



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CQ enterprises Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with a tenant's application for monetary compensation against the landlord. The hearing was held over two dates and an Interim Decision was issued on June 12, 2020. The Interim Decision should be read in conjunction with this decision.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure. The landlord called a witness to testify and the witness was affirmed and subject to examination and cross examination.

It should be noted that I was provided a considerable amount of submissions and evidence, in the form of testimony and documentation, all of which I have considered; however, with a view to brevity in writing this decision, I have only summarized the parties' respective positions and referenced the most relevant of evidence.

### Issue(s) to be Decided

Has the tenant established an entitlement to compensation as claimed against the landlord?

### Background and Evidence

The parties executed a tenancy agreement for a fixed term tenancy that commenced on April 13, 2020 and set to expire on April 14, 2021. The tenant is required to pay rent of \$930.00 on the 15<sup>th</sup> day of every month.

## **Tenant's position**

The tenant is of the position the landlord breached its duty to provide the tenant with a safe environment by properly cleaning the unit before her tenancy started. Also, the landlord failed to perform a move-in inspection with her.

The tenant resides in the rental unit with her 11 year old son. The tenant described her son as being autistic and has an affliction called "pica" which is where a person puts inedible objects in their mouth.

The tenant testified that she had observed her son acting sick on a couple of occasions but the tenant dismissed it as being growing pains. However, on April 29, 2020 the tenant observed that her son had great difficulty staying awake so after calling the medical information line she took her son to the hospital on April 29, 2020. Testing at the hospital revealed the tenant's son was suffering from fentanyl poisoning. The hospital notified the Ministry for Children and Family Development (MCFD). Upon being released from the hospital the tenant and her son stayed at the tenant's father's home.

MCFD visited the tenant at her father's house and questioned the tenant as to where she and her son had been or people they had seen before the hospital. The tenant testified that she informed MCFD that she had been self-quarantining at the rental unit with the exception of the occasional trip to the grocery store and the tenant had been working mostly from home and when she saw clients she stayed in her vehicle. After interviewing the tenant, MCFD issued an order precluding the tenant's son from entering the rental unit until "it can be assessed" by a social worker and until such time the tenant's son would reside at the tenant's father's home until MCFD advises otherwise. The order also required that if there were any further symptoms, such as the inability to wake, being confused or acting strangely, the tenant was to call 911.

The tenant contacted a professional cleaning company and proceeded to have the rental unit cleaned on May 1, 2020 and the tenant was invoiced \$939.75 for "disinfection services" on May 8, 2020. On May 5, 2020 a representative for the cleaning company wrote an email to the tenant stating the following:

I attended site on May 1 2020 after receiving call of a child possible exposure to Fentanyl in there new home that they moved into 15 days prior.

Upon my inspection I did not see any drug paraphernalia visible or anything leading me to believe that substance would be in the home, which would lead me to believe that there would be possible residue on surfaces (ie. Walls, floors ,counters cupboards, appliances ect. ) we did not do any surface detection at this time and have provided an 3d imaging of the home in the link below highlighted

If there is any questions please don't hesitate to call

<https://my.matterport.com/show/?m=oJS1z85WHNC>.

The tenant testified that she also laundered her possessions and cleaned her car to clean these areas of possible fentanyl residue.

The tenant testified that after cleaning, the tenant sent a copy of the cleaning invoice to MCFD and she was permitted to bring her son back to the rental unit. The tenant submitted that it was found that there were no indications of drug use or drug paraphernalia in the rental unit but the rental unit was not tested for fentanyl residue because it would be too costly. The tenant testified that she resumed living in the rental unit on May 8, 2020.

The tenant had requested the landlord pay for cleaning the rental unit which cost of \$939.75 or negotiate an alternative agreement, including release from the fixed term tenancy agreement and to continue the tenancy on a month to month basis. The landlord declined to pay this amount or otherwise negotiate with the tenant.

During the hearing, the tenant acknowledged that, in addition to going to the grocery store, she had also visited her brother's family a couple of times at his new home and she permitted her son to ride his bike on the residential property. The tenant also admitted that she had a couple of people, she described as family and friends, help her move her possessions into the rental unit.

The tenant suspects her son may have ingested fentanyl residue by trying to chew on the walls or the ceiling in the rental unit (from his loft bed) or that his chewing appliance was placed on a surface in the rental unit that had fentanyl residue. The tenant stated the ceiling and the tops of the cupboards were found to be dirty and this is evidence the rental unit was not sufficiently cleaned by the landlord before her tenancy started, but that she did not produce the video evidence for this proceeding.

