



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with the tenants' application for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations or tenancy agreement.

The parties and the landlords' agent and witness appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross examine each other.

### Issue(s) to be Decided

Have the tenants established an entitlement to a monetary order under section 67 of the Act?

### Background and Evidence

This month to month tenancy started April 1, 2010, ended March 12, 2011, when the tenants vacated the rental unit, monthly rent was \$900.00 and the tenants paid a security deposit of \$425.00 on March 30, 2010. Although the tenancy has ended, the landlords have not returned the tenants' security deposit.

The tenants' monetary claim is as follows:

Ferry	\$150.00
Rent repayment	\$900.00
Lost work	\$1,500.00
Gas	\$400.00
Leaving without notice	\$5,000.00
Broken glass	\$500.00
Drywall dust over belongings	\$500.00
Family's health risk	\$500.00

Damage deposit	\$450.00
Forced to move	\$5,500.00
False accusations	\$1,000.00
Financial duress	\$1,000.00
Stress	\$500.00
Replacing almost everything	\$1,500.00
<b>TOTAL</b>	<b>\$20,225.00</b>

The tenants' relevant evidence included photos of the rental unit during the repairs and during the tenancy and after the tenants moved out, their notice to vacate to the landlord, dated March 11, 2011, receipts for expenses claimed, a statement from the former manager of the rental unit at the tenancy beginning, and an undated letter from the tenants to the landlords informing the landlords that the tenants were staying away from the rental unit temporarily due to repairs and concerns for mould issues.

**The tenants' testimony included the following:**

The tenants had noticed many water leaks when they moved in and there had been attempts by the landlords' agents to address the problems. When the latest property manager and her husband, the witness here, were introduced by the landlords, the tenants informed them about the bathroom leak, they came in right away to fix the leak.

On February 19, 2011, the hot water tank, scheduled to be replaced, was removed, at which time black mould was discovered due to the water tank being so old as to not be sealed.

The landlord's agent immediately began ripping out walls, even though the tenants and their children were there, which caused a concern to the tenants due to the presence of the black mould. The agents asked them if they had anywhere to go for a week, which they did. During this time away, the tenants asked for \$800.00 as a return for part of the rent they had already paid, and in turn, were given \$300.00 by the agent. The landlords were out of the country at this time.

When the tenants returned home on February 26, the rental unit was a complete "mess," with drywall dust covering the tenants' belongings and interior doors missing. The water tank repair and replacement had been in a substandard manner and was still not functioning properly.

The tenants were informed by the agents that this was the first time they, the agents, had replaced drywall, made repairs or remediated the mould.

The tenants continued to ask the agents when the landlords were returning home and requesting money for compensation. When the landlords returned home, the tenants, on March 5, 2011, addressed the problems with them and attempted to settle their financial claim for compensation. Instead of any results, the landlords issued to the tenants warnings about their furniture on the carport.

On March 12, 2011, the tenants were forced to move out of the rental unit due to, among other things, a broken ceiling fan light, unfinished floors, and continuing leaks and black mould, resulting in health problems to the tenants and their children.

In support of the items listed on their monetary claim, the tenants paid March rent in advance and asked for it to be returned as they were forced to leave the rental unit. The tenants estimated \$825.00 as a place to stay, even though they stayed with the male tenant's mother, and travel costs to the mother's house.

As to the lost work, the tenants work from home and were forced to move from their home.

As to the broken glass, the tenant said their daughter could have been injured by it and that she wanted compensation.

As to the other items listed, the tenants estimated these amounts as they were forced to move from their home.

**Landlord's response:**

The landlords' relevant evidence included a written response to the tenants' application, a letter from another tenant and assistant to the manager in the residential building, photos of the rental unit and a letter each from the landlords' agent, the property manager, and witness.

**The landlords' testimony included the following:**

The tenants had not reported any ongoing problems and at the first report of a leak on February 19, 2011, the landlords' agents attended promptly.

The tenants were offered another unit in the complex to move into temporarily during repair and construction, which they refused, saying they did not want to move their belongings. Although the agents offered to help them move their belongings, the tenants chose to travel to Vancouver Island and incurred the travel costs. The agent paid a loan to them of \$300.00 to be able to return home.

After the tenants returned, on March 5, both the female landlord and the agents attended the rental unit. On this visit, the drywall and hot water tank had been replaced, but the flooring and closet doors were still to be installed.

The landlord asked the tenant to show her where the leak had been and noticed water was lying on the floor. The tenant stated that it had been there for some time, but thought it was water from the dog's water dish or her children playing and had not reported the water. The landlord considered this negligence so that the leak could not be fixed in a timely manner.

