

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Three witnesses identified by the tenants were unavailable when the Telus Operator attempted to connect them with the telephone conference hearing.

The tenants entered written evidence that they provided a copy of their dispute resolution hearing package to the landlords by registered mail on November 5, 2010. They provided Canada Post Tracking Numbers to confirm this mailing. I am satisfied that the tenants served this document in accordance with the *Act*.

### Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses and damage arising out of this tenancy? Are the tenants entitled to recover their filing fee for this application?

### Background and Evidence

This one-year fixed term tenancy for a two bedroom rental unit commenced on March 1, 2010. Monthly rent during this tenancy was set at \$1,400.00, payable on the first of the month. On August 15, 2010, the tenants sent the landlords a written notice that they planned to vacate the rental premises on October 15, 2010. The parties agree that the landlords returned the tenants' \$700.00 security deposit within the time limit for doing so after the tenants vacated the rental unit on October 15, 2010.

The tenants entered written evidence regarding a number of problems that occurred during this tenancy. They maintained that the landlords failed to repair a railing on their deck and leaks on the concrete floor in the laundry room also used for storage. They asserted that possessions that they kept in rubber sealed containers in the laundry/storage area were damaged by mould and mildew by the landlords' failure to address their concerns about humidity in that room. They also testified that the landlords failed to repair a leak into the electrical outlet in the ceiling of the laundry/storage room which started in August 2010 after required repairs to the deck

were completed by the landlords. Both parties agreed that the landlord did not attend to this repair problem until after the tenants vacated the rental unit.

The tenants applied for a monetary award of \$1,618.40 for damage to the following possessions that they maintained were ruined by mould and mildew arising out of the landlord's failure to repair the rental unit.

<b>Item</b>	<b>Amount</b>
Artificial Christmas Tree	\$179.20
Christmas Ornaments & Decorations	291.20
Ladies Leather Jacket	560.00
Ladies Suede Jacket	224.00
Boots and Shoes	280.00
Bamboo Wind Chimes	84.00
<b>Total Monetary Award Requested for Damage to these Items</b>	<b>\$1,618.40</b>

They entered into evidence photographs of these belongings.

In the tenants' overall claim for a monetary Order of \$4,168.40, they included a request for reduced rent of \$300.00 per month for the 8 ½ months of their tenancy, an amount of \$2,550.00. They requested this reduction on the basis of the "lowered value of rental unit and the health risks it gave us to have to use it on a regular basis."

The landlords entered written evidence that the tenants requested \$1,445.00 in compensation for the damage to their belongings when the landlords came to inspect the rental unit. Although the landlords at that time offered the tenants \$800.00 in an attempt to resolve this matter, the tenants rejected this offer.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

While I have turned my mind to all the documentary evidence, including photographs, letters, e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

#### Damage to Tenants' Possessions

Based on the oral and written evidence presented, I find that there was mould and mildew damage to the tenants' possessions identified in their list during this tenancy. The male tenant said that this list did not cover all of the damaged items, but only included those that could not be salvaged.

The tenants attributed responsibility for the damage to their possessions solely to the landlords' failure to address humidity problems in the laundry/storage room that they said that they had raised repeatedly with the landlords from the commencement of their tenancy. The tenants maintained that this damage likely occurred over the entire duration of their tenancy as they placed seasonal possessions in "rubber totes" that were "relatively sealed containers." The landlords claimed that the tenants stored too many of their belongings in a small area and did not take adequate measures to ventilate this area by keeping doors open when this was possible.

I find that the landlords bear the majority of the responsibility for the damage to the tenants' possessions. However, given that the tenants knew that the room where they were storing these possessions was damp and humid, I find that they bear a portion of the responsibility for leaving these possessions there and not checking to see if they were impacted by the humidity levels in that room. For these reasons, I find that the landlords are responsible for two-thirds of the damage caused to these items.

The tenants' list and photographs of damaged items submitted into evidence were not disputed by the landlords. However, the tenants admitted that these were used items and that their estimates were for replacement of these items. They provided no receipts for replacement of these items, no invoices, no estimates, nor any basis for the estimated values that they assigned to these items in their application.

I am not satisfied that the tenants/applicants for this monetary award have met the burden of proof required to verify the actual monetary amount of the loss or damage as required by section 67 of the *Act*. Despite the tenants' failure to meet this burden of proof, I do accept that the tenants' belongings did have value and that the tenants experienced losses arising out of the damage to their possessions. Under these circumstances, I find the allowable value of the tenants' damaged possessions was \$600.00. As I find the landlords responsible for two-thirds of this loss, I issue a

monetary award in the tenants' favour in the amount of \$400.00 for damage to the tenants' possessions arising out of this tenancy.

Monetary Award for Losses Arising out of Repairs, Services or Facilities that were Agreed Upon but not Provided by the Landlords

I am satisfied by their attachment and their application that the landlords were aware that the tenants were seeking a monetary award because of the landlords' failure to address their concerns about the condition of the rental unit.

The tenants admitted that they did not send anything in writing to the landlords about their concerns. However, based on the sworn testimony of the parties, I am satisfied that the tenants did ask the landlord repeatedly to address their concerns about dampness in the laundry/storage room to little avail. While the landlords attempted to repair some of these items, problems with dampness and water damage continued until the end of this tenancy. I find that the tenants are entitled to a monetary award to compensate them for the landlords' failure to provide them with the repairs, services or facilities that they expected when they entered into their tenancy agreement.

Although the tenants submitted that the mould and damp conditions in the laundry/storage room presented health risks to them, they provided no evidence from any health care professional indicating that anyone in their family encountered health problems arising out of these conditions in the rental premises.

I allow a monetary award in the tenants' favour of \$50.00 per month from April 2010 until October 15, 2010, a period of 6 ½ months. I make no award for the first month of this tenancy, as the tenants agreed to enter into this tenancy on the basis of the conditions existing at that time. By April 1, 2010, I find that the landlords would have had sufficient time to consider the tenants' request for repairs to alleviate the problems the tenants raised with the landlords. I limit the amount of this reduction to \$50.00 per month. This was a relatively small area of the overall rental unit (estimated by the parties to be 8 or 9 feet by 12 feet) and one which was not used as a primary living area for this tenancy. The parties agreed that the flooring in this area was concrete and was used primarily for laundry and storage.

By August 2010, the leakage of water onto the ceiling in the laundry/storage area requiring the tenants to discontinue using the ceiling light caused additional inconvenience to the tenants. I allow an additional monetary award of \$50.00 per month for the final two months of this tenancy to account for the landlords' failure to repair this water damage to the tenants' laundry/storage area.

Since the tenants have been partially successful in their application, I allow them to recover \$25.00 of their filing fee from the landlords, an amount which I add to the monetary award granted.

### Conclusion

I issue a monetary award in the tenants' favour in the following terms:

<b>Item</b>	<b>Amount</b>
Landlords' Responsibility for Damage to Tenants' Possessions	\$400.00
Monetary Award for Repairs, Services or Facilities Agreed Upon but not Provided by the Landlords – April 2010 to October 15, 2010 – (6.5 months @ \$50.00 = \$325.00)	325.00
Monetary Award for Water Damage to Ceiling – 2 months @ \$50.00 = \$100.00	100.00
Recovery of Filing Fee	25.00
<b>Total Monetary Order</b>	<b>\$850.00</b>

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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*.