



## Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

### DECISION AND REASONS

#### Dispute Codes

MNDC, MNSD, & FF

#### Introduction

This hearing dealt with an application by the tenants seeking a monetary claim related to damage or loss suffered under the *Act* and for the return of their security deposit. Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

#### Issues to be Determined

Have the tenants established a monetary claim related to loss of quiet enjoyment and damage to personal possessions due to noise and mould issues experienced at the rental unit? Are the tenants entitled to the return of their security deposit plus interest?

#### Background and Evidence

The tenancy originally began on May 1, 2001 in a different unit. At that time the tenants paid a security deposit of \$310.00. On July 1, 2005 the tenants moved into the above noted rental unit for the monthly rent of \$800.00 and paid an additional \$75.00 security deposit on that date. The tenancy ended when the tenants vacated the rental unit on approximately February 2, 2009. It is not disputed that the tenants did not provide thirty (30) days written notice as required by the *Act*.

The tenants make the following claims:

The return of their security deposit	\$500.00
Damage for loss of quiet enjoyment	\$2,670.00
Moving expenses (estimated)	\$500.00
Cost to clean and sanitize possessions	\$750.00
Replacement of bed due to smell of mould	\$1,368.00
Recovery of filing fee paid for this application	\$100.00
<b>Total</b>	<b>\$5,888.00</b>

The tenants argued that they are entitled to this compensation on the basis of the loss of quiet enjoyment suffered due to the noise problems they experienced in the final

months they occupied the rental unit and due to the effect of the mildew or mould smell on their possessions. The tenants stated that they had not realized the effects of the mould until they vacated the rental unit.

The tenants provided details in their oral testimony about the failure of the landlord to adequately repair items in the rental unit. The examples raised included the repair of the bathroom in August and November 2008 and the mould issue discovered behind the walls, the leaking faucet in the kitchen sink which was not addressed and the failure to maintain the fireplace which eventually resulted in the loss of that facility.

The tenants also called in a witness who expressed similar anecdotal experiences with the state of the rental building and issues with the lack of maintenance.

The only evidence provided by the tenant was photographs showing the rental unit, depicting the two repair jobs in the bathroom and the condition of the cabinet under the kitchen sink. The tenants did not provide any receipts in support of some of their damages, such as cleaning all of their clothing and bedding or moving expenses, and acknowledge that these were estimates. The tenants did not provide any photographs of their possessions, such as the bed, to confirm that it was damaged by mould or any other evidence to support that they suffered significant damage to their possessions.

The landlord submitted that the former agents are no longer available and she did not become an agent of the landlord until after the tenants had vacated the rental unit. The landlord submitted evidence showing the work completed on the rental unit during and immediately following the tenancy. The landlord also indicated that she had documentation on the file respecting the tenants' complaints about noise; however, she was not aware that the tenants would be raising this as an issue prior to the hearing so it was not submitted as evidence.

It is the landlord's response that all complaints were dealt with in an appropriate and reasonable manner and that there was never any complaint received from the tenants about mould during the tenancy. The landlord also pointed out that the tenants failed to give legal notice prior to vacating and that the tenants did not provide a forwarding address until making this application.

### Analysis and Findings

I deny the tenants' application, except for the return for the return of their security deposit. Respecting the security deposit I find that the tenants are only entitled to the return of their original deposit plus interest, not double their security deposit, as they failed to provide the landlord with a forwarding address until filing this application.

Although I appreciate that the tenants believe they had some right to vacate the rental unit without notice, given their alleged experience, the fact is they breached the *Act* by failing to give proper notice to the landlord. The tenants also failed to provide the landlord with any notice of any alleged problems with mould, such as the alleged health problems, and to provide the landlord any opportunity to investigate and address any problem found.

The tenants' have also failed to provide any evidence to support their significant monetary claim. The tenants did not provide any medical or expert opinion to support their allegation that they suffered any ill effects from mould or mildew in the rental unit, did not provide any receipts to support their claim for cleaning costs and failed to provide the landlord with any reasonable notice to correct any alleged breaches before they vacated the rental unit without notice.

I dismiss the tenants' claim for loss of quiet enjoyment, cleaning costs, moving expenses and bed replacement without leave to re-apply as these claims are without merit.

I find that the tenants are entitled to the return of their security deposit plus interest for the sum of \$405.10 comprises of their original deposits of \$310.00 and \$75.00 plus \$20.10 in accumulated interest.

I deny the tenants' request to recover the filing fee paid for this application as their application was largely without merit.

#### Conclusion

I have determined that the tenants' are entitled to the return of their security deposit plus interest. All other claims by the tenants are dismissed without leave to re-apply.

Dated June 03, 2009.

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Dispute Resolution Officer