



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking a monetary order for compensation for damage or loss under the Act or tenancy agreement, and to recover the filing fee for the Application.

The female Tenant appeared, gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Tenants served the Landlord with their Application and the Notice of this Hearing by registered mail, sent on October 26, 2011. Registered mail is deemed served five days after mailing under the Act. I find the Landlord has been duly served in accordance with the Act. Despite this, the Landlord did not appear at the hearing.

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.

### Preliminary Matter

I note that towards the end of the hearing, the male Tenant came into the conference call unannounced and began using foul language. When the Tenant was cautioned for this he directed an explicative towards me and then disconnected from the conference call.

### Issue(s) to be Decided

Are the Tenants entitled to monetary compensation from the Landlord?

### Background and Evidence

This tenancy began in August of 2011, under an oral tenancy agreement. The monthly rent was \$950.00, and the Tenants moved into the rental unit on or about August 11, 2012. A security deposit was paid, however, the Tenant testified that this has now been returned to the Tenants.

The Tenant testified that when she moved into the rental unit the Landlord informed her that the roof was going to be repaired. The Tenant testified that the house smelled of mildew when they moved in. She further testified that the walls were buckling and sagging. The Tenant also testified that there was very poor water pressure in the rental unit. For example, after flushing the toilet it would take several minutes to have enough pressure to wash your hands.

The Tenant testified that they had not informed the Landlord in writing of any of these deficiencies.

On September 16, 2011, the ceiling in the bathroom caved in. The Tenants submit in their written evidence that the collapse of the ceiling revealed no vapour barrier and "extensive toxic black mould".

The Tenants allege the Landlord rented them the property with the prior knowledge it was in gross disrepair.

The Tenants also submit that the rental unit is on an agricultural land reserve. They allege that after the collapse of the ceiling, at the time they were removing their property from the rental unit, a building inspector acting on behalf of the agricultural land commission placed "do not occupy" signs on the front and back door. The Tenant testified she was informed by the building inspector they had to leave the rental unit immediately.

The Tenants allege that the rental unit was illegal and the Landlord should not have rented to them in the first place.

The Tenant testified that they had to find alternate living accommodations quickly, and due to this the female Tenant missed work and the male Tenant missed a course he signed up for.

The Tenants are requesting monetary compensation of \$3,501.00, comprised of the following:

- \$1,900.00 for the return of all the rent paid to the Landlord. The Tenants claim that because the rental unit was not legal they are entitled to all their rent back.
- \$1,033.00 for the first month of rent in their new rental unit, which includes the pet deposit and utility deposit paid to their new landlord.
- \$60.00 for gas used during the move.
- \$84.00 for storage of their property.
- \$224.00 for the cost of the course missed by one Tenant.
- \$200.00 for their hydro bill at the rental unit.

### Analysis

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

A dispute resolution hearing is a formal legal proceeding. In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss (here the Tenants) has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

To prove a loss and have the other party (here the Landlord) pay for the loss requires the claiming party to prove four different elements:

1. that the damage or loss exists;
2. that the damage or loss occurred due to the actions or neglect of the Respondent in breach of the Act or agreement;
3. they must establish the actual amount required to compensate for the claimed loss or to repair the damage; and
4. prove that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this instance, the Tenants failed to provide any form of documentary evidence that would support their claim that the damage or loss exists. For example, they might have taken and submitted pictures of the caved in ceiling, or of the notice posted by the building inspector prohibiting anyone from occupying the rental unit, or provided evidence that shows the rental unit is on land reserved for agricultural purposes. I note that the Hearing Notice and the Hearing package the Tenants obtained while they filed their application contains statements such as, "Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing."

The Tenants have also failed to prove the actual amount required to compensate them for their losses. For example, the Tenants failed to provide a receipt, invoice or bank records for any of the expenses they have claimed, such as rent paid, the cost of the course one Tenant allegedly missed, or their storage fees.

For the above reasons, I find the Tenants have failed to prove their claims against the Landlord and therefore, I dismiss their Application without leave to reapply.

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 12, 2012.

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Residential Tenancy Branch