



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, MNDC, FF  
                                 MNDC, MNSD

### Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is for a monetary order for damages, a monetary order for unpaid rent, money owed or compensation for damage or loss and recovery of the filing fee. The application by the tenants is for money owed or compensation due to damage or loss and return of the security deposit. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

This tenancy began February 26, 2011 with monthly rent of \$1000.00 and the tenants paid a security deposit of \$500.00.

The tenant testified that on February 16, 2011 they met with the landlord and entered into an agreement to rent the back half of the house. The tenant stated that the landlord was cleaning out the house and completing repairs to the rental unit and that the tenants accommodated the landlord by not taking full possession until March 7 as there was no working toilet in the rental unit and the tub surround was not installed until March 17. The tenant stated that they then reached a verbal agreement with the landlord to not pay the March rent as the rental unit had no working bathroom for 2.5 weeks.

The landlord testified that the tenants did not pay the March 2011 rent and in April asked if the March rent could be 'forgiven' as the bathroom had not been functional until mid March. The landlord stated that the toilet was always functioning but did acknowledge that the tub surround installation was not completed until March 17 partially because the tenants requested early possession of the rental unit. The landlord stated that he told the tenants that he would consider a rent reduction for March 2011

but that he never agreed to a full month's rent reduction and that the agreement was never finalized. The landlord stated that he did not give the tenants a notice for unpaid rent as he knew they were in a tough financial spot.

The tenant stated that the landlord then misplaced the tenancy agreement and in mid April insisted that the tenants sign a new tenancy agreement that was back dated to February 17, 2011. The landlord stated that this was not true and the tenancy agreement that the tenants signed was the original tenancy agreement.

The tenant stated that there were numerous issues with the property that the landlord simply would not repair. The tenant stated that there was a broken window in the laundry area that they had to secure shut with a board. The tenant stated that the landlord moved a travel trailer into the back yard which he was living in and that the sewer line from the trailer was run to the open lid of the septic tank. The tenant stated that this was just outside their bedroom window and the stench from the septic tank was pulled into their bedroom through their air conditioning unit. The tenant stated that the landlord has both rental units in the house and the travel trailer all hooked up to the same hydro meter which the tenants were never advised of and as a result the tenants had exceedingly high hydro bills.

The landlord stated that the travel trailer was always parked on the property and it was in late August when the landlord was installing a drain around the property that he was using the travel trailer to stay in. The landlord stated that the only time the lid to the septic was open was when the holding tank on the travel trailer needed to be emptied. The landlord clarified that the tenants had their own hydro meter and that when he had the trailer hooked up it ran off the hydro from the vacant rental unit. The landlord stated that the tenant's high hydro bill was most likely due to the tenants running 2 air conditioners 24/7 as the tenants preferred to maintain a low temperature in the rental unit.

The tenant stated they discovered in mid August that there was a problem with water ingress into the rental unit and that all of the downstairs walls leaked and that the water would run from the right side to the left side where there was a sump pump. The tenant stated that the landlord attempted to repair the leak by installing a drain around the perimeter of the house but the end result was water pooling near the back corner of the house. The tenant stated that they lost belongings due to the water ingress that caused mold to develop in the basement. The tenant maintains that family members all became sick in because of the mold that they were exposed to. The tenants have submitted into evidence, doctor's notes from November 11, 2011 advising the tenant to move because of mold and December 30, 2011 that states that the tenants both had recurring illness's in December; the tenant stated that these notes establish why it took so long for them to respond to the landlord's application with their own claim.

The landlord stated that he had been aware of a water ingress problem into the basement near the stairs in the other rental unit but had not been aware that there was a water ingress problem with this rental unit. The landlord stated that in August after the

tenants advised him about the water ingress into the basement that he installed a drain around the perimeter of the house. The landlord stated that this property had been owned by his parents, he had grown up in the residence and had never been aware of anyone becoming sick from mold in the basement. The landlord also stated that he advised the tenants to remove their personal belongings from the areas affected by the mold and water ingress but that they never did.

The tenant stated that after discovering the mold in the basement they verbally advised the landlord on August 14, 2011 that they would be looking for a new place to live. The tenants then found a new rental unit and verbally advised the landlord that they would be vacating on September 24, 2011. The tenant stated that he had no idea that written notice was a requirement as he had always provided notice to landlords verbally with no issue about it being raised.

