



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPR, MNR, MNSD, FF

### **Introduction**

This hearing was convened in response to applications filed by both the tenants and the landlord.

The tenants seek:

1. To cancel a Notice to End Tenancy given for unpaid rent;
2. A monetary Order for compensation for damage and/or loss in the sum of \$4,800.00;
3. An Order that the landlord make repairs;
4. An Order compelling the landlord to make emergency repairs;
5. An Order to be allowed to reduce the rent for repairs, services or facilities agreed upon but not provided; and
6. Recovery of the filing fee paid for this application.

The landlord seeks:

1. An Order of Possession;
2. A monetary Order for unpaid rent and/or loss of revenue in the sum of \$3,300.00;
3. An Order to be allowed to retain the security deposit; and
4. Recovery of the filing fee paid for this application.

I accept the landlord's evidence that she served a 10 day Notice to End Tenancy on the tenant's by posting the Notice to the rental unit door on February 2, 2013.

Both parties attended the hearing and gave evidence under oath.

**Issue(s) to be Decided**

Have the parties met the burden of proving their claims?

**Background and Findings**

This tenancy began on May 1, 2012 as a month-to-month tenancy. Rent was fixed at \$1,650.00 due on the first of each month. The tenants paid a security deposit of \$825.00 on April 9, 2012 and a pet deposit of \$825.00 on May 1, 2012.

The parties prepared a move-in inspection report on April 29, 2012 noting that there were no repairs to be done "...at the start of the tenancy. But as agreed by both parties, I am needed time to re-build under deck and storage area" (reproduced as written).

The tenants were served with a Notice to End Tenancy on February 2, 2013 for unpaid rent of \$1,650.00 due on February 1, 2013. The tenants agree that they have not paid the rent. The tenants say they withheld their rent because they reported a mold issue to the landlord on January 13, 2013 and again via text message on January 18, 2013. The tenants say the landlord did not immediately deal with the matter. The tenants say that the female tenant has been to emergency numerous times with mold symptoms. The tenants submitted medical records showing that the tenant attended Ridge Meadows Hospital on January 17, 18 and February 3, 2013. The tenants say they have a young child age 4 and a newborn. The male tenant says that he has been sick as well. The tenants say they need to find alternate accommodation immediately.

The tenants are also seeking the following sums:

January ?	Home Hardware – Purchase a humidity indicator	20.00
January 27	Springfield Construction Report – Journeyman contractor and former municipal inspector used to prepare a report that there is mold in the rental unit	168.00
February 4	16" POD container to prepare for moving	313.00
February ?	POD Cost for moving for delivery and taken off the site will be removed February 26	186.00
February 8	Second POD container	526.40
February ?	Rona Spackle and spatula for holes in the wall from hanging pictures	9.50
February 10	Shoppers Drug Mart - packing tape	8.94
February 9	Moving Helpers (rough estimate: amount 3 helpers including one family member being paid \$15.00 per hour + gratuity)	500.00
February 10, 11 and 12	Cleaning rental unit	250.00
February 9	Garbage Removal – 1-800-JUNK remove garbage	35.00
February ?	Fuel for the car to drive around seeking a new place to live	80.00
February 12	BC Ferries – Female tenant travelled to the island because she was ill	14.85
February ?	Male Tenant traveled to island to be with wife and children	64.10
February 15	Initially the tenants stayed with their parents but as one parent had surgery they could not stay every night so had to relocate to the Travel Lodge in Sidney, BC	299.00
February 20	Male tenant received 50% off a stay at Pacific Shores in Parkville 5 nights	450.00
	Disruption of family life	1,000.00
	Time off work for tenants and time taken to attend hospital and having to move (male tenant works from home so work was disrupted as well)	1,000.00
	Security Deposit paid to rent new accommodation	1,000.00
	<b>Total</b>	<b>5,924.79</b>

Although the total of the amounts listed above is \$5,924.79 the tenant has claimed \$4,800.00 in the Application for Dispute Resolution. The tenants say they are seeking recovery of costs for moving because they have been forced to move as a result of the mould.

The tenant testified that he did not submit receipts or invoices because no one at the Residential Tenancy Branch told him he needed to submit receipts or invoices. Further

that some of the payments have not yet been made and the sums quoted are estimates only.

