



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

At the beginning of the hearing the Tenant admitted that she had not served the Landlords with her evidence package however she claimed she was unaware she was required to do so. When the Tenant received her hearing packages, she would have received Fact Sheet #114, (The Dispute Resolution Process) which states at p. 2 as follows:

***“Copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible and —at least five (5) days before the dispute resolution hearing.”***

RTB Rule of Procedure 11.5(b) says that the Dispute Resolution Officer may refuse to accept evidence not provided to another party if the Dispute Resolution Officer determines that the acceptance of the evidence would prejudice the other party. Given that the Landlords would be prejudiced by not being able to respond to the Tenant's evidence package, the Dispute Resolution Officer gave the Tenant the option of having her application dismissed with leave to reapply or of proceeding with this hearing without her evidence package. The Tenant opted to proceed with the hearing as scheduled and as a result, her evidence package is excluded from evidence.

### Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

### Background and Evidence

This tenancy started on April 1, 2011 and ended on June 30, 2011 when the Tenant moved out. Rent was \$1,225.00 per month. The rental unit is a 4 bedroom house with a finished basement. The Tenant resided there with her 3 children.

The Tenant said that when she first viewed the rental property in March 2011, the Landlord (C.V.) advised her that there was a crack in the foundation which would be repaired once the snow melted. Consequently, the Tenant said she was aware that there might be some water leaking into the rental unit from this crack.

The Tenant said she could smell a strong musty odour from the basement and noticed approximately 2 weeks after the tenancy started that there was mould on the trim of a bedroom, storage room and part of a hallway located in the basement. The Tenant said she advised the Landlord's agent about the mould and he said he would have it taken care of right away but that did not happen. On April 20, 2011 the Tenant said she found water flooding into the storage room and a bedroom closet in the basement and discovered the source was the hot water tank. The Tenant said she shut off the hot water and advised the Landlord's agent who said he would have someone look at it the following day. The Tenant said a friend and handyman of the Landlord's showed up the next day but he just left a plastic container under the release valve. The Tenant said she dumped out the water that collected over the next few days until April 15, 2011 when she found hot water had overflowed and poured out everywhere. Consequently, the Tenant said she contacted the Landlord's agent about this again and the release valve was replaced a few days later.

The Tenant said that after this flooding, the musty smell in the basement got worse to the point that one of her children could no longer use the bedroom in the basement and had to relocate to her bedroom upstairs. The Tenant said she contacted the Landlord's agent on May 1, 2011 and again on May 14, 2011 about the mould and he said he thought it had already been dealt with but agreed to have someone deal with it right away. The Tenant said the Landlord, C.V., arrived on May 14, 2011 and spent approximately one hour wiping off the baseboards with bleach. The Tenant said the Landlord advised her to leave on a heater for 2 days to dry out the area behind the baseboards. The Tenant said she advised the Landlord that these steps were inadequate because she had earlier removed a section of the baseboard and saw mould behind it and in the walls.

The Tenant said she also advised the Landlord's agent on May 2, 2011 that an upstairs toilet was constantly running and needed to be repaired. The Tenant said she shut the water off to this toilet until the Landlord's handyman finally arrived on May 6, 2011 to fix it. The Tenant gave the Landlord's agent her notice to end the tenancy on May 31, 2011. The Tenant said on June 15, 2011 she noticed small water spots on the carpeting in the basement and advised the Landlord's agent. Approximately one week later, following a heavy rain, the Tenant said the bedroom and storage room in the basement flooded with water. The Tenant claimed that as a result of this flooding, some of her personal items in the storage area and an X-Box console that her children had stored in a closet floor were damaged.

The Tenant said that on May 22, 2011 she asked the Landlord's Agent to be compensated for the use of the electricity to run the heater and for the loss of the downstairs bedroom and the Landlords initially said they would compensate her

approximately \$125.00 for May 2011 but later gave her only \$60.00. The Tenant argued that this amount was not adequate to compensate her for the loss of use of the basement and toilet as well as her having to clean up water from the hot water tank and leak in the foundation.

The Landlord's agent said he was acting on behalf of the Landlord, C.V., (who is one of the owners of the rental property) because her spouse had a serious medical condition at the beginning of the tenancy that required her to be out of town for a number of days at a time while he was being treated. The Landlord's agent said, the Landlord's spouse usually took care of maintenance in the rental unit.

The Landlord's agent claimed that the Tenant contacted him first about the leak in the hot water tank and the Landlord's friend and handyman went to the rental unit a couple of days later to look at it. The Landlord's agent also claimed that on that day, the release valve did not appear to be leaking so a pail was placed under it. The Landlord's agent said that as soon as the Tenant contacted him again to say the valve was leaking, he arranged to have the valve replaced however it took 2 more days to order in the part. The Landlord's agent claimed that it was only around this time that the Tenant complained about mould. Consequently, the Landlord's agent argued that any mould was likely due to the recent hot water tank leak and would have been confined to the baseboards rather than inside the walls. The Landlord's agent claimed that the Landlord spent many hours cleaning the baseboards with bleach.

