

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution, filed by each party.

The Tenant is claiming for the return of her security deposit and interest, and money owed under the Act or tenancy agreement, plus the return of the filing fee for the Application.

The Landlord is claiming to keep a portion of the security deposit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issues(s) to be Decided

Is the Tenant entitled to the monetary compensation sought?

Is the Landlord entitled to the monetary compensation sought?

### Background and Evidence

This tenancy began in or about April of 2007, with the Tenant paying a security deposit of \$350.00. The tenancy ended, through mutual agreement, on September 15, 2009.

In August of 2009, the Landlord was informed by a third party that the rental unit appeared to have a musty smell. The Landlord investigated and found that there was black mold in the rental unit. There had been mold in the unit prior to this tenancy and the Landlord had addressed it prior to this tenancy.

The Landlord claims that the current mold issue arose in large part due to the Tenant not keeping the unit clean, not providing sufficient ventilation, leaving damp towels and clothes around, and by having furniture too close to the wall of floors. The Landlord is not making a monetary claim against the Tenant for the mold, this is simply her defense to the claims of the Tenant.

The Landlord is also claiming for damages to a door at the rental unit, caused by one of the Tenants when he was unable to access the rental unit. The Landlord claims the Tenant damaged the door handle and door jam, causing her to have to replace the door and frame. The Landlord seeks to retain all or a portion of the security deposit and interest in compensation. I note the Landlord filed her claim against the security deposit within the 15 day period required under the Act.

The Tenant is claiming for the return of her security deposit and interest. The Tenant is also claiming for damages to, and the cleaning of, her personal property alleging this was caused by the mold in the unit. Some of the items have sentimental value to the Tenant.

The Tenant alleges she informed the Landlord about one year ago that the mold was in the rental unit. According to the Tenant this was done verbally. The Tenant did not inform the Landlord in writing of the mold in the unit.

The evidence of both parties indicates there had previously been an issue with mold in the rental unit, which apparently had been rectified by the Landlord with the previous renter.

### Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

In regard to the Landlord's claim, **I find the Tenant breached the Act and tenancy agreement by not repairing the door to the rental unit.** I allow the Landlord's claim for \$275.00 for repairing the door, as well as the filing fee of \$50.00, totalling **\$325.00**, subject to the offset below.

In regard to the Tenant's claim, **I find that the Landlord is responsible for the mold in the rental unit.** The Landlord must supply a rental unit in accordance with section 32 of the Act, and has failed to do so. It appears from the history of the unit, the photographs and the evidence that the mold was not created by the Tenant, but rather, from some other source, such as water entering the rental unit walls. However, I do not allow the Tenant the complete amount claimed for her losses due to the mold, for the reasons I set out below.

The Landlord acted very quickly to address the mold issue in the rental unit when informed by a third party. The Landlord appears to take great interest in the property and addresses issues quickly, when she is informed of them. I find it unlikely that the Tenant told the Landlord about the mold over a year ago, and the Landlord did nothing about it.

Furthermore, under the Act, the Tenant has a duty to inform the Landlord of problems in the rental unit as soon as they arise and in writing. The Tenant failed to do this.

Under section 7 of the Act, the Tenant has a duty to mitigate her losses. This means that she should have informed the Landlord earlier of the problem with mold in the unit. I find that it is likely the Tenant did not notice the mold until it was brought to her attention by the third party or the Landlord. In other words, if had the Tenant noticed the mold earlier and informed the Landlord of it earlier, she would not have suffered all the losses she did. The Tenant was likely not cleaning the unit as thoroughly as she should and failed to detect the mold for some time. Nevertheless, on a balance of probabilities, I find that the Tenant did not cause the mold, but rather, there is a recurring problem with mold in the unit.

As the Tenant failed to mitigate her losses, I am reducing her \$676.90 claim by 50%. I award the Tenant \$338.45 for replacing and cleaning personal items damaged by mold, and order the return of her security deposit and interest of \$359.06, as well as a her filing fee of \$50.00, totalling **\$747.51**, subject to the offset set out below.

Under section 72 of the Act I offset the award to the Landlord of \$325.00, from the award to the Tenant of \$747.51, and order the Landlord to pay the Tenant the balance of **\$422.51**. The Tenant is granted and issued a formal order in the above amounts, which may be enforced in the Provincial Court of British Columbia.

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: January 28, 2010.

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Dispute Resolution Officer