



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant application 1: MNDCT OLC  
Tenant application 2: MNDCT OLC

### Introduction

This hearing was convened as a result of two tenant Applications for Dispute Resolution (applications) seeking remedy under the *Residential Tenancy Act* (Act). Application 1 is for a monetary order in the amount of \$600 for cleaning costs and for an order directing the landlord to comply with the Act. Application 2 is for a monetary order in the amount of \$394.78 for perished food/take-out food costs and for an order directing the landlord to comply with the Act.

The tenant, the landlord and an agent for the landlord, SM (agent) attended the teleconference hearing. The parties gave affirmed testimony, and the parties were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to this Decision has been included below as per Rule 3.6 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

Service issues were raised regarding the tenant's photo and video evidence. The landlord stated that they did not receive video evidence from the tenant, which the tenant confirmed they did not serve on the landlord. In addition, the tenant referred to photos "IMG1789 to IMG 1824" and the tenant was advised that the tenant did not upload to the RTB Dispute Management System (DMS), any photo files containing that name. As a result, the video evidence from the tenant was excluded pursuant to Rules 3.1, 3.10.4 and 3.10.5 and the time to submit "IMG1780 to IMG1824" has long since passed.

The tenant confirmed being served with the landlord's documentary evidence.

In addition to the above, the parties confirmed their respective email addresses, and they were advised that the Decision would be emailed to the parties within 30 days of the hearing in accordance with the Act.

As the tenant mentioned during the hearing that they had a concussion, the tenant asked for time to locate various evidence during the hearing and extra time was afforded the tenant to ensure a fair hearing.

The hearing concluded after 46 minutes.

### *Request for Withdrawal*

During the hearing, and after specific evidence was excluded due to service issues described above, the tenant made a verbal request to withdraw both applications and indicated they have learned a lot during the hearing. The tenant was advised that I would have to confirm with the landlord prior to permitting the tenant from withdrawing their applications. The landlord did not consent to the tenant being able to have another attempt at filing both applications and were ready to proceed. In keeping with the Principles of Natural Justice, the tenant was advised that their request to withdraw both applications and start over was denied and I ordered the hearing to continue. This order is made pursuant to section 62(3) of the Act.

### Issues to be Decided

- Is the tenant entitled to money owed for compensation for damage or loss under the Act?
- If yes, should the landlords be ordered to comply with the Act, regulation or tenancy agreement if a breach is proven?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on March 1, 2022. Monthly rent is \$1,800 per month and is due on the first day of each month. The tenant paid a security deposit of \$900 at the start of the tenancy. The tenant continues to occupy the rental unit.

The landlords did not agree with any portion of either claim.

Cleaning costs

The tenant is claiming \$600 for cleaning costs and alleges the following in their application:

Suite was not clean on move-in date 3/1/22. I contacted the landlord by text to see if the cleaners were coming soon to clean: wood and construction dust as well as soot from house fire on all surfaces, windows, windowsills, walls, countertops, soot from house fire in shower tub and surfaces, bathroom surfaces, walls, toilet. Floors had plaster dust and wood dust, footprints and handprints on the walls. Landlord refused to assist with cleaning so I advised that I would begin cleaning at my rate.

[reproduced as written]

The tenant was given the opportunity to present any photo evidence in support of the need for cleaning. The only photos served on the landlord and uploaded to the DMS were 28 screenshot photos of the tenant's smartphone. None of the 28 screenshot photos had images large enough to be of any weight, which the tenant was advised of during the hearing. I will address this item further in my Analysis below.

Spoiled food/Take-out food costs

The tenant has claimed \$394.78 for the cost of spoiled food items and take-out food costs due to what the tenant states is a broken refrigerator and hazardous stove and oven (fridge and stove). The tenant was asked to present their evidence related to the fridge and stove and all 28 screenshots of texts sent on either March 1, 2022 or March 5, 2021 were reviewed. The first of 28 screenshots of texts began on March 1, 2022 with no time shown in the texts. The content of the texts are included below in order in left to right format with applicable times listed:

[Mar1/22/no time shown]

Hi [redacted] the place is lovely, however, it's absolutely dirty with construction dust, the windows are completely veiled with dust	veiled with dust and streaks, dirty fingerprints all over the walls... It's going to take me a few hours to clean, which I hadn't	hadn't anticipated. Would you like to call a cleaner for today, or is it simpler for me to clean and deduct the \$50/hr labor?	Would you like to call a cleaner for today, or is it simpler for me to clean and deduct the \$50/hr labor? Thanks!	I hadn't anticipated cleaning the place top to bottom, I'd like this completed today please
---	---	--	--	---

