



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in repose to the tenants application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

Both parties agree that this tenancy started on July 01, 2011. This is a fixed term tenancy which is due to expire on June 30, 2012. Rent for this unit was \$1,050.00 per month and was due on the first day of each month.

The tenants testify that shortly after they moved into the rental unit and started to have showers in the basement bathroom, mould started to grow on the walls. The tenants' state there is no ventilation in the bathroom and air circulation is poor. The landlord was verbally

informed of this problem and two weeks later the tenants noticed mould growing on their window sills.

The tenants' testify that they tried to clean the mould with soap, water and bleach and made repeated attempts to clean the mould. The tenants thought at first that it was just a surface mould but it kept coming back through.

The tenants' testify that they asked a restoration company to come and look at the mould and this company told the tenants that it was a level two mould which would continue to grow back when it was subjected to moisture due to poor ventilation. The tenants' testify that the landlord told the tenants to leave their windows open, however the tenants state they were not happy to do this because they live in an unsafe area and also due to a loss of heat. The tenants have provided photographic evidence of the mould growing on the bathroom walls and windowsills in the upstairs windows.

The tenants' testify that the landlord was repeatedly informed of the mould problem but showed no interest in rectifying this problem until he came to the unit 10 months into the tenancy to deal with a septic tank back up. At this time the landlord advised the tenants to clean the mould with 3 percent Hydrogen Peroxide and the landlord gave the tenants information detailing this and their responsibility to clean the window sills. The tenants testify that the landlord did offer his wife's services to come and clean the mould but at that time the tenants declined as they were waiting for the expert to come and look at the mould from the Restoration Company. The tenants testify that the landlord was aware of the mould marks on the bathroom walls as the landlord has documented them as 'spots on wall' in his inspection on November 01, 2011. The landlord also documented other issues such as missing knobs.

The tenants seek compensation of \$1,500.00 for having to live with the mould for the duration of their tenancy and the landlords failure to take action to prevent the mould occurring.

The landlord testifies that he went to the unit on April 27, 2012 on another matter when the tenant EN showed the landlord the mould in the bathroom. The landlord testifies that the tenant explained that she had tried to clean the mould using bleach and that she had experienced mould at her previous unit. The landlord agrees that his wife volunteered to come and clean the mould and the tenants did agree on a date but later withdrew that. The landlord testifies that on April 29, 2012 they provided the tenants with literature from the internet about how to kill the mould and that the use of bleach will not do an effective job. The landlord testifies that they would have used the three percent Hydrogen Peroxide solution to kill the mould and would have then applied a mould resistance paint. The landlord submits that the tenants have allowed the mould to get to this condition by using the bleach to clean it.

The landlord testifies that when he carried out an annual inspection of the unit he noted that the tenants had dark blankets covering the downstairs bedroom windows. The landlord testifies that he explained to the tenants about having adequate ventilation and air circulation in the unit. The landlord agrees the tenants should not leave their windows open but the windows can be opened three or four inches and then locked in place. The landlord states because the tenants are covering the windows with dark blankets this causes mould to grow on the windows.

The landlord testifies that the tenants have allowed another occupant to live in the rental unit. This additional person has not had the landlord's approval and would be having showers in the unit which would also contribute to condensation.

The tenants dispute the landlords claims and the tenants testify that the windows in the downstairs bedrooms have blankets on to keep the heat in as the windows are old and heat escapes. These windows do not suffer from mould issues and it is the windows upstairs without blankets that have mould as shown in the tenants' photographs.

The tenants testify that there is a list of problems in the unit, The bathroom fan does turn on but does not suck out any air; not all of the windows have locks; the windows are not insulated; the door frames are not insulated, the screen door is ripped (now been replaced

after 11 months); the door fixture is broken; broken pantry knobs; there is a bug problem because the unit is not sealed correctly; the toilet seat was replaced by the tenants; the walls were not painted at the start of the tenancy although the landlord said they were. The tenants could only use two burners on the stove until December 13, 2012 as the other burners caused damage to the fridge. The tenants state the move in inspection detailed most of these deficiencies and the landlord told the tenants he was proactive about fixing things.

The landlord testifies that the tenants have not informed him about these deficiencies in writing or verbally. The landlord testifies that he arranged to do an inspection with the tenants and asked the tenants to make a list of any areas of concern. The tenants did not make a list and the landlord was not made aware of their concerns. The landlord testifies that he did replace the stove and fridge, it was the tenants cat who made the existing hole in the screen larger and the door the tenants refers to that is not insulated is a steel door with dead bolts. The landlord testifies that the tenants have his telephone number and know the landlords mailbox so they can put any problems in writing. The landlord testifies that he also touched up the paint in the unit prior to the start of the tenancy.

The tenants seek to recover \$100.00 paid to have the Hydro account put into their name because the landlord did not transfer the account from the last tenant. The tenants also seek \$500.00 for additional Hydro costs because the windows and doors did not seal properly causing the tenants hydro bills to be excessive.

The landlord testifies that the average cost for two people living in a unit of this size is \$125.00 to \$135.00 per month. The tenants had an extra person living in their unit so their hydro costs would be higher.

