before he moved out and find the tenant has fulfilled his responsibility to keep it reasonably clean. Moreover, it is unclear to me what chores the tenant was expected to do to obtain a reduction in rent as opposed to those he was required to do as a tenant living on the farm property shared with the landlord. I find the landlord has failed to prove this portion of her claim.

PG-1 states: *Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.* I find the tenant had fulfilled the obligation to properly dispose of waste in accordance with the pre-agreed method. I reviewed the photos of the excessive garbage that the landlord alleges was left behind and I find the tenants properly sorted their recyclables and left items that would not fit in the garbage bin neatly beside it. I find it reasonable for the tenants to do so, as there didn't appear to be any organic material to attract animals or pests in the 2 bags left beside the garbage bin. This portion of the landlord's claim is likewise dismissed.

I find the landlord has failed to prove her claim to be compensated for firewood. The landlord testified the tenants were to do chores in order to be entitled to the firewood from the pile that the landlord also took her firewood from. Based on this, I find it impossible for the landlord to quantify how much wood the tenants used. The landlord also failed to maintain accurate records of what labour was credited for use of the firewood as opposed to labour for a reduction in rent or labour expected of the tenants simply for living in the rental unit. This portion of the landlord's claim is dismissed.

The landlord has failed to prove ownership of the soaker hoses she claims were her property when the tenants vacated the rental unit. The burden of proof falls upon the applicant when seeking compensation under sections 7 and 67 of the Act and I find that the tenant's testimony that the soaker hoses were brought to the property from his community garden to be just as reasonable as the landlord's claim that she purchased them. Without a receipt to prove ownership the burden of proof has not been satisfied and this portion of the landlord's claim fails.

The tenant acknowledges he lost the mail key and agreed the landlord is entitled to compensation in the amount of \$35.00. The landlord is entitled to a monetary order in the amount of \$35.00.

The parties agree that the tenants' security deposit was already returned to them and the landlord's application seeking to retain it is dismissed.

As the landlord was unsuccessful in the majority of her claim, the filing fee will not be recovered.

#### Conclusion

I award the landlord a monetary order in the amount of \$35.00.

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: October 04, 2022

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Residential Tenancy Branch