The landlord's agent stated that she offered the tenants another unit in the complex during repair and to help them move, but the tenants refused the offer. The repair of the rental unit took 4-5 days.

The substance in the hot water tank closet and in the rental unit was mildew and not mould.

The landlords' witness stated that he made the repairs to the rental unit and that he didn't see any mould.

The tenants never reported any leaks to him.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the tenants to prove damage or loss.

**Place to stay for seven days**-The Landlord is required under section 32 of the Act to provide and maintain the residential property in a state of decoration and repair which complies with health, safety and housing standards required by law.

Where a tenant requests repairs, the landlord must be afforded a reasonable amount of time to take sufficient action. In the case before me, there was no indication of the actual date the tenants notified the landlords of the leak around the water tank. However, the landlord's agent attended the rental unit on February 19, 2011, noticed the leak and immediately began making the required repairs. I find that the landlords took the necessary and sufficient steps to make the repairs.

Having heard the testimony of the parties, I accept that the tenants lost the use of the rental unit through no fault of their own for a period from February 19-26, 2011, due to the structural repairs and lack of a hot water tank. Although the tenants provided no proof that they incurred a loss in the amount of \$825.00, I find that an amount of **\$75.00 per day** to be reasonable under the circumstances should the tenants chose to stay in a hotel during this time.

Additionally, I accept the lack of flooring and doors until the time the tenants vacated on March 12, 2011, caused the tenants to suffer a loss of value in the tenancy. As a result I find the tenants are entitled to compensation for a loss of value in the tenancy from February 26 until March 12, 2011. While I am convinced the tenants' use of the rental unit was restricted I do not find that they could not occupy and use the rental unit. I find reasonable compensation to be in the amount of **\$20.00 per day for February 26 until March 12, 2011 (15 days)**.

I also find that the landlords have paid the tenants \$300.00 during this time.

I therefore **grant** the tenants' claim for the amount of **\$600.00** (\$75.00 x 8 days = \$600.00; \$300.00 (\$20.00/day x 15 days; -\$300.00 paid by the landlords to the tenants).

**Ferry, Gas-**The tenants choose to leave to a relative's home and not accept the landlord's offer of an alternate unit in the same complex. I therefore find that the tenants did not mitigate their loss and I dismiss their claim for \$550.00.

**Rent repayment-**The tenants did not provide notice to the landlord of their vacancy of the rental unit on March 12, 2011, as required under section 45 (1) of the Act. I therefore find that the tenants are not entitled to the return of their rent for March and **dismiss** their claim for \$900.00.

**Lost work-**The tenants submitted no evidence of lost income and due to this lack of proof, I **dismiss** their claim for \$1,500.00.

**Health risk for family -**The tenants provided no evidence to prove that mould was present in the rental unit, such as an environmental assessment report. The landlords disputed that the substance was mould, rather it was mildew. The conflicting verbal testimony is not sufficient to meet their burden of proof and I dismiss their claim for \$500.00.

**Replacement of belongings-**The tenants provided insufficient evidence of their lost belongings and I therefore **dismiss** their claim for \$1,500.00.

**Stress, financial duress-**The tenants provided no proof or substantiation that the landlords were the cause of financial duress or stress or that the landlords violated the Act or tenancy agreement. I therefore **dismiss** their claim for \$1,500.00.

**Had to leave without notice, broken glass, forced to move, false accusations-** I find the tenants provided no evidence or credible testimony to substantiate the merits of these claims. I therefore **dismiss** the tenants' claim for \$12,000.00.

**Security deposit-**I find that the landlords received the tenants forwarding address through the submission of the tenants' application, which the landlords acknowledged receiving shortly after the tenants mailed the application via registered mail on March 24, 2011 and have not returned the security deposit to the tenants. I also find that landlords have not made an application for dispute resolution claiming against the security deposit. Pursuant to Section 38(6) of the Act, I find the tenants are entitled to double their security deposit and therefore **grant** the tenants' claim in the amount of \$900.00.

Conclusion

I find the tenants have established a total **monetary claim** in the amount of **\$1,500.00**, comprised of \$600.00 for alternate accommodations during the repair/construction period as described above and loss of the value of the tenancy and the security deposit of \$450.00, doubled.

I am enclosing a monetary order for \$1,500.00 with the tenants' Decision. This order is a **legally binding, final order**, and may be filed in the Provincial Court (Small Claims) should the landlords fail to comply with this monetary order.

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 8, 2011.

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Residential Tenancy Branch