The tenants seek to recover the sum of \$1,000.00 for the stress caused in having to live under these conditions. The tenants testify that at first the landlord told them he was the landlord's agent and he would have to check things the tenants requested with the landlord. The tenants later found out he was the landlord. The tenants state the landlord also lied to them about the rent and parking. The tenant's testify that they had original agreed to pay

\$950.00 for this rental unit and the landlord said he would have to check with the “landlord”. Then came back and told the tenants rent would be \$1,050.00. The tenants’ testify that the septic tank backed up into their toilet on the 27<sup>th</sup> of the month and they had informed the landlord two or three days earlier about an odour. On the 27<sup>th</sup> the toilet backed up on to the bathroom floor and the landlord had a contractor out to unblock the field and told the tenants “I guess I should have done something sooner”.

The tenants’ testify that the landlord also entered their unit without prior notice when the landlord delivered the new fridge and stove. The tenant EN testifies that she was home at the time and heard the landlord come into the unit without knocking. The female tenant was upstairs and she found the landlord and the delivery men in the kitchen moving the tenants’ food and making comments about the food

The landlord disputes this and states he does not neglect his tenants and he had the septic tank man out within 90 minutes of the tenants informing the landlord. The landlord testifies that the tenants agreed to pay a monthly rent of \$1,050.00 when they signed the tenancy agreement. The landlord testifies that he had to deliver the tenants new stove and fridge and did not enter their unit illegally.

The tenants seek to recover the sum of \$500.00 for their time and energy in dealing with these problems and with the worry about having to move from the rental unit.

### Analysis

With regard to the tenants claim for a monetary order for money owed or compensation for damage or loss regarding mould issues; I have reviewed the documentary evidence and the oral testimony and find there is an issue with mould at the unit in both the bathroom and some of the window frames. The landlord argues that the tenants are responsible as they did not deal with the mould properly and declined the landlords offer for his wife to clean the mould. The landlord also argues that the tenants did not open windows to allow for air circulation to prevent mould. The tenants argue that the landlord was aware of the mould

and did nothing to rectify the situation in a timely manner and there is poor ventilation in the unit. I refer the parties to the s. 32 of the *Act* which states:

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

While not all mould is toxic black mould any mould must be taken seriously to ensure it does not affect the health of the occupants of a rental unit. I find the landlord was aware of a problem with mould and although the tenants did not put it in writing to the landlord the landlord did document himself that there were spots on the bathroom wall on November 01, 2011. I am therefore satisfied from the tenants evidence that the landlord was aware of the mould and I am also satisfied that the ventilation fan in the bathroom was inadequate to remove moisture build up from this area. It is of no consequence how many additional people were living in the unit or whether or not the tenants left windows open in an area of risk and I find there is no evidence to show that by placing blankets at the windows contributed to this mould in the bathroom. Consequently, I find in favour of the tenants claim for compensation for living with mould for 11 months and find the tenants are entitled to compensation to the value of **\$1,500.00** pursuant to s. 67 of the *Act*.

With regard to the tenants claim for living with other defects in the rental unit; I find there is some evidence that the landlord was aware of some of these defects such as missing knobs, the tenants restricted use of the stove top; a rip in the screen door, and un-insulated windows and doors however I find the sum claimed by the tenants of \$500.00 to be excessive for these minor deficiencies and the tenants have not mitigated there loss by putting these deficiencies in writing to the landlord and then filing a claim against the landlord for repairs in the event the landlord did not make repairs within a time frame purposed by the tenants. I further find the tenants have not been deprived of the use of all or part of the premises and the suffering to the tenants for these deficiencies is minimal.

Consequently, I limit the tenants claim to a nominal amount of **\$200.00** for living with these deficiencies.

With regard to the tenants claim for \$500.00 for excessive utilities bills; I have considered the tenants claim in this matter and find there is insufficient evidence to show that the higher utility bills are as a result of the landlord's actions or negligence and not as a result of additional people living in the rental unit. Consequently this section of the tenants claim is dismissed.

With regard to the tenants claim of \$1,000.00 for the stress of dealing with the landlord over these repair issues; I find the tenants have not provided sufficient evidence to show the level of stress incurred during their tenancy that would warrant a Monetary Order of \$1,000.00. Consequently, this section of the tenants claim is denied.

With regard to the tenants claim for the sum of \$500.00 for their time and energy in dealing with these problems; I find as the tenant have been awarded the sum of \$1,500.00 for living with the mould problem there is no provision under the *Act* for me to award additional amounts to file applications and prepare evidence. Consequently, I find the tenants are claiming for similar things and this section of the tenants claim is denied.

With regard to the tenants claim for a rent reduction of \$500.00; the tenants have provided insufficient evidence to show that they offered the landlord \$950.00 and the landlord charged the tenants \$1,050.00. The tenancy agreement shows that rent is \$1,050.00 and the tenants agreed to this amount when they signed the tenancy agreement. Consequently, this section of the tenants claim is denied.

As the tenants have been partially successful with their claim I find the tenants are entitled to recover half their \$50.00 filing fee to the sum of **\$25.00** pursuant to s. 72(1) of the *Act*. The tenants have been issued with a Monetary Order for the following amount:

|                        |            |
|------------------------|------------|
| Compensation for mould | \$1,500.00 |
|------------------------|------------|

|                                 |            |
|---------------------------------|------------|
| Compensation for repairs        | \$200.00   |
| Filing fee                      | \$25.00    |
| Total amount due to the tenants | \$1,725.00 |

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,725.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: June 21, 2012.

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Residential Tenancy Branch