The tenant submitted a letter from CJ of Springridge Construction dated January 27, 2013. Mr. J states that he is the owner of Springridge Construction a Journeyman Glazier and Building Inspector. Mr. J states that the windows in the entire house are aluminum framed with sealed glass units. He notes that "...it is very noticeable that most of the sealed glass units are failing." And that the windows are dated from 1984 before the use of thermal break which stops condensation from collecting on frames. Mr. J notes that black mold and mildew can be plainly seen and "Mold & mildew can be very toxic & can cause illness." In conclusion Mr. J states:

There is only one way to remedy this problem in this house. All the windows need to be replaced with either vinyl or thermal break double glazed aluminum windows.

As Mrs. D (the female tenant) has explained she is already showing signs of mold infection the windows should be replaced immediately to stop any further illness.

The tenant submitted that they paid \$150.00 for this report and they did not engage the services of an expert in mould because those reports cost upwards of \$500.00.

The landlord testified that she received a text message from the female tenant on January 18, 2013 advising that there was mold in the rental unit. The landlord testified that she had no notification of any problems prior to this date even though this tenancy began on May 1, 2012.

The landlord submitted a further email received on January 23, 2013 from the female tenant who advised that she had been in the ER "...5 times in the last 8 weeks with severe illness and will be having some tests to see if this is an illness related to the black mold".

The landlord submitted that she immediately engaged the services of BioSolutions Inc. to inspect the premises. The landlord submitted into evidence a preliminary report sent to her by BioSolutions via email on January 28, 2013.

The landlord submitted a further email sent to her by the tenants on January 30, 2013 at 12:16 p.m. in which the tenants provided the landlord with 1 month notice of their intention to vacate the rental unit "...due to toxic mould exposure illness."

On January 30 at 1:28 p.m. the male tenant sent a further email to the landlord advising that an Application for Dispute Resolution had been issued stating further that:

Your neglect to resolve the report issue in a timely satisfactory manner is now a legal matter so follow procedures and do not have any contact with my Wife as you have already caused her more than enough stress in the way you have poorly handling this matter.

There is also a PS:

I would suggest that you don't bother trying to hassle my family any further about this matter which includes trying to schedule a time to rent your contaminated home out until after the hearing date - February 25, below is our termination notice.

The male tenant also advised that they were serving the landlord with an inspection report noting that the primary reason for the mold was the failed window seals and no fans in the bathrooms which the landlord had promised to install.

In addition to contacting BioSolutions the landlord also contacted James Dobney Inspections. He inspected the premises and on January 30, 2013 and reported that there was a fair amount of moisture in the house and not enough ventilation. The report indicates that the mold came from cooking, heating, showering and other heat generated activities. The report also indicates that the windows have lost their seals. The inspector recommended the installation of fans in bathrooms which must be left on during showering/bathing and for 45 minutes afterwards; using kitchen hood fans during cooking; ensuring fans are discharging to the exterior of the house; opening windows as little as ½ an inch to expel moisture building up, reducing unnecessary moisture and heat generating activities like drying clothes indoor and opening curtains and blinds to allow for air flow. The inspector stated that there is not much that can be done about condensation between the double glazed window panes which is a cosmetic problem so long as no actual water is standing within the panes. Replacing the window assemblies with newer vinyl windows was recommended.

The landlord produced a Mould Inspection Report prepared by BioSolutions Inc on February 9, 2012 at 11:00 a.m. BioSolutions Inc. The report concluded that

There are mould issues that can be corrected by occupant activity and upgrades to components in the home.

The report recommended replacing older windows, opening windows and the installation of a fan in the main bathroom.

The landlord also produced a letter from JM of Ballet Glass dated February 9, 2012. Mr. M stated that he has been a certified window glazier for 30 years and has replaced the glass in the windows on this rental unit and noticed only a small amount of mould during the installations.

## **Analysis and Findings**

### ***Order of Possession***

Based on the undisputed evidence of the landlord I find that the landlord is entitled to an Order for Possession. There is outstanding rent and while the tenants did dispute the Notice to End Tenancy given for unpaid rent they have failed to show that they have paid the rent and have agreed that they withheld their rent. With respect to the payment of rent the *Residential Tenancy Act* states at Section 26 as follows:

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants state that they have withheld their rent due to a mould problem in the rental unit however they supplied insufficient evidence to show that they had any right under the Act to deduct any of their rent. The tenants' application seeking to cancel the Notice to End Tenancy given for unpaid rent is therefore dismissed.

