



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, MNSD, ERP, FF

### Introduction

This matter dealt with an application by the tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application. At the outset of the hearing the tenant stated the landlord has returned his security deposit to him and as he does not reside at the rental unit he withdraws his application for the return of his security deposit and for an Order for the landlord to make emergency repairs for health and safety reasons.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on June 23, 2011. The tenant states he served his documentary evidence to the landlord on July 11, 2011. The landlord was given the opportunity to have the hearing adjourned today as he did not receive the tenants evidence five days before the hearing in accordance with s. 3.6 of the Rules of Procedure; however the landlord declined this opportunity and requested that the hearing continue today.

Both parties appeared along with an interpreter for the landlord. All persons present, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

This tenancy started on June 01, 2011. This is a month to month tenancy and was a verbally agreement between the parties. Rent was agreed at \$850.00 per month due on the first day of each month in advance. The tenant paid a security deposit of \$400.00 and his first month's rent on or about June 01, 2011.

The tenant testifies that he looked around the property with a view to rent in May, 2011. He agreed to rent the property and gave the landlord a security deposit and his first month's rent. However the tenant testifies that on June 01, 2011 when he went to move into the property he found it was in a filthy and unsanitary condition. He states the landlord or the previous tenant had not cleaned the unit, there was still some of the previous tenants possessions in the drawers and there was mould present in the unit.

The tenant testifies he could not move in on that date. The tenant states he returned to the unit late at night on June 04, 2011 but it was still in the same unsanitary condition. He states he contacted the Residential Tenancy Branch the next day and was advised to write to the landlord requesting him to clean the unit. The tenant states he did this and returned to the house on either the June 8 or 9, 2011 and took photographs of the condition of the property. The tenant states he met with the landlord and they walked around the property again and he pointed out areas he wanted the landlord to clean.

The tenant testifies that the landlord did some cleaning but it was still not satisfactory and the unit remained unfit to live in. The tenant states he returned to the unit and took some more pictures after the landlord had cleaned.

The tenant states while this was going on he had to pay rent somewhere else at a rate of \$650.00 per month. The tenant seeks to recover the rent he paid of \$850.00 for June, 2011 and the additional rent he paid of \$650.00.

The landlord testifies through his interpreter and states the tenant came to see the house on two occasions before he agreed to rent it. He states the tenant told him the house was fine and he would paint it for the landlord. The landlord testifies that the first he heard of the tenants concerns was on June 11, 2011 when the tenant called to tell him the house was not clean. The landlord agrees he went to the house with the tenant and walked around with him while he showed him what he wanted him to clean. The landlord testifies he did clean the house after this date and the tenant never said anything else to him.

The tenant testifies that he did agree to paint the unit but he did not agree to clean the unit first to prepare it for painting. He states he could not have painted any part of the unit in the unclean condition it was in.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I refer the landlord to s. 32 of the Act which states:

A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I have reviewed the two separate sets of photographs provided by the tenant in evidence. The first set shows the condition of the rental unit at the start of the tenancy and clearly show areas of the house which are unsanitary and in a state which require decoration and

repair. There is also clear evidence of mould in the unit which indicates poor ventilation, a water leak or damp.

The tenant argues he could not live in the unit in this condition and went to stay elsewhere while he sought advice on what to do. I am satisfied that the tenant met with the landlord and gave him opportunity to rectify the problem. I am not satisfied with the landlords' arguments that he did rectify the problem by cleaning the unit. The tenants second set of photograph evidence shows the rental unit after the landlord says he cleaned it. These pictures show that there is still evidence of area that are unclean, they still show areas with mould and they still show areas of poor decoration and repair particularly around the window frames, cupboards, walls and laundry room.

Consequently it is my decision that the tenant has met the burden of proof that the unit was unfit for occupation by the tenant and the landlord is in breach of s. 32 of the *Act*. Therefore, it is my decision that the tenant is entitled to recover the rent paid for this unit of **\$850.00** from the landlord pursuant to s. 67 of the *Act*.

The tenant has also applied to recover rent paid for alternative accommodation of \$650.00. However, I am not satisfied that the tenant acted expediently in this matter by bringing it to the landlords attention on June 01, 2011 and he waited until June 11, 2011 to notify the landlord in writing of the problem. I also find the tenant would have to pay rent for somewhere he lived and although he argues that he was paying two rents for June one of these he has now been successful in having refunded. Consequently, this section of the tenants claim is dismissed.

The remainder of the tenants claim involved the return of the security deposit which has been returned to him by the landlord and the tenants claim has been adjusted accordingly.

As the tenant has been partially successful with his claim I find he is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

### Conclusion

A Monetary Order has been issued to the tenant for the sum of **\$900.00** comprised of \$850.00 to recover rent for June, 2011 and the \$50.00 filing fee. The order must be served on the respondent and is enforceable through the Provincial Court 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: July 15, 2011.

---

Residential Tenancy Branch