



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MNDC, ERP, RP, FF

For the landlord – MND, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant has applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, for an Order for the landlord to make emergency repairs for health or safety reasons, for an Order for the landlord to make repairs to the unit, site or property and to recover the filing fee from the landlord for this application. The landlord has applied for a Monetary Order for damage to the unit, site or property and to recover the filing fee from the tenants paid for this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness 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. Both Parties confirmed receipt of evidence and confirmed that they had opportunity to review it. All evidence and testimony of the parties has been reviewed and are considered in this decision.

At the outset of the hearing the tenant advised that they are no longer residing in the rental unit. Consequently, the tenant's application for an Order for emergency repairs and a repair order would no longer be enforceable and will not be considered at this

hearing. These sections of the tenants claim are therefore dismissed without leave to reapply.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

### Background and Evidence

The parties agree that the tenant moved into this rental unit around April, 2010. This landlord purchased the property on April 08, 2011 and took over as landlord to the tenant at that time. The parties agree that rent was \$550.00 per month, due on the 1<sup>st</sup> day of each month.

### **The tenants claim**

The tenant testifies that at the start of the tenancy the previous landlord did not complete a move in condition inspection of the unit with the tenant. The tenant testifies that under that landlord they did not experience any mould issues. However approximately a year ago in the spring of 2012 the tenant started to experience a problem with mould in the small bedroom, the living room, the bathroom, the boot room and in the kitchen cupboards. The tenant testifies that the mould got into the box spring of the queen sized bed located in the small bedroom. The tenant testifies that they do not know if the mattress also has mould. The tenant testifies that she informed the landlord each month about the mould when the landlord came to collect the rent. The tenant agrees that they never showed the landlord the mould and did not put it in writing to the landlord.

The tenant testifies that her children, her partner and herself all experienced symptoms with their health due to the mould issues. The children became sick with coughing, wheezing, cold and sickness and breathing problems. The tenant's partner experienced headaches and they both experienced rashes. The tenant testifies that she took the children to the doctors but the doctor said the symptoms would pass however the tenant testifies that her daughter still suffers from breathing issues even though they moved from the unit on March 01, 2013. The tenant testifies that she was pregnant with twins and lost one of the babies. The tenant testifies they suffer from depression due to the mould.

The tenant seeks to recover the cost of a new queen sized bed to the sum of 700.00. The tenant also seeks compensation from the landlord equivalent to half a month's rent for 21 months since this landlord has owned the property due to the mould issues. The tenant seeks a total sum in compensation of \$5,775.00.

The landlord disputes the tenants claim. The landlord testifies that the tenant had informed the landlord on one occasion that there was moisture on the wall in the bedroom which could be mould. The landlord testifies that he advised the tenant to move the bed away from the outside wall to allow for air circulation. The landlord testifies that he later found out that the previous landlord had also advised the tenant to do this. The landlord testifies that he heard no more about it from the tenant.

The landlord testifies that at the end of the tenancy the landlord had a home inspector inspect the property after the landlord received the tenant's application for Dispute Resolution. The landlord has provided photographic evidence and a written report from the home inspector. The landlord testifies that the home inspector determined that the condensation problems in the unit were caused through poor housekeeping, maintenance by the tenants and clutter which prevented good air circulation. The home inspectors report also identifies causes of condensation and refers to the very dirty furnace filter, duct filter and bathroom fan which due to their condition do not allow air to

circulate freely. The window frames had not been cleaned which allows a build up of moisture.

The landlord testifies that the tenant had stopped using the gas furnace to keep air moving and relied on electric space heaters. The landlord testifies he discovered this when he spoke to the gas company and was notified that the tenant gas bill was so low for the year they must have turned off the gas furnace. The landlord testifies he also determined that the clothes dryer vent was blocked which vented the warm moisture back into the unit causing additional condensation.