When the tenants vacated on September 24, 2011 they told the landlord that the back door was open, the landlord now had access to the rental unit and that they would return September 26, 2011 to finish cleaning the rental unit. The landlord stated that when he checked the rental unit he discovered that the tenants had left a pile of frozen food from their freezer on the basement floor along with numerous discarded items and that the rental unit had not been cleaned. The landlord stated that he filled 6 large trash bags up with items the tenants left behind and that he had to disinfect the basement floor because of the rotting food. The landlord stated that he spent around \$300.00 on cleaning products and that he had to change the furnace filter because of the smell from the rotting food. The landlord stated that 2 doors had the locks missing on them, the bathroom door was broken and the tenant handed the landlord a disassembled door lock on the day they vacated.

The tenant stated that they cleaned the rental unit *'they best they could'* and as the landlord still had many of his father's belongings in the basement, the tenants *'may have left some items behind'* as they were not sure what was theirs and what belonged to the landlord, the tenant stated that *'as far as he was aware'*, no food was left in the basement.

The landlord stated that after the tenants vacated the rental unit he took up occupancy of the rental unit and stayed living there while he completed additional renovations. The landlord vacated the rental unit at the start of December 2011 and the unit was rented to new tenants as of December 15, 2011.

The landlord is seeking \$1500.00 compensation for loss of rent, damages and cleaning costs.

The tenants are seeking \$2500.00 compensation due to loss of their peace and quiet enjoyment and severe health issues related to the odour from the septic tank and the mold.

### Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds for entitlement to a monetary order for loss of rent or unpaid rent.

The tenants did not provide the landlord with proper notice per the *Act* however the landlord took up occupancy of the rental unit after the tenants vacated therefore the landlord did not suffer a loss of rental income for the month of October 2011. In regards to the rent for March 2011, both parties acknowledged that there was a discussion regarding a partial or full deduction for the March 2011 rent and this along with the landlord stating that he knew the tenants were in a tough financial spot and not pursuing a notice to end tenancy for unpaid rent, would leave a reasonable person to believe that the tenants would no longer be required to pay the March 2011 rent. Therefore the landlord's claim for loss of rent or unpaid rent is dismissed without leave to reapply.

In regards to the landlord's claim for damages and cleaning costs, I accept the landlord's testimony and find that the landlord has established that there was incidental damage to the rental unit and cleaning that was required after the tenants vacated. The tenant also acknowledged that items were left behind in the rental unit that the landlord subsequently had to remove. However in the absence of any receipts for costs associated with this portion of the landlord's claim, I find that the landlord is entitled to the limited amount of \$150.00. The balance of the landlord's claim for damages and cleaning costs is dismissed without leave to reapply.

Accordingly I find that the landlord is entitled to a monetary order for \$150.00.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenants have not met the burden of proving that they have grounds for entitlement to a monetary order for compensation for damage or loss in regards to the mold in the rental unit or the odor from the septic tank.

While the tenants make the allegation that they became ill from the mold in the rental unit, the area of mold was restricted to an unfinished room in the basement and the pantry corner. The doctors notes entered into evidence by the tenants stated that the tenants had *'recurrent illness over the month of December'* however these notes do not establish what the illness's were or if they were in any way related to mold in a residence the tenants vacated September 24, 2011. And while the photographic evidence does show some mold and water stains on a wall in the basement room and pantry, the amount of mold does not appear to be very significant. The landlord's testimony about this being his family home and no one in the family ever being sick from mold in the basement or pantry must also be taken into consideration. There was also conflicting testimony from the parties on how often the lid was off the septic tank and in this regard I accept the landlord's testimony that the lid to the septic tank was only open

when the trailer holding tank was being emptied. Therefore the tenants claim for \$2000.00 compensation is dismissed without leave to reapply.

The tenants are entitled to return of \$300.00 of the \$500.00 security deposit which is the amount due back to the tenant's after deduction of the landlord's award.

As the landlord has had some success in their application they are entitled to recover \$25.00 of the \$50.00 filing fee.

### Conclusion

I find that the landlord has established a monetary claim for \$150.00 in damages and cleaning costs. The landlord is also entitled to recover \$25.00 of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep \$200.00 of the tenant's security deposit in full satisfaction of the claim.

The landlord is to return the \$300.00 balance of the security deposit to the tenants within 2 weeks after receipt of this decision.

The tenant's application is dismissed in its entirety without leave to reapply.

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: January 10, 2012

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Residential Tenancy Branch