



# **Dispute Resolution Services**

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** MNSD, MNR and FF

### **Introduction**

This application was brought by the landlord seeking a Monetary Order for unpaid rent/loss of rent after the tenants left the rental unit without giving the required notice. The landlord also seeks the cost of carpet cleaning as per the rental agreement and recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

### **Issue(s) to be Decided**

This matter requires a decision on whether the landlords is entitled to a Monetary Order for the unpaid rent/loss of rent, carpet cleaning and filing fee and authorization to retain the security deposit in set off.

### **Evidence**

This tenancy ran from November 1, 2007 to December 31, 2008, although move-out was not complete until January 7, 2009. Rent was \$943.67 per month and the landlord holds a security deposit of \$455 paid on October 20, 2007.

During the hearing, landlord gave evidence that the tenant had given notice to end the tenancy on or about December 30, 2008 as a result of a fairly severe roof leak compounded by an unusually heavy snow fall.

The tenants stated that on their return from a holiday trip on December 27, 2008, they found flooding in the rental unit. They advised the landlord who attended the following day. The landlord first suspected the water intrusion was from a broken pipe under the cement slab, but subsequently found the water coming from a leaking roof.

Both parties submitted photographic evidence, and both sets of photos clearly show water damage, although those of the landlord indicate little or no mold in the interior of the walls as had been feared by the tenants.

Nevertheless, the rental unit clearly showed signs of water damage including soaked drywall and carpets, some mold behind the washer and dryer and water in light fixtures. The baseboards were off, having fallen off as a result of being soaked according to the tenants although the landlord's written submission had suggested they might have been removed by the tenants.

The tenants, supported by written submissions from their respective mothers who had attended the rental unit, stated that there was an extremely strong, foul odour which they believed to be mold. The landlord stated that she had not found the odour as strong as represented by the tenants.

The tenants have two children, one five who was removed from what was deemed to be an unhealthy environment by a grandmother during the material times, but a two-and-a-half month old infant was being nursed and had to remain.

The parties gave evidence that the roof had leaked early in the tenancy and was promptly repaired. The landlord gave evidence that arrangements had been made with a roof contractor to replace the flat roof in the subject rental unit and the adjoining seven others in November of 2008. However, when the roofer had delayed start of the work to December, the landlord felt it prudent to put off the replacement until more clement weather rather than risk having the roof open in the rain/snow storm season.

The landlord stated that to affect the roof repair, the workers had to deal with 40 cm. of snow which temporarily appeared to exacerbate the leaking.

The tenants gave further evidence that on returning to the rental unit in the latter part of January to check for mail, they found the rental unit inhabited by their former neighbours.

### **Analysis**

Section 32 of the *Act* imposes a duty on a landlord to maintain a rental unit in a state that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

While I appreciate that the landlord had put plans in motion to replace the roof and was frustrated both by delay by the contractor and a snowstorm, I find that the rental unit was not suitable for occupation at the time the tenants repudiated the rental agreement.

Given the holiday season and heavy snow on the ground, I find on the balance of probabilities that the tenants would not have chosen to move unless their concerns for the health and safety of their children were sincere and carefully considered.

Section 45(3) of the *Act* provides that a tenant may end a tenancy without full notice if a landlord has failed to comply with a material term of the tenancy agreement.

## **Conclusion**

In this instance, I find that, having been aware of the condition of the roof considerably in advance of the episode in question, the landlord was in breach of a material term of the rental agreement.

Therefore, the application is dismissed.

The parties would now be in a position in which the landlord should return that portion of the security deposit not agreed to by the tenants.

March 24, 2009.

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Dispute Resolution Officer