



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for \$3800.00; however at the hearing the tenant reduced the claim to a request for return of the security deposit of \$825.00, and request for return of the pet deposit of \$425.00. The tenants are also requesting recovery of their \$50 filing fee.

The landlord's application is a request for a monetary order for \$4125.00. The landlords are also requesting recovery of their \$50 filing fee.

### Background and Evidence

This tenancy began on January 21, 2012 with a monthly rent of \$1650.00.

This was a fixed term tenancy running to January 31, 2013.

The tenants vacated the rental unit and return possession to the landlords on June 30, 2012.

The tenants stated that:

- There was mould in the rental unit that was making them sick and as a result both of them had been put on inhalers.
- The rental unit has any 4 foot dirt crawlspace under the house and there is black mould and a series of animals under the house at various times such as possums, a skunk, raccoons, and domestic cats.
- They both develop severe respiratory problems and as a result a lot of medical issues.
- They had addressed the issue of a mould smell with the landlords but the landlord told them it was just damp paper in the cupboards.
- They decided to move prior to the end of the lease because of the health issues, and because their grandson who has severe asthma was arriving to stay with them on June 22, 2012.
- They therefore physically moved out of the rental unit on June 21, 2012 and returned possession to the landlord on June 30, 2012.
- They believe they had no choice but to vacate the rental unit due to the unhealthy conditions and therefore they are requesting the return of their security deposit and pet deposit and recovery of their filing fee.

The landlords testified that:

- The tenants never addressed the issue of a mould smell in the rental unit with them prior to making the decision to vacate.
- The tenants did not even give them the opportunity to investigate the alleged mould problem before moving out.
- They had a professional mould inspection done after the tenants vacated, at a cost of \$762.00 and as you can see from the report no mould whatsoever was found.
- There has also never been any evidence of, nor have they ever seen any animals of any kind in the crawlspace under the house.
- They provided letters from previous tenants who had no health issues while living in the rental unit, and the landlords husband himself, who has asthma, had no issues whatsoever in this rental unit.
- They have also looked at the evidence provided by the tenants, and numerous receipts for things like inhalers are dated 2011 prior to the tenants moving into the rental unit as was one of the emergency visits.
- It's obvious from the information on the emergency visit form but this tenant had respiratory issues well before moving into the rental unit.
- The tenant was on inhalers prior to ever moving into this rental unit and therefore already had pre-existing health issues.
- They believe the tenants are just using these health issues for a reason to end their lease without proper notice.
- Due to the short notice they were unable to rent the unit for the month of July 2012, or August 2012 and therefore have lost two months' rent.
- I also have to pay the utilities while the unit is empty.
- They also had to have yard maintenance done, which was the responsibility of the tenant.
- One of the tenants rent cheques was also NSF.

The landlords are therefore requesting an order as follows:

July 2012 lost rental revenue	\$1650.00
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August 2012 lost rental revenue	\$1650.00
Utilities (estimated)	\$300.00
July 2012 yard maintenance	\$120.00
August 2012 yard maintenance	\$120.00
NSF cheque charge	\$25.00
Mould inspection cost	\$761.60
Filing fee	\$50.00
Total	\$4677.00

### Analysis

It is my finding that the tenants have not met the burden of proving that their health issues were caused by environmental problems in the rental unit such as mould or animal dander.

I reviewed the prescription receipts and other health related documents provided by the tenants, and I have found that there are numerous documents that are dated well prior to the beginning of this tenancy. Three of the four prescription receipts were from 2011, prior to the tenancy beginning. One of the laboratory statements is from April 2011, well before the tenancy began, and one of the hospital emergency visits was also from April 2011.

Further none of the medical documentation concludes that the health issues suffered by the tenants are the result of environmental problems in the rental unit.

Therefore it is my decision that the tenants did not have the right to end this tenancy without giving the proper notice, or prior to the end of the fixed term, and therefore any financial loss suffered by the landlords as a result can be charge back to the tenants.

In this case the landlords have lost rental revenue for two months, and therefore I allow the landlords claim for recovery of that lost rental revenue of \$3300.00.

The landlords have also claim for utilities however at the time of their claim they did not yet have those utility bills and therefore it is my decision that I dismiss that portion of their claim with leave to reapply once they have received those utility bills.

I will allow the landlords claim for yard maintenance however because the landlords have supplied an invoice that shows that they are paying \$120.00 per month for yard maintenance.

I also allow the landlords claim for \$25.00 for the cheque that was returned due to insufficient funds.

I will not allow the landlords claim for the cost of the mould inspection, because that was not on the original application as at that time it had not yet been done, however the landlords are free to file a separate claim for the cost of the mould inspection at a later date if they so choose.

Therefore I have allowed the following portion of the landlords claim:

Lost rental revenue for July 2012	\$1650.00
Lost rental revenue for August 2012	\$1650.00
July 2012 yard maintenance	\$120.00
August 2012 yard maintenance	\$120.00
NSF cheque fee	\$25.00
Filing fee	\$50.00
Total	\$3615.00

Conclusion

Tenant's application

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

Landlord's application

I have allowed \$3615.00 of the landlords claim, and I therefore order that the landlords may retain the full security/pet deposits totalling \$1250.00 and I have issued a monetary order in the amount of \$2365.00.

As stated above the claim for utilities is dismissed with leave to reapply, and the claim for the mould inspection may also be included in a future application.

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: August 23, 2012.

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Residential Tenancy Branch