The tenant submitted that the residential property has had a reputation in the past as being occupied by drug users. The tenant submitted that before the tenancy started the

tenant enquired with the landlord's agent about current drug users at the residential property and the landlord said there was nobody using drugs at the property anymore.

### **Landlord's position**

The landlord's agent was of the position the landlord met its obligation to clean the rental unit before the tenant moved in and that it was cleaned to a higher standard required by the Act. The landlord is of the position there is insufficient evidence fentanyl or fentanyl residue was in the rental unit when the tenancy started or the result of the landlord's negligence.

The landlord's agent acknowledged she did not perform a move-in inspection with the tenant. The landlord's agent explained that was due to concerns over COVID transmission so she notified the tenant of the areas of pre-existing damage or wear and tear then after the tenancy started she asked the tenant if there were any other areas of concern the tenant identified and the tenant did not indicate any or raise the issue of insufficient cleaning.

The landlord pointed out that the MCFD order does not require cleaning of the rental unit. The landlord stated she contacted the MCFD social worker and confirmed the rental unit was not tested for fentanyl and that the assertion fentanyl was in the rental unit was made by the tenant.

The landlord submitted that she contacted the representative of the cleaning company used by the tenant and determined there was no testing for fentanyl performed in the rental unit and the cleaner did not see any signs of fentanyl or drug paraphernalia. Rather, the assertion of fentanyl being in the rental unit was made by the tenant.

The landlord stated she has no knowledge of current or recent illicit drug use at the residential property with the exception of several years ago when a former tenant who was evicted and the landlord suspected drug use so the landlord took extra precaution to check for drugs and "sharps" when that tenancy ended.

The landlord pointed out that after the tenant raised the issue of cleaning the rental unit, the tenant withdrew her request.

The landlord's agent testified that after the immediately preceding tenant moved out of the rental unit, she had her maintenance employee clean the unit for showings to prospective tenants and to ensure the unit was safe for people to enter due to COVID-

19. After the showings, the employee would wipe down touch surfaces. Then, right before the tenancy started, the landlord hired a professional cleaner to clean the rental unit.

The landlord presented a copy of a cashed cheque of April 3, 2020 made out to the landlord's professional cleaner. The landlord called her maintenance employee (referred to as "DY") to testify as to his cleaning efforts.

DY confirmed that the written statement included in the landlord's evidence package was written by him. DY testified he was the first person to enter the rental unit after the former tenant moved out. He found the unit to be dirty and in need of cleaning so he purchased a high quality mop with three different heads to wash the ceiling, walls and floor with separate mop heads. He washed cabinets and drawers with disinfecting wipes. DY explained that he washed every surface to protect himself against COVID before commencing repairs in the rental unit. DY also testified the he vacuumed the rental unit with a sock on the end of the hose to check for small bugs/pests. DY testified he did not see any indications of fentanyl in the rental unit. Then, after each showing to prospective tenants, he wiped down touch surfaces and wiped down the flooring with the mop to prevent the transmission of COVID-19.

Upon examination by the landlord, DY testified the rental unit was last painted the year before the tenancy started as there had been a water leak. DY confirmed the ceiling is painted so they can be washed. DY testified that a professional cleaner came in to clean the unit again because he had left the keys for the professional cleaner.

Upon cross examination, DY acknowledged that he does not know what fentanyl residue looks like but that he did not see any white powder when he was cleaning the rental unit. DY stated that he believed he checked on top of the cupboards if they did not go to the ceiling as sometimes tenants leave things up there.

### **Tenant's rebuttal**

The tenant denied the landlord enquired about the condition of the rental unit after her tenancy started. The tenant maintained that the rental unit was not sufficiently cleaned and she had a video to demonstrate that but she acknowledged she had not produced it as evidence. The tenant acknowledged withdrawing her complaint to the landlord but then after speaking with others she decided it was not her obligation to re-clean the unit and she pursued the matter. The tenant pointed out that she also had her car detailed and her possessions laundered in response to her son's fentanyl poisoning but that she

did not seek compensation for those cleaning efforts from the landlord. The tenant was of the position that many of the landlord's statements are based on hearsay evidence and not sufficiently supported.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, the tenancy started on April 13, 2020. I was provided unopposed evidence that the tenant's son suffered from fentanyl poisoning on April 29, 2020 and I accept that evidence and conclude the tenant's son came into contact or ingested fentanyl after the tenancy started, on or about April 29, 2020.

