



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the tenants and their agent. The landlord did not attend.

The tenant provided confirmation of service of notice of this hearing to the landlord via registered mail on November 24, 2011 in compliance with the requirements under the *Residential Tenancy Act (Act)*. I accept the landlord has been sufficiently served with notice of this hearing.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenants provided a copy of a tenancy agreement signed by the parties on July 15, 2010 for a 1 year fixed term tenancy agreement for a monthly rent of \$950.00 due on the 1<sup>st</sup> of each month and a security deposit of \$475.00 was paid. The tenancy agreement does not stipulate that the tenants must vacate the rental unit at the end of the fixed term.

The tenants also submitted into evidence a copy of a Mutual Agreement to End a Tenancy signed by the parties on October 3, 2010 ending the tenancy effective 11:00 a.m. on October 15, 2010. The tenants testified that the landlord returned ½ month's rent for October and the full security deposit and an additional \$100.00 in recognition of the costs associated with removing the tenants' possessions.

The tenants assert that prior to moving into the rental unit the landlord committed to fixing the bathroom window to allow it to be opened as it was inoperable at the time the tenants viewed the unit. They further stated the landlord never did fix the window.

The tenants also stated that the landlord had originally been asking \$980.00 per month for rent but agreed to a reduced rent to \$950.00 for the duration of the fixed term to compensate the tenants for painting the rental unit. The tenants confirmed the landlord reimbursed them for paint by reducing August 2011 rent by \$400.00.

In the first week of September 2011 the tenants note that they began to have health problems including sore raspy dry throats and sore dry eyes and nasal passages, skin irritations and shortness of breath.

On September 22, 2010 the tenants discovered mould growing on the bottom of the couch and upon further inspection discovered "extensive mould growing on all furniture, many of our shoes, clothing, area rugs, handbags and other personal belongings".

The tenants provided several photographs showing a visible whitish substance on a leather couch; back of a bookshelf; the bottom of a black chair; a coffee table; a slipper; a high heeled shoe and a nylon bag. Included were additional photographs of the crawlspace underneath the house; the sealed bathroom window; a bed frame; a cloth coat; a fabric couch; a bed and television; a kitchen setting including a small fridge and kitchen table and several pieces of wooden furniture; a DVD stand; a lamp; and some exterior pictures of the rental unit. The tenants noted that they did not have pictures of all items as they had not determined the extent of damages until they had gotten rid of some items.

On September 23, 2010 the tenants spoke with the landlord and told him they had to move out and sought to cancel the tenancy agreement and the landlord agreed. The tenants moved out on October 2<sup>nd</sup> and 3<sup>rd</sup> and in so doing they moved the belongings and assessed to see if they could be cleaned adequately; clothing was taken to a laundromat or dry cleaners; shoes and handbags were scrubbed with a toothbrush and almost all furniture and edible dry goods were thrown out.

The tenant testified that even when they cleaned items while still in the rental unit the next day they would be covered with mould again. She stated that even if they had some water in a glass on a table the next day there was a mould on the water surface the next day.

On October 5, 2010 the tenants arranged for an Environmental Health Officer from the local Health Authority to conduct an inspection on the rental unit. The Officer notes in several locations there are "coloured stains that appear to be mould" and "that the residence be further inspected by a qualified person for sources of moisture intrusion and the presence of mould".

The tenants' Application outlines their financial claim as follows:

Description	Amount
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Loss of furniture, personal belongings; and food*	\$4,583.00
Disposal cost of furniture, personal belongings and food	\$197.00
Cleaning supplies for mould removal	\$137.83
Refund of rent from September 23 to Oct 15, 2010	\$695.00
Remuneration of paint job	\$300.00
Health related costs	\$346.00
Lost wages due to mould	\$384.00
<b>Total</b>	<b>\$6,642.83</b>

\*The tenants' submission listing all items requiring replacement totalled by the tenant at \$4,679.00 and when I calculated the amount from the listing I totalled \$5,219.76.

The tenants submitted receipts for furniture; personal belongings and food totally \$1,411.09; disposal of items \$197.00; cleaning supplies \$209.20; and health related costs \$350.00 and photographs and registered mail charges of \$19.59. The tenants testified that they had only replaced certain items at this point as they cannot afford to complete all replacements.

### Analysis

To be successful in a claim for loss or damages the party making the claim must provide sufficient evidence to establish the following 4 points:

1. A loss or damage exists;
2. The loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken, if any, to mitigate any damage or loss.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I accept the tenants' testimony and evidence that shortly after moving into the rental unit some form of microbial growth started appearing on their belongings, however, the tenants have failed to provide sufficient evidence to substantiate it was anything specific, including any type of mould.

In addition the tenants have failed to provide sufficient evidence to establish what standard of cleaning would have been suitable to be able to reclaim any or all of the belongings that they discarded or how they determined that certain items were not suitable to retain.

Despite the tenants' self awareness the tenants have provided no medical documentation confirming the microbial growth had any health effects on either of the tenants or their guests.

Based on the above, I accept the landlord failed to provide a rental unit that was suitable for occupation by tenants and find the tenants should not be responsible for the payment of rent for the month of September 2010 or for the first part of October 2010.

I also accept, based on the unknown nature of the contaminant, the tenants were justified in discarding any food products and cleaning their possessions very thoroughly and should be reimbursed for those costs. As per the tenants' evidence, I find the landlord has already sufficiently compensated the tenants for removal of items in the amount of \$100.00. However, for the reasons noted above, I dismiss the tenant's claim for replacement furniture and other belongings and for health related costs and lost wages.

Finally, the tenants have provided no evidence supporting their claim regarding a reduction in rent for the purposes of painting the rental unit. In addition, as there is no requirement in the tenancy agreement for the tenants to vacate the rental unit at the end of the fixed term, I find it unlikely that a landlord would agree to a permanent rent reduction for the duration of a tenancy based on a finite amount of work. I dismiss this portion of the tenant's application.

### Conclusion

I find that the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,912.07** comprised of \$1,425.00 rent returned; \$227.87 groceries; \$209.20 cleaning products; and as the tenants were only partially successful in their claim \$50.00 of the \$100.00 fee paid by the tenants for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: April 1, 2011.

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Residential Tenancy Branch