The Landlord's agent claimed that he contacted the Tenant in mid-June 2011 to arrange to do showings and at that time the Tenant told him she was not residing in the rental unit during the last two weeks of June 2011. Consequently, the Landlord's agent claimed that he noticed the flooding in the basement at the end of June 2011 before the Tenant did. The Landlord's agent said he had advised the Tenant at the beginning of the tenancy not to move any gutters and to keep them clear because they were diverting water away from the house. However, the Landlord said he noticed at the end of June 2011 that the gutters had been removed with the result that the water ran into the house. The Landlord's agent claimed that the Tenant vacated the rental unit without cleaning up this water. The Landlord's agent said that after the Tenant vacated, he found some containers of spoiled food in the storage room of the basement which may have caused the musty smell in the basement. The Landlord's agent argued that the Tenant knew the rental property was an older house and that problems could be expected in older houses. The Landlord's agent also argued that the Tenant's application in this matter was motivated to get money from the Landlord because she could not afford the rent.

The Tenant denied that the Landlords said anything about the gutters at the beginning of the tenancy and denied removing them. The Tenant also claimed that the gutters alleged to have been removed were on a different side of the house than the foundation crack. The Tenant said she did clean water up from the flooding at the end of June 2011 but was unable to extract it from the carpeted areas.

## Analysis

Section 28 of the Act says (in part) that a Tenant is entitled to quiet enjoyment which includes but is not limited to the right to exclusive possession of the rental unit subject only to the Landlord's right to enter under s. 29 of the Act and freedom from unreasonable disturbance.

Section 32(1) of the Act says that "a landlord must provide and maintain residential property in a state of decoration and repair that complies with 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." Section 32(5) of the Act says that "a landlord's obligations under s. 32(1) of the Act apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement."

In this matter, the Tenant has the burden of proof and must show (on a balance of probabilities) that the Landlords breached their duty under s. 32(1) of the Act to repair the rental unit and that as a result, her right to the use and enjoyment of the rental unit (or to quiet enjoyment) was breached. This means that if the Tenant's evidence is contradicted by the Landlord, the Tenant will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Tenant claimed that she lost the use of at least one bedroom in the rental unit for 2 and ½ months due to the existence of mould in the walls and the overpowering smell it left. The Tenant claimed that the mould likely pre-existed the tenancy and was caused by prolonged leaking through a crack in the foundation of the rental unit. The Tenant said although she was aware prior to the tenancy that some water could leak into the rental unit, she was unaware until after the tenancy started that there was mould in the walls. The Tenant also claimed that she was inconvenienced by having to mop water up and from being without an upstairs toilet for approximately 5 days. The Tenant further claimed that some of her personal belongings (mementos) and some of her children's belongings (computer games and accessories) were damaged by the leaking water.

The Landlords argued that any mould in the rental unit would have been confined to the baseboards only and resulted from the hot water tank leak. The Landlords also argued that they took reasonable steps to repair the hot water tank and toilet in a timely manner and that there was a delay in cleaning the mould due to a miscommunication between the Landlords and the need for one of them to be out of town at that time.

While mould could reasonably have accumulated in the rental unit basement walls from prolonged leaking through the foundation crack, the Tenant provided no corroborating evidence that this was the case. Although the Tenant claimed that she had photographs of a section of a wall where she had removed baseboards revealing mould, she did not provide these as evidence at the hearing. However, I do not accept

the Landlord's agent's evidence that a musty smell in the basement was caused by containers of food left in the storage room by the Tenant because he also claimed that those containers were sealed and the foul smell was not apparent until they were opened. Based on these findings, I conclude that there was a musty smell likely caused by mould on baseboards in the basement of the rental unit that was reported by the Tenant to the Landlords in mid-April, 2011 but which was not addressed by the Landlords until May 14, 2011. I find that this was an unreasonable delay and that as a result the Tenant lost the use of a bedroom in the basement for a one month period. Although the Tenant argued that the steps taken by the Landlord to remove the mould were inadequate, I find that there is little evidence that the Tenant lost the use of this bedroom for the period May 15, 2011 to June 30, 2011 due to mould in the walls.

I also find that the Landlords delayed unreasonably in repairing a hot water tank. On April 20, 2011, the Tenant reported to the Landlords that this leak was significant enough that it flooded a storage room and bedroom. However, the Landlords' response to this was to put a pail under the damaged valve until they were advised by the Tenant on April 25, 2011 that the pail was inadequate to deal with the quantity of water still leaking from the hot water tank. As a result of this initial delay, the Tenant had to deal with additional flooding and the loss of use of a hot water tank for a number of days. The Tenant said she reported to the Landlord on May 2, 2011 that the upstairs toilet was running. The Landlords claim they could not get someone in to repair the toilet until May 6, 2011. The Tenant admitted that she had the use of the downstairs toilet for 4 days. Consequently, I find that the Landlords did not delay unreasonably in repairing a toilet.

There was no suggestion by either party that the Tenant's rent was already reduced to compensate her for problems with the foundation. Consequently, given the loss of use of the downstairs bedroom for at least a one month period, the inconvenience to the Tenant of having to deal with a leaking hot water tank, the cost of electricity to run the heater and to mop up water at the end of the tenancy, I find that the Tenant is entitled to compensation of \$450.00. The Tenant also applied for compensation for a damaged X-Box controller and damaged mementos, however, she provided no evidence of the damaged items in question, nor did she provide any evidence of the value of those items. Consequently, that part of the Tenant's application is dismissed without leave to reapply. As the Tenant has already received compensation from the Landlords in the amount of \$60.00, I find that the compensation she has been awarded in this matter must be reduced by that amount to \$390.00. I also find that the Tenant is entitled pursuant to s. 72(1) of the Act to recover from the Landlords the \$50.00 filing fee she paid for this proceeding for a total monetary award of \$440.00.

### Conclusion

A Monetary Order in the amount of **\$440.00** has been issued to the Tenant and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the

Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: October 25, 2011.

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Residential Tenancy Branch