



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, FF**

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant requested compensation for damage or loss under the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The tenant served the landlord with evidence just within the required time-frame. The landlord's evidence was then received late, as the time to respond to the tenant's submission was limited. All evidence submissions were accepted and neither party raised an issue with the other's submission.

The tenant did not attach a detailed calculation to the application served to the landlord; the calculation was not served to the landlord until March 1, 2012; with the tenant's evidence; however, the landlord acknowledged understanding of the claim and the hearing proceeded.

### Issue(s) to be Decided

Is the tenant entitled to compensation for damage and loss in the sum of \$25,000.00?

Is the tenant entitled to return of the filing fee paid?

### Background and Evidence

This fixed-term tenancy commenced on August 1, 2011, rent was \$1,250.00, due on the first day of each month. A deposit in the sum of \$625.00 was paid and has been disbursed. The tenant vacated the rental unit on September 20, 2011. A copy of the tenancy agreement was supplied as evidence.

The tenant stated she did not receive a copy of the move-in condition inspection report until the landlord served her with evidence. The landlord stated the tenant had previously been given a copy of the inspection report.

The tenant claimed costs for mould test kits, cleaning, lab reports, supplies, moving costs, hotel rooms, postage, vacuum, light bulbs and photographs totalling \$5,689.04; plus damages in the sum of \$19,310.96.

The tenant submitted receipts for light bulbs, a storage locker rental from September 18 to October 18, 2011; furniture cleaning invoices dated September 19, 2011 in the sum of \$630.00; a moving invoice and receipt; hotel receipts; a change of address record and a vacuum invoice. The tenant claimed compensation for these costs she incurred as a result of having to move out of the unit, as the landlord would not respond to her request that the mould be investigated.

The tenant provided photographs, some of which showed growth in Petri dishes. Other photos showed the carpets, mouse droppings in the garage rust on a washing machine; mould on the inside of the garage door and bath tile. Of 24 photos supplied as evidence, 11 were taken of the carpet.

The tenant supplied a copy of mould reports she obtained after taking swabs or placing swabs in the rental unit and then mailing them to a lab in Florida; 2 samples were taken. The tenant had talked to the landlord about her concerns, as she felt the house had mould and was making her ill. The tenant could not recall the specific dates she and the landlord discussed the problems she was experiencing.

The tenant called the lab to ask questions about the reports that had been issued on September 7, 2011; but was unable to point to portions of the reports that indicated the rental unit was dangerous due to the presence of mould. Copies of the mould analysis report for direct microscopic examination submitted as evidence showed several commonly found moulds were present in the rental unit.

Shortly after receiving the analysis report the landlord and tenant reached a mutual agreement to end the fixed term tenancy.

The landlord did not wish to assist the tenant with compensation for moving; they offered the tenant new carpets for the unit, which she declined. The landlord tried to make the tenancy work, but the tenant told him she had pre-existing health problems

and wanted to leave. The strata counsel was contacted and they reported no mould concerns in any of the other units. The landlord believed the mould report showed no issues that required a response.

### Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The tenant lived in the rental unit just less than 7 weeks and is claiming a loss of \$25,000.00 as the result of the presence of mould in the rental unit; an amount that is twenty times the monthly rent payable.

The tenant provided copies of mould reports that were issued based upon swabs sent by mail to a lab in Florida. Shortly after the reports, issued on September 7, 2011, were received, the tenant reached a mutual agreement ending the tenancy and vacated the unit on September 20, 2011.

The tenant could not point to any portion of the mould reports that indicated a serious health risk existed in the rental unit or that the unit was uninhabitable. The tenant provided no medical records or health authority reports which supported her allegation that the unit was causing her health problems. The tenant also did not provide any evidence of a serious attempt to communicate with the landlord, such as written letters, which outlined the details of her concern, evidence of her concerns and a request for repair.

The lab reports were based on swabs taken by the tenant, within her home. There was no evidence of any air testing and no evidence of testing outside of the unit, so that comparisons could be made. It is not surprising that mould spores were found, as the report indicated some moulds are very common. At best, the report obtained by the tenant was a general statement on mould, and the kind of moulds present. There was nothing in the reports that gave any comparisons or detail that suggested the unit was uninhabitable or required remediation.

In the absence of evidence that supports the tenant's claim that the home contained mould which posed a health threat to the degree that it would require her to move, I find that the tenant has failed, on the balance of probabilities, to prove the landlord was negligent and that any emergency repair or repair was required. The tenant turned down the offer of new carpets and showed no evidence of any intention by the landlord to delay delivering on this offer.

Further, the tenant has provided no evidence of the loss she has claimed in the sum of \$19,310.96: no medical information, no evidence of professionals she has seen, no evidence of time lost seeking employment, no medical receipts, or food and meal receipts.

Therefore, I find, on the balance of probabilities that the tenant has failed to prove that the landlord has breached the Act and responsible for the costs claimed; the application is dismissed.

### Conclusion

The tenant's application is dismissed.

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: March 13, 2012.

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Residential Tenancy Branch