



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNDC MNSD FF

### Preliminary Issues

At the outset of the hearing the Tenant testified that he and his wife have vacated the rental unit as of February 28, 2011 therefore he was withdrawing his requests for orders to have the Landlord make emergency repairs and repairs to the unit, site or property.

The Landlord will not be prejudiced by the Tenant's request to amend the application. Based on the aforementioned I approve the Tenant's request to amend the application pursuant to # 23 of *Residential Tenancy Policy Guidelines*

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, for the return of their security deposit, and to recover the cost of the filing fee for this application from the Landlord.

The Tenant served the Landlord with the hearing documents on approximately February 18, 2011 when they were left on the Landlord's doorstep. The Landlord confirmed receipt of the hearing documents on February 19, 2011.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Have the Landlord's breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

## Background and Evidence

The Landlords testified and confirmed they did not receive copies of all of the Tenant's evidence. They did not receive pages 2 to 4 or 5 to 6 which included a statement from the Tenants and copies of hydro bills. The Tenant confirmed receipt of all of the Landlords' evidence.

I heard undisputed testimony that the tenancy agreement was entered into by two Landlords and four adult Tenants and 4 occupants who were their children. It was a month to month tenancy effective May 1, 2010. Rent was payable on the first of each month in the amount of \$1,100.00 and on April 30, 2010 the Tenants paid \$550.00 as the security deposit. The rental unit was a five bedroom townhouse.

The Tenant testified that he and his wife vacated the rental property on February 24, 2011. They provided the Landlords with verbal notice to end their tenancy sometime in mid December 2010. A move out inspection report was completed with the Tenants on February 28, 2011 and the keys were returned to the Landlords at that time.

The other two Adult Tenants named on the tenancy agreement remained in the rental unit. The Tenant stated that he believes they vacated the property on March 4<sup>th</sup> or 5<sup>th</sup>, 2011.

The Tenant stated that in November 2010 they began to have problems with water and mold forming in the window sills. They informed the Landlords who provided them with a dehumidifier. The Landlord instructed them to run the dehumidifier constantly and to leave two windows open so the air would flow. This caused their hydro bills to increase between November 2010 and the end of January 2011. Then they found mold growing on their mattress. They later found out that the unit was renovated before their tenancy because there was mold in the basement. When the Landlords refused to provide them with monetary compensation they decided to end the tenancy.

They are seeking monetary compensation as follows:

- \$1100 – Bed that had mold on it as displayed in the photo evidence
- \$275 – return of their security deposit
- \$120 – TV stand that suffered water damage
- \$200 – clothing and sheets damaged by mold
- \$166.96 – difference in hydro bills for having to use de-humidifier
- \$10 – mold spray
- \$37.50 – for stop payments placed on 3 rent cheques \$12.50 each

The Tenant confirmed that the only item that was replaced was his TV stand. He did not provide a copy of the receipt to prove the cost to replace the stand or the date that it was purchased. They did not provide evidence to support the cost of the other items listed above or any documentation to prove these items were disposed of.

The Landlords testified the other two adults are still residing in the rental unit. They confirmed these Tenants moved out February 28, 2011 and returned their keys. The unit was clean and there was no smell of mold in the unit. The female who remains in the rental unit was the person who paid the security deposit at the onset of the tenancy and this deposit will be returned to her when her tenancy ends. She paid the Landlord for rent for the full month of March and as far as the Landlords know she is still occupying the rental unit with the other adult.

The Landlords stated they did not have much more to add in addition to their typed written statement they provided in their evidence. They confirmed there was no mentioned of mold in the unit until January 28, 2011. They asked the Tenants why they did not tell them about the mold sooner when they were calling about the noise complaints.

The Landlords wanted to point out that three of the photos provided by the Tenants were not taken inside the rental unit. These photos displayed some sort of furniture or table on a carpet that is not inside the rental unit.

The Tenants did not tell the Landlords they were moving out until January 28<sup>th</sup> or 29<sup>th</sup>, 2011. The Landlords have not re-rented the unit as the other two adults are still occupying the rental property until the end of March 2011. They did not receive copies of the hydro bills but state this was a cold winter so of course the hydro bill will increase during the winter months of November to January.

In closing the Tenant stated the security deposit was paid in cash and he paid half of it. He states that when they provided the Landlord their verbal notice to move they told them they were going to be moving "right away".

### Analysis

The Landlord's testified they did not receive all of the Tenant's evidence. Not providing the respondent copies of all the evidence is a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore I find that the evidence not received by the

Landlords cannot be considered in my decision. I did however consider the Tenant's testimony pertaining to this evidence which consisted of a written statement and copies of hydro bills.

The *Residential Tenancy Policy Guideline # 13* provides that Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

After careful consideration of the evidence before me I find that given the circumstances of this case the Landlords were within their rights to retain the security deposit until the remaining tenants vacate the property, pursuant to the *Residential Tenancy Policy Guideline # 13* and the applicant Tenant is required to seek his portion of the security deposit from the remaining two tenants. Therefore I dismiss his request for monetary compensation for the return of his deposit, without leave to reapply.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Tenant has sought \$1,420.00 as compensation for mold on his bed, clothing and sheets and to replace a TV stand that allegedly had water damage. The only item that

was replaced was the TV stand. After careful consideration of the evidence before me I find there is no evidence to support the bed, clothing and sheets could not be washed or treated to eliminate the mold nor is there evidence to support these articles were disposed of or replaced. Based on the aforementioned I find there to be insufficient evidence to support the test for damage or loss, as listed above and I hereby dismiss this claim without leave to reapply.

In the presence of opposing testimony from the Landlords I find there to be insufficient evidence to support that the hydro bills increased by \$166.96 because the Tenants were requested to use a dehumidifier and not because it was a cold winter. Therefore I dismiss their claim without leave to reapply.

There is no evidence to support the Tenants paid \$10.00 to purchase mold spray or that they paid to put stop payments on three rent cheques. Therefore I dismiss their claim without leave to reapply.

The Tenant has not been successful with his application; therefore he must bear the burden of the cost to make his application.

### Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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: March 16, 2011.

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Residential Tenancy Branch