I was provided undisputed evidence that the tenant had the rental unit professionally cleaned on May 1, 2020 at a cost of \$939.75. At issue is whether the landlord is responsible for compensating the tenant for this cost.

I was provided disputed evidence as to whether the rental unit was sufficiently cleaned by the landlord before the tenancy started; however, I find it unnecessary to make a determination as to whether the landlord sufficiently cleaned the rental unit before the tenancy started for the reasons that follow.

The Act does not specifically provide for the level of cleanliness a landlord must provide when possession of the rental unit is given to the tenant at the start of the tenancy. Rather, section 32 of the Act requires that a landlord ensure that a rental unit and property meet "health, safety and housing standards" established by law, and suitable for occupation by the tenant as living occupation, taking into account the nature and location of the property.

The tenant did not point to any specific “health, safety or housing standard” required by law that the landlord breached; however, I proceed to consider whether the landlord failed to provide a rental unit that was “suitable for occupation” as living accommodation when the tenant took possession of the rental unit. I have limited this test to the start of the tenancy since the tenant asserts that fentanyl or fentanyl residue was in the rental unit before she took possession due to the landlord’s negligence and there is no evidence presented to me to suggest it was introduced to the rental unit after the tenancy started by or on behalf of the landlord or its agents.

I was provided consistent evidence that there were no visible indications of the presence of fentanyl or other illicit drugs when the tenancy started or any time after that. The tenant asserted that fentanyl residue may have caused the tenant’s son to become poisoned. I was not provided any evidence to indicate fentanyl residue is visible or readily detectable other than by performing “testing” at a significant cost although I was not provided evidence as to what is involved in testing for fentanyl residue.

Based on the timing of the tenant’s son’s fentanyl poisoning and the tenant proceeding to have the rental unit cleaned shortly thereafter, I accept that the tenant undertook the cleaning efforts in response to her son’s exposure to fentanyl; however, I find the cleaning efforts do not sufficiently prove the fentanyl or fentanyl residue was in the rental unit when the tenant took possession of the rental unit when I consider:

- The tenant also had her vehicle and her possessions laundered in response to her son’s fentanyl poisoning which suggests there were multiple different locations where the tenant’s son may have come into contact with fentanyl or fentanyl residue and the tenant is uncertain where the exposure took place.
- The tenant had people move her possessions into the rental unit and fentanyl or its residue may have been introduced to the rental unit or the tenant’s son by others coming into the rental unit and that is not within the landlord’s control.
- After the tenancy started and before the tenant’s son was poisoned, the tenant and her son went to another home to visit the tenant’s brother’s family and to the grocery store which points to locations other than the rental unit as being possible locations where the exposure may have taken place or the drug or its residue picked up and brought into the rental unit.
- The tenant had testified that she informed MCFD that she had been self-quarantining at home and had made a couple of trips to the grocery store before her son was exposed to fentanyl but it is unclear that she disclosed to MCFD that she had also gone to her brother’s home and had other people help move her possessions into the rental unit.

In order to succeed in her claim against the landlord, the tenant must be able to prove, on a balance of probabilities, that fentanyl or fentanyl residue was present in the rental unit when she was given possession of the rental unit and the landlord was negligent in failing to provide the tenant with living accommodation that was suitable for occupation. Based on the evidence before me, I accept it is possible that fentanyl or fentanyl residue was in the rental unit and the tenant's son was exposed to it in the rental unit; however, there are also other possibilities for which the landlord is not responsible. The tenant's son may have been exposed to fentanyl or fentanyl residue outside the rental unit, when the tenant was grocery shopping or visiting her brother's family, or the fentanyl residue may have been brought into the rental unit on food packages brought into the rental unit after the tenancy started or when the tenant's possessions were moved into the rental unit by others. Given the uncertainty as to where the fentanyl exposure took place and considering it may have been introduced to the rental unit after the tenancy started, I find the tenant's position that the tenant's son was poisoned by fentanyl or fentanyl residue that was in the rental unit when she took possession is speculative and insufficient for me to conclude the landlord was negligent in its duty to the tenant. Therefore, I find I am unsatisfied that the landlord is obligated to pay for the cleaning of the rental unit the tenant had performed on May 1, 2020 and I dismiss the tenant's claim against the landlord.

### Conclusion

The tenant's application for compensation against the landlord is dismissed 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: July 22, 2020