



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **CNL, MNDCT, OLC, FFT**

### **Introduction**

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to sections 49 and 55;
- A monetary order for damages or compensation pursuant section 67;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant TM and the landlord both attended the hearing. As both parties were present, service was confirmed. The landlord confirmed receipt of the tenant’s Notice of Dispute Resolution Proceedings, but did not receive some late evidence uploaded to the Residential Tenancy Branch online portal by the tenant on July 10, 2023 (7 days before the hearing). I advised the tenant that pursuant to rule 3.14 of the Rules of Procedure, the last day for him to upload evidence to the Residential Tenancy Branch and exchange it with the landlord is 14 days before the hearing.

The tenant testified that he uploaded the late evidence to contradict the landlord’s evidence which he described as being false. I determined that the tenant’s evidence uploaded to the Residential Tenancy Branch website is not considered new and relevant and unavailable at the time of filing his application. As such, the late tenant evidence was excluded from consideration in this decision pursuant to Rules 3.17 of the Residential Tenancy Branch Rules of Procedure. The evidence uploaded at the time of filing the application was considered.

The tenant acknowledged service of the landlord’s evidence and it was admitted.

### Preliminary Issue – Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute 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 beginning of the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved the following resolution of one aspect of their dispute with the following terms:

1. The tenant agrees to vacate the rental unit in accordance with the notice to end tenancy for landlord's use on August 31, 2023 at 1:00 p.m.
2. The landlord will not collect rent for the month of August to compensate the tenant in accordance with section 51 of the *Act*.
3. The rights and obligations of the parties continue until the tenancy ends.

Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settles these aspects of the dispute. As the parties resolved matters by agreement, I make no findings of fact or law with respect to the application before me and I make no determinations on whether the notice to end tenancy was valid.

I determined that the tenant's application seeking an order that the landlord comply with the *Act* be dismissed without leave to reapply as this tenancy is ending.

### Issue(s) to be Decided

Is the tenant entitled to compensation?

Can the tenant 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 admitted 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 tenant gave the following testimony. He inspected the rental unit before agreeing to move in. It was vacant at the time, though very dirty. The walls needed painting and the tenant agreed to paint the unit for free if the landlord supplied the paint. The tenant testified that although the tenancy agreement commencement date was July 15, 2020,

he and the co-tenant were unable to fully move in because they spent the first 2 weeks painting the unit. The tenant was under the impression that the lease would be long term and he wouldn't have sacrificed 2 weeks of painting labour if he knew the landlord was going to terminate the tenancy later on.

The tenant testified that for the first 2 months, the washing machine didn't work, despite the tenancy agreement stating there is laundry. The machine never worked and the landlord accused the tenant of being a drunk and causing damage to the machine. The tenant ended up purchasing a used washing machine for \$200.00 from an online ad but does not have any proof of purchase.

The landlord testified that the washing machine was fixed by the end of the first month of tenancy, in July 2020. The tenant was just unable to figure out the programming of it. Also, the tenant damaged the rubber gasket on the machine by not keeping it open. On September 28, 2020 the landlord took a video of the washing machine working fine. The landlord acknowledges taking away the original washing machine when the tenant purchased his own.

### 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 and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the 4-point test]

The tenant contends that the landlord should compensate him for the painting he did at the beginning of the tenancy and for the washing machine he purchased. For the reasons that follow, I do not find the tenant has provided sufficient evidence to satisfy me he is entitled to compensation.

The tenant testified that at the beginning of the tenancy, he agreed to do the work of painting the unit for free. While the tenant may have felt that doing the work for free would be justified if the tenancy were to last a long time, there is no guarantee from the landlord that the tenancy would last any longer than the one year of the fixed term. According to the tenancy agreement, the tenancy became month to month after July 31, 2021.

Further, my attention was not drawn to any agreement from the landlord that the landlord would compensate the tenant for painting the unit. I insufficient evidence to demonstrate a breach of the Act, tenancy agreement or regulations by the landlord, sufficient to justify a clam of compensation for painting the unit at the beginning of the tenancy (point 1 and 2 of the 4 point test). Further the tenant did not provide evidence to show how he arrived at the figure of \$550.00 for the painting labour (point 3). This portion of the tenant's claim is dismissed without leave to reapply.

With regard to the washing machine, I accept that the tenancy agreement has "free laundry" ticked, indicating that laundry is included in the rent. I accept the evidence of the tenant indicating that the washing machine was not operational for the first 2 months of the tenancy, based on my reading of the emails sent between the parties.

As the issue with the washing machine happened at the beginning of the tenancy, on a balance of probabilities, I find that it is more likely that not that it was faulty from the commencement of the tenancy. I accept that the tenant purchased a new washing machine at \$200.00, but that machine remains the property of the tenant and the tenant can either take it with him or sell it when he leaves. The landlord is not required to purchase it from the tenant at the end of the tenancy.

Despite this, a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement. Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

I find that the laundry facility was restricted from July 15, 2020 to September 15, 2020, when he purchased his own washing machine. I find the tenant is entitled to a reduction in rent for those 2 months, at a cost of \$30.00 per month. I find \$30.00 per month would adequately compensate the tenant for having to do his laundry (an essential service on the tenancy agreement) elsewhere. The tenant is awarded a monetary order for **\$60.00.**

As the tenant was only partially successful in this application, I decline to order the filing fee be recovered from the landlord.

#### Conclusion

This tenancy will end at 1:00 p.m. on August 31, 2023, by which time the tenant and any other occupant will have vacated the rental unit.

The landlord will not collect rent for the month of August to compensate the tenant in accordance with section 51 of the Act.

The rights and obligations of the parties continue until the tenancy ends.

The tenant is awarded a monetary order in the amount of \$60.00.

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: July 17, 2023

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Residential Tenancy Branch