



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, MNR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Landlord filed requesting a monetary order for compensation under the Act or tenancy agreement, to keep all or part of the security deposit and to recover the filing fee for the Application.

The Tenants filed requesting monetary orders for the cost of emergency repairs, money owed or compensation for loss under the Act or tenancy agreement, for the return of the security deposit, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Are the Tenants entitled to monetary compensation from the Landlord?

### Background and Evidence

The parties entered into a one year, fixed term tenancy agreement on July 16, 2011. The tenancy had a term of July 17, 2011 to August 30, 2012, and was renewable at the end of the term. The parties agreed to rent of \$1,200.00 per month, and the Tenants paid the Landlord a security deposit of \$600.00 on or about July 15, 2011.

Prior to taking possession of the rental unit the Tenants requested that the Landlord clean the furnace ducts, as the Tenant H.K. had asthma and was sensitive to dust. The Landlord had the furnace ducts cleaned and the Tenants had possession of the rental unit on July 17, 2011.

The Landlord and Agent testified that the rental unit had been "totally renovated", with new flooring, new washroom fixtures and fresh paint just prior to the start of the tenancy. According to their testimony, one other set of renters had been in the rental unit prior to the Tenants.

The Landlord's Agent testified that the Tenants had been late paying rent in the first two months of the tenancy. He testified and submitted a written summary in evidence.

The Agent testified that the Tenants informed him in early to mid September that the rental unit had invisible mould in it, which was affecting the Tenant H.K.

The Tenants informed the Agent that they were having tests performed. They discussed who would pay for the tests. The Agent informed the Tenants the Landlord was reluctant to pay for the tests.

Over the next week or two, the parties also discussed who would pay for these repairs if mould was found. The Tenants informed the Agent around this time that it would cost approximately \$1,200.00 to repair the mould in the rental unit. Again, the Agent for the Landlord informed the Tenants the Landlord was reluctant to pay for these repairs. Apparently, they agreed that they would each pay \$600.00 to repair the mould problem.

About a week after these discussions, the Agent asked for the air test results from the Tenants. On or about September 22 or 23, 2011, the Tenants gave the Agent documents indicating they were terminating the tenancy agreement effective September 30, 2011, and were claiming for \$7,220.00 for their losses.

The Agent for the Landlord testified he began advertising the rental unit on September 23, 2011, by putting up notices in a local laundromat. The Tenants vacated the rental unit by September 30, 2011. The Agent testified that the Landlord had new renters move into the rental unit on November 10, 2011.

The Landlord is claiming \$11,400.00 from the Tenants for nine months rent according to the tenancy agreement and to keep the security deposit.

The Tenants testified that the Tenant H.K. became ill while she was in the rental unit. The Tenants testified that although they could not see any mould in the rental unit they decided to have air tests done for mould.

The Tenants hired a restoration company to perform the air tests, who took samples and forwarded them to a testing laboratory. The results of the lab tests were submitted in evidence. In the summary of results the lab reported,

“No fungal spores were detected in the outside sample which is unusual at this time of year. The *Cunninghamella* sp in the bedroom sample/left side of bed is elevated. The *Aspergillus/Penicillium* spore count for the crawlspace may be elevated.”

[Reproduced as written.]

There are no explanations given by the lab if these results indicate a hazard or risk to the Tenants.

The Tenants provided a letter from a person who apparently works at a restoration company which sets out that,

“... the results came back with a high count of *Aspergillus/Penicillium* sp. which is an allergenic type of mold. With these results, it is recommended to go with a remediation process in order to bring the air quality in the house, back to normal.”

[Reproduced as written.]

The qualifications of the person giving this letter are not set out. The restoration company provided the Tenants with an estimate of \$1,837.92 for remediation of the rental unit. The estimate contains a statement there is no visible mold on items, however, a portion of this statement has been blocked out or cut off.

The Tenants also provided a letter from a Doctor, dated September 22, 2011. It explains that while living at the rental unit the Tenant H.K. became ill, and, “... investigation revealed significant mould at the [rental unit address].”

The Doctor writes the Tenant is under the care of a respirologist and an allergist. The letter ends by stating, “[Tenant H.K.] is unable to continue living at the above address due to health reasons.” [Reproduced as written.]

The letter appears to have been written by the Doctor based solely on information provided to him by the Tenants. For example, there is no reference to reports or other medical information that the Doctor may have consulted or relied upon.

The Tenants testified that after they had these results back they asked the Agent for the Landlord to make repairs to the rental unit to alleviate the mould. The Tenants testified that the Landlord and Agent replied that the Tenants would have to pay for the repairs themselves.

The Tenants wrote the Landlord on September 22, 2011, explaining they were ending the tenancy and requesting \$7,220.00 in compensation, comprised of the return of all rents paid to the Landlord, the costs of cleaning their property and all tests and medical expenses.

In their Application the Tenants are requesting \$8,404.73, which includes the return of all rents paid and double their security deposit, as well as the return of the payments they made for utilities, telephone, internet service, living expenses, and \$1,837.92 for the estimated cost of the restoration company. When they were asked why they were requesting the return of all rents and utilities, the Tenants responded by saying the rental unit was uninhabitable and unliveable.

In reply, the Landlord testified that the Tenants were smokers and had two dogs in the rental unit. The Agent alleges that the smoking and pets were the cause of the Tenant H.K.'s allergy problems.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenants breached the tenancy agreement and section 45 of the Act by terminating a fixed term tenancy without authority to do so.

Under section 45 of the Act, the Tenants *might* have ended the tenancy in accordance with the Act had they provided the Landlord with a written demand setting out the problems with the rental unit and providing the Landlord with a reasonable amount of time to make repairs. Had the Landlord not addressed their concerns the Tenants could have then provided a notice to end tenancy to the Landlord. The Tenants testimony and evidence indicates they did not send the Landlord a letter until they informed the Landlord they were ending the tenancy.

I find that, on a balance of probabilities, the Tenants have failed to prove there was a significant mould problem in the rental unit. The results of the tests performed indicate an “elevated level” of a type of spore, however, no information is provided on the impact to health as a result of this spore or due to the amount of the spore.

Furthermore, the Tenant H.K. had a pre-existing health issue, as she required the furnace ducts to be cleaned at the outset of the tenancy due to her asthma. The evidence that there was mould in the rental unit which contributed or worsened the pre-existing health of the Tenant, would need to be clear and unequivocal. It is not.

I find that, based on the evidence before me, I am unable to find the rental unit contributed to or exacerbated any health issues the Tenants may have had.

Having made these findings, I dismiss the Application of the Tenants without leave to reapply.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director’s authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches by the Tenants have caused the Landlord to suffer a loss of rent for 41 days. The daily rent for the rental unit under their tenancy agreement would have been \$39.45, based on one year of rent at \$1,200.00 per month.

Therefore, I find that the Landlord has established a total monetary claim of \$1,617.53 comprised of 41 days loss of rent.

I order that the Landlord retain the deposit of \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,017.53**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I note that the Landlord filed the Application within the timelines of section 38 of the Act, and therefore, the Tenants were not entitled to the double the security deposit, in any event of their claim.

Lastly, I find that both parties here have greatly exaggerated their claims. For example, the Landlord claimed for over 270 days of rent, when they had re-rented the rental unit within 41 days of the end of the tenancy. Therefore, I do not allow either party to recover the filing fee for their Application.

### Conclusion

The Tenants breached the Act and the fixed term tenancy agreement. The Tenants shall pay the Landlord for a loss of rent for 41 days. The Landlord may keep the security deposit and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 11, 2012.

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Residential Tenancy Branch