



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary issue

On August 07 2012, the parties attended a dispute resolution hearing which the tenant's application for dispute resolution was heard for the return of the security deposit. The Dispute Resolution Officer at that hearing found the tenant was neither diligent in the prevention of the mould developing nor cooperative in its treatment. It was also found that the tenant did not clean her room regularly, or allow in the cleaning services provided as part of the tenancy agreement. However, the landlord did not have a cross-application for monetary compensation. The Dispute Resolution Officer made a final decision on the return of the security deposit.

On September 6, 2012, the landlord filed an application for dispute resolution.

### Issue(s) to be Decided

Are the landlords entitled to monetary compensation for damages to the unit?

### Background and Evidence

The tenancy began on December 30, 2011. Rent in the amount of \$600.00 was payable on the first of each month. A security deposit of \$300.00 was paid by the tenant. The

tenancy ended on April 30, 2012. The parties agreed the tenant rented a room and shared the common areas with another occupant.

The landlord claims as follows:

a.	New queen quilt mattress cover	\$50.00
c.	Moving furniture fee	\$80.00
d.	Wall holes filed and painted	\$50.00
e.	New queen box spring	\$200.00
f.	Damage to entertainment cabinet	\$100.00
g.	Extra cleaning fee	\$75.00
h.	Loss of rent due to condition of room	\$600.00
i.	Filing fee	\$50.00
	<b>Total claimed</b>	<b>\$1,255.00</b>

*Mattress cover and sheet set*

At the onset of this hearing the tenant agreed she damaged the mattress cover and the sheet set. The tenant agreed the amount claimed by the landlord to replace those items is reasonable.

*Moving furniture fee and Wall holes filed and painted*

The landlords testified the tenant had permission to move a desk in the common area, however, the tenant moved all the furniture and did not have their permission. This included moving pictures and re-hanging them in other places on the wall.

The landlords testified that it took them several hours to restore the unit to its original condition. The landlords stated when the pictures were returned to their original location they had to fill the holes and cover the fill with paint. The landlords seek to be compensated for their time to return the unit to its original condition in the amount of \$130.00.

The tenant agreed she did not have permission to move the furniture or the pictures and did not return the unit to its original state at the end of tenancy.

The tenant testified that the holes from the pictures would have been the same size of the holes already there.

The landlords argue that the holes may have been the same size, however, they were visible and needed to be repaired.

New queen box spring

The landlords testified the tenant damaged the box spring from sitting on the edge of the mattress. The landlords stated the tenant admitted to sitting on the edge of the bed.

The tenant testified that she did not admit to sitting on the edge of the bed.

Damage to pine entertainment cabinet

The landlords testified when the tenant move the pine entertainment cabinet she broke a piece of the cabinet. The landlords stated the piece broken was left in the cabinet draw. The landlords stated they did not have the cabinet repaired and they have not had an estimate provided for the repair. However, they seek compensation.

The tenant testified she was very careful when she moved the cabinet and disputes damaging the cabinet.

Extra cleaning fee

The landlords testified that the tenant's room required extra cleaning. The landlords stated that the tenant's room was left very dirty. The landlord stated the tenant also refused to open her window or bedroom door to allow the air to circulate and it caused a major mould problem in her room. Filed in evidence are photographs of mould on the wall, baseboard and dresser.

The tenant testified that for almost a month, she did not live in the rental unit and the landlords did not contact her to let her know of the problem. The tenant stated it is the landlords responsible to address any mould problems not hers and she believes there is a water leak in the wall.

The landlords argue the tenant has possession of the unit regardless if she was staying elsewhere as the tenant belongings still remained in the unit and rent was paid. The landlords argued the tenant is responsible to clean the rental unit and leave it undamaged at the end of tenancy. The landlord denied there is a water leak in the wall.

Loss of rent due to condition of room

The landlords testified due to the condition the tenant kept her room they were unable to show it prior to her leaving. The landlords stated it took them about one week to ten days to clean the room and address the mould issue. The landlords stated once they were satisfied the unit was presentable to show they advertised the unit for rent.

The tenant testified she is not responsible for the landlord taking the time to deal with the mould issue.

### Analysis

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

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act by the tenant and a corresponding loss as a result.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

### Mattress cover and sheet set

The tenant agreed she damaged the mattress cover and sheet set and agreed the amount claimed by the landlord was reasonable. Therefore, I find the landlords are entitled to compensation for the mattress cover and sheet set in the amount of **\$100.00**.

### Moving furniture fee and Wall holes filed and painted

Under Residential Policy Guideline #1 – Renovations and changes to rental unit

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant

The tenant agreed she did not have permission to move the furniture or pictures in the common areas. The tenant also agreed she did not return the unit to the original state prior to vacating the unit. I find the tenant has violated the Act and the landlords suffered a loss.

The amount claimed by the landlords for returning the unit to its original condition is reasonable as they were required to move all the furniture back to the original location, re-hang pictures and fill and paint holes. Therefore, I find the landlords are entitled to compensation in the amount of **\$130.00**.

*New queen box spring*

The landlords' claim the tenant damaged the box spring by sitting on the edge of the mattress. I do not find sitting on the edge of the mattress is a violation of the Act or the tenancy agreement. Therefore, I dismiss the landlords' claim for compensation for the box spring.

*Damage to pine entertainment cabinet*

The landlords' evidence was there was a piece of wood broken off the pine cabinet from when the tenant moved the cabinet. While the tenant may have caused the damage to the pine cabinet, I find the landlords have failed to prove the actual amount to be compensated as the cabinet was not repaired nor was there an estimate for the repair submitted into evidence. Therefore, I dismiss the landlords' claim for the damage to the pine cabinet.

*Extra cleaning fee and Loss of rent due to condition of room*

Section 37 of the Residential Tenancy Act states:

- 37 (2) When a tenant vacates a rental unit, the tenant must
  - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The Dispute Resolution Officer's (the "DRO") order of August 23, 2012, found the tenant was neither diligent in the prevention of the mould developing nor cooperative in its treatment. I find that due to section 77(3) of the Act and the legal principal of Res judicata, there is no jurisdiction to alter or change that finding.

The documentary evidence submitted supports the landlord's claim that the tenant did not clean the mould at the end of tenancy. I find the amount claimed by the landlord to clean the rental unit reasonable. Therefore, the landlords are granted compensation for cleaning the rental unit in the amount of **\$75.00**.

Further, I find the tenant did not leave the rental unit reasonably clean as mould was left on the walls, baseboards and dresser. I find the landlord has suffered a loss of rent for one month as a result of the tenant's neglectful action to prevent or cooperate in mould treatment. Therefore, the landlords are granted compensation for loss of revenue in the amount of **\$600.00**.

I find that the landlord has established a total monetary claim of **\$955.00** comprised of the above described amount and the \$50.00 fee paid for this application. I grant the landlord an order under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary as described above.

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: November 27, 2012.

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Residential Tenancy Branch