The landlord testifies that the tenant had informed the landlord a year ago that they wanted to move out as the tenant was pregnant and they needed more space. The tenant sent the landlord a text message (copy provided in evidence) on January 28, 2013 informing the landlord that 'the tenant was giving one months notice, the tenant had found a bigger place, the tenant loves it here but the kids need more room'. The landlord testifies that there is no mention of any mould issues in any of the tenant's text messages just that the tenant loves the unit. The landlord therefore submits that the tenants claim is false and based on the belief that the tenant can get money out of the landlord.

The tenant calls her witness EJ who is the tenant's partner. The witness testifies that when the mould appeared they told the landlord and the landlord said that if it appears again to wipe it down. The witness testifies that you should not wipe mould down with bleach. The witness testifies that they did not want to clean the mould as they felt it was the landlord's responsibility. The witness testifies that they had a roof leak and the landlord only used silicone to repair it.

The tenant disputes the landlords claim that they turned the furnace off. The tenant testifies that they did not clean the window frames as it looked like mould.

### **The landlords claim**

The landlord testifies that the tenants caused damage to two of the matching four doors in the unit. The two damaged doors cannot be replaced with the same type of door so all four doors will have to be replaced. The landlord testifies that the damaged doors have holes in them and the landlord has provided photographic evidence of the doors. The landlord has provided a quote from a door company in evidence and seeks to recover the amount of \$439.00 as quoted for the four doors.

The landlord testifies that he had to have the home inspection report done to dispute the tenants claim that there was mould in the unit. The landlord has provided an invoice with an HST number from the home inspector and seeks to recover the amount of \$151.20 for this inspection.

The landlord testifies that the previous landlord had purchased a new dehumidifier for the unit to help the tenants eliminate moisture. At the end of the tenancy the tenants stole this dehumidifier from the unit. The landlord testifies that he spoke to the previous landlord and was informed the dehumidifier cost \$250.00 to \$300.00. The landlord testifies that he does not have the original receipt for this and therefore seeks to recover the amount of \$250.00.

The tenant disputes the landlords claim that the tenant was responsible for damage to the doors. The tenant testifies that when they moved into the property there was a plastic caddy on the bathroom door which fell off leaving holes in the door. The tenant testifies that the other door also had a hole in it at the start of their tenancy.

The tenant disputes that they stole the landlords dehumidifier and states that their movers removed the dehumidifier by mistake and the tenants want to return it to the landlord.

The tenant also disputes the landlord's claim of \$151.20 for the home inspection report.

Both parties seek to recover their \$50.00 filing fee from the other party.

### Analysis

#### **The tenants claim**

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

1. Proof that the damage or loss exists;
2. Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
4. Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

When one parties' evidence contradicts that of the other then the burden of proof falls to the person making the claim. In this event the landlord has contradicted the tenants claim that there was mould in the rental unit. The tenant has provided no documentary evidence to corroborate her testimony that the unit suffered with a mould problem that created mould on the bed, made the tenants and their children unwell or that would warrant a rent reduction equivalent to half a month's rent for 21 months.

I further find the tenant has no evidence to show that the landlord was notified of any mould issues and failed to act accordingly. In fact the tenant's text messages to the landlord show that the tenant loved the unit and was only moving to obtain more space for the tenant and the tenant's family. The landlord on the other hand has provide corroborating evidence to dispute the tenants claim that the unit had mould and the home inspection report details the findings of the home inspector along with photographic evidence that disputes the tenants claim. Consequently I find the tenant has not met the burden of proof in this matter and the tenants claim is dismissed without leave to reapply.

As the tenant has been unsuccessful with this claim the tenant must bear the cost of fling their own application.

### **The landlords claim**

I find the landlord carried out a home inspection of the property to obtain documentary evidence to dispute the tenants claim that there was mould in the rental unit. As the landlords home inspection successfully corroborates the landlord's testimony I have allowed the landlords claim to recover the costs incurred in obtaining this inspection. Therefore the landlord has established a claim to the sum of **\$151.20** pursuant to s. 67 of the *Act*.

With regards to the landlords claim to replace four doors; I have applied the same test used for damage or loss claims as applied for the tenants claim. The landlord has provided some photographic evidence showing damage to two of the