### ***Monetary Order - Landlord***

I find that the landlord has met the burden of proving that there are rental arrears. I find the landlord is entitled to recovery of those arrears. I will award the landlord a monetary order for rental arrears in the sum of \$1,650.00 for the month of February 2013. The landlord has also claimed rent for March 2013 based on a concern that she did not know when the hearing of this application would be held. As March has not yet arrived I am unable to grant a monetary Order for March rent however the landlord remains at liberty to reapply for March's rent or loss of revenue as she may see fit.

### ***Monetary Order - Tenants***

The evidence shows that this tenancy began on May 1, 2012 and on or about January 13 or 18, 2012 the tenants reported to the landlord that they had discovered mould in

the rental unit. Further, that for the period January 18 to February 3, 2013 the female tenant made several trips to Ridge Meadows Hospital on the believe that her illness was cause by "black toxic mould" the tenants withheld their rent for February and have decided to vacate the rental unit. They are now claiming \$4,800.00 as set out above.

In support of their claim they have supplied a report issued by a Journeyman Glazier/ Contractor/Inspector attesting to mould being in the rental unit. The contractor has also stated that he is a building inspector but no credentials in this regard have been supplied. The contractor indicates that he saw mould in the rental unit and that this mould is "very toxic" and can cause illness and that the female tenant is already showing signs of illness.

With respect to illness, the tenants have submitted reports from Fraser Health Authority (Ridge Meadows Hospital) some of which are illegible and others that state that the tenant attended the Emergency Room suffering from "...left flank pain and nausea...red blood mixed with the stool hemorrhoids with pregnancy...not seeping well, poor appetite..." and that she states that she feels "fuzzy" and has a "...heavy flow more than normal for her". The report indicates that the tenant is suffering from UTI (urinary tract infection) and "... small para-pelvic cysts..." Another report notes that the female tenant "Has had a course of ABX but now flu like symptoms although thinks it may still be UTI dizzy diarrhea today".

I give little weight to the report supplied by the tenants given by the Journeyman/Glazier/Inspector. He has supplied information on mould and the possible medical complications that could result yet it has not been proven to me that he is either a mould or medical expert.

With respect to the medical reports supplied by the tenants nothing in them indicates that the tenant's symptoms have been caused by mould located in the rental unit.

Overall I found the tenants' case to be built upon their own speculation and the speculative advice they received as opposed to solid expert evidence. Based on this speculation the evidence shows the tenants chose to withhold their rent and vacate the rental unit. Further, they demand that the landlord pay the costs of their choice including sums they say they have spent; none of which have been substantiated by invoice evidence.

It is true that all of the reports prepared show that there is some mould in the house and the inspectors involved have made recommendations how this issue can be remediated. However, with respect to their allegation that the tenants had cause to end

their tenancy because the landlord was somehow negligent in not having taken action with respect to the mould immediately, I find to the contrary. I find that the evidence shows that the landlord was notified in late January 2013 of the mould issue and that she engaged the services of two inspectors within a few days. Both of those inspectors made recommendations to alleviate the matter; some of the recommendations could have been immediately instituted by the tenants. With respect to the larger scale issue of replacing windows, a landlord is well entitled to engage her own advisors before taking on substantial repairs as recommended by the tenants and their own contractor. I find that in this regard the landlord acted promptly and appropriately.

Based on the findings set out above, I find that the tenants have failed to meet their burden of proving their claims and their claims are therefore dismissed in their entirety.

### ***Filing Fees***

As the landlord has been successful in this application I find that the landlord is entitled to recover the filing fees paid for this application.

### ***Security Deposit***

I find further that the landlord is entitled to retain the security deposit and interest (if any) to the date of this decision in partial satisfaction of the rental arrears.

### ***Calculation of total Monetary Award in favour of Landlord***

Rental Arrears for February 2013	\$1,650.00
Filing Fees for the cost of this application	50.00
Less Security Deposit	-1,650.00
Interest from the date the deposit was paid to the date of this Order	0.00
Total Monetary Award	\$50.00

### **Conclusion**

The landlord is provided with a formal copy of an order of possession. This is a final and binding Order enforceable as any Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. This is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia.



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: February 25, 2013

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Residential Tenancy Branch