The bathroom also needs everything cleaned, the bath and shower walls are so gross!  
The garbage in the courtyard can also be removed.  
Let me know asap please, this is a huge inconvenience  
I'll go ahead and start cleaning ;)  
Sorry I just saw your msg now  
I don't think I can arrange for a cleaner right now..I'm at work..you had inspected the

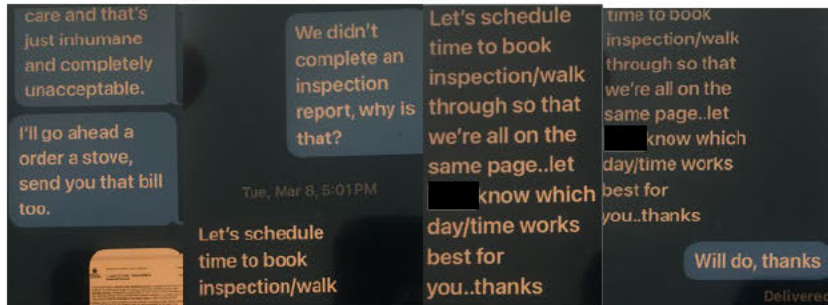
now..I'm at work..you had inspected the place last week and it had been closed since then  
It was still being worked on, I had noticed all the dust and fingerprints, normally suites are cleaned after renovations.  
Here are pictures for your records, pretty disappointing that it's not move-in ready.  
It was still being worked on, I had noticed all the dust and fingerprints, normally suites are cleaned after renovations.  
Here are pictures for your records, pretty disappointing that it's not move-in ready.  
It was still being worked on, I had noticed all the dust and fingerprints, normally suites are cleaned after renovations.  
Here are pictures for your records, pretty disappointing that it's not move-in ready.

This window is broken  
I'm going to get [redacted] to call you..as I said, I'm at work..  
I'm going to get [redacted] to call you..as I said, I'm at work..  
The suite is as it was on your initial day of viewing..there was no renovation work done afterwards  
The suite is as it was on your initial day of viewing..there was no renovation work done afterwards

Sat, Mar 5, 8:12 AM  
Hi [redacted] isn't responding to my urgent texts, I need answers for the delivery of a new stove and fridge today.  
Please follow up with him. I haven't been able to cook since I moved in.  
The mountain of garbage needs to be removed this morning, so I can enjoy what I'm paying for.  
Thanks.  
My Child would like breakfast.  
I don't have a stove to cook breakfast for my baby. You guys don't seem to care and that's just inhumane and completely unacceptable.



[Mar8/22/5:01pm]



I will address the contents of the texts shown later in this Decision.

### Analysis

Based on the above, and on a balance of probabilities, I find the following.

#### Test for damages or loss

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 sections 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Cleaning costs** – Firstly I find the tenant failed to prove all 4 parts of the test for damages or loss. I afford no weight to the tiny thumbnail images included in the texts above as those tiny thumbnail images I find are insufficient to support the need for cleaning. Furthermore, I find that charging \$50.00 per hour for one person cleaning is exorbitant. As a result, I **dismiss** this portion of the tenant's claim due to insufficient evidence, without leave to reapply.

**Spoiled food/Take-out food** – Section 33(1) of the Act states the following:

**Emergency repairs**

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

**(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.**  
[emphasis added]

Firstly, I find a fridge does not qualify as an emergency repair under section 33 of the Act. Secondly, I find the tenant failed to provide a reasonable time to make the repairs as the tenant first mentions the fridge and stove in a March 5, 2022 text and the same day gets frustrated and states to the landlord “I’ll go ahead and order a stove, send you that bill too.” I find the tenant’s texts support that the tenant failed to give the landlord reasonable time to address their concerns and accordingly, I find the tenant has failed to meet all four parts of the test for damages or loss. Therefore, **I dismiss** this item due to insufficient evidence, without leave to reapply.

The tenant’s claim has no merit and is dismissed in its entirety.

The filing fee was already waived.

### Conclusion

The tenant’s application has no merit and is dismissed in its entirety.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 29, 2022

---

Residential Tenancy Branch