



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing dealt with an application by the landlord for monetary compensation and an order to retain the security deposit in partial compensation of the monetary claim. An agent for the landlord and an agent for the tenants participated in the teleconference hearing.

### Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on September 6, 2002. The tenants paid a security deposit of \$190 on August 28, 2002. A move-in inspection report was completed on September 6, 2002. The report indicates that the carpets were new and the unit had been freshly painted at that time.

The landlord conducted unit inspections on an annual basis during the tenancy, and has submitted inspection forms from October 2007, October 2008, November 2009 and November 2010. Each of these forms indicated a presence of mould in the rental unit. After the October 2007 inspection, the landlord conducted further investigation to confirm that the tenants' bathroom fan was properly venting. On December 10, 2007, the landlord then issued a warning letter to the tenants, advising them that the mould in their unit was due to the high levels of humidity in the rental unit. The landlord instructed the tenants to run their bathroom fan for at least one hour after each bath or shower, and to leave a window at the front and at the back of their unit slightly open all the time to let fresh air in. At each of the following annual inspections the landlord noted the presence of mould and reiterated their instructions to the tenants about reducing the moisture in their unit.

In November 2010 the landlord received notice that the tenants would be vacating the rental unit on or before December 31, 2010. On January 4, 2010 the landlord and the tenants' daughter carried out the move-out inspection. The inspection report notes that the unit was dirty, with "lots of mould/mildew." Only one key was returned. The tenants' daughter noted on the report as follows: "condition not parents fault." The landlord then cleaned and repaired the unit and repainted.

The landlord has claimed the following amounts:

- 1) \$684 for 38 hours of cleaning, at \$18 per hour – extensive cleaning was required, including cleaning the fridge and stove, and wiping down all of the walls. The landlord submitted a receipt for cleaning, which notes the hours and the hourly rate, but does not provide a breakdown of the work done. They also submitted photographs which depict the condition of the rental before cleaning was done. Several of the photographs show obvious mould growth on the walls and window sills. The landlord stated that none of the mould was structural, it was all surface mould that was removed when the cleaning was done.
- 2) \$50 to replace two fridge door handles – the fridge and freezer door handles were broken and needed to be replaced. The previous annual inspections did not indicate that these items were broken. The landlord could not provide an age for the fridge but estimated that it was approximately 10 to 15 years old.
- 3) \$107.52 to re-key the unit – multiple keys were given out during the tenancy, but only one key was returned at the end.
- 4) \$30 for estimated cost of garden clean-up – the garden was not kept up. This work had not yet been done at the time of the hearing due to weather.
- 5) \$347.46 for 30 percent of costs to replace the carpets – the carpet was new in 2002, and the landlord anticipated a life of 12 years for the carpet. The carpets were full of mould and had to be replaced.
- 6) \$455.71 for 20 percent of the costs to repair nail holes in the walls, repaint and seal the ceilings and walls – the paint was new in 2002, and the landlord anticipated a service life of 10 years for paint. Repainting was required because of the mould and mildew.

The response of the tenants was as follows. The tenants' daughter appeared as their agent in the hearing and stated that in 2010 it became apparent that her parents were suffering from dementia. She gained power of attorney over her parents' affairs and took steps to have them moved out of the rental unit. In early November 2010 the tenants' daughter was contacted by Vancouver Island Health Authority workers who had been assigned to assist the tenants but were now refusing to enter the rental unit due to toxic mould. After she moved her parents out of the unit she contacted a cleaner, who

visited the rental unit and then told the daughter that it would require a professional as it was a toxic mould problem. The daughter then contacted Public Health, and a worker inspected and confirmed that the rental unit was not habitable. The daughter was told that the mould was structural, not surface mould, and she made the decision that the mould was not her problem and should have been addressed by the landlord long ago. The tenant was not able to have the rental unit cleaned.

In regard to each of the specific items claimed by the landlord, the tenants' response was as follows:

- 1) Cleaning – the cleaning would likely have taken only five hours to do if it were not for the mould, and the mould was the landlord's responsibility.
- 2) Fridge handles – the fridge was ancient, and the handles had been broken for a very long time. The landlord should have noticed it in their annual inspections.
- 3) Re-keying locks – the tenants' daughter acknowledged that she only returned one set of keys. Her parents had a drawer full of keys, and she could not distinguish which were for the rental unit.
- 4) Garden clean-up – the garden was completely overgrown when the tenants moved in, and they worked to restore it. However, as their dementia set in they neglected the garden. The tenants' daughter didn't think it was the tenants' responsibility to clean up the garden at move-out.
- 5) Carpets – the tenants were not responsible for the carpet mould.
- 6) Repainting – the unit was never re-painted during the tenancy, and the tenants should not bear the cost of painting.

### Analysis

In considering all of the evidence, I find as follows.

Section 32 of the Act sets out the landlord and tenant's obligations to repair and maintain a rental unit. A landlord must maintain the unit in a state that complies with health, safety and housing standards required by law. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the unit. I find that in this case the landlord was clearly aware of the mould issue as early as October 2007. The landlord carried out at least a minimal inspection and gave the tenants instructions on how to deal with the mould, but they did not follow-up except to note again each following year that there was mould present and that they gave the tenants the same instructions to reduce the mould. The tenants apparently did not do as the landlord instructed; nor did they make any requests for the landlord to address the mould problem. However, the obligation of a landlord to maintain the unit in accordance with

health standards required by law is a higher, more serious obligation than that of the tenant to maintain reasonable standards of cleanliness. I find that the landlord's knowledge of the mould, coupled with their questionable instructions to the tenants and their lack of investigation, amounts to contributory negligence in the damage caused to the rental unit. I find that the landlord is responsible for 75 percent of the damage caused by the mould.

In regard to the specific amounts claimed by the landlord, I find as follows:

- 1) Cleaning – I accept the landlord's evidence regarding the hours of cleaning required for the entire unit. I also accept as reasonable the tenant's submission that the unit would likely only have required five hours of cleaning if not for the mould. I therefore find that the tenants are responsible for the costs of five hours of cleaning, at \$18 per hour, for a total of \$90. I further find that the tenants are responsible for 25 percent of the remainder of the cleaning, or 25 percent of 33 hours of cleaning at \$18 per hour, a total of \$148.50. The total cleaning costs that the landlord is entitled to is \$238.50.
- 2) Fridge handles – the landlord could not verify the age of the fridge, and I accept the testimony of the tenant that the fridge was very old and that she observed that the fridge handles had been broken for years. As the handles likely broke due to age, I find that the tenants are not responsible for the cost of replacing the handles.
- 3) Re-keying the locks – the tenant acknowledged that she only returned one set of keys, and I accept the landlord's claim for \$107.52 for re-keying.
- 4) Garden clean-up – as this work was not done, I find that the landlord is not entitled to claim compensation for it.
- 5) Carpets – under the Residential Tenancy Policy Guidelines, the average life of carpets is 10 years. I therefore find that the landlord may claim 20 percent of the cost for replacing the carpets, or \$347.54, reduced by 75 percent to \$86.87 to reflect the landlord's contribution to the mould that damaged the carpets.
- 6) Painting – under the Residential Tenancy Policy Guidelines, the average life of paint is 4 years. I therefore find that the landlord is not entitled to any of the cost for repainting. The landlord did not provide a clear breakdown of the costs of repairs to holes in the walls or resealing, and I therefore decline to award the landlord any amount for that work.

As the landlord's claim was only partially successful, I find that they are only entitled to partial recovery of the filing fee, in the amount of \$25.

Conclusion

The landlord has established a claim for \$457.89. I order that the landlord retain the deposit and interest of \$196.73 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$261.16. This order may be filed in the Small Claims Court and enforced as an order 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*.

Dated: March 31, 2011.

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Residential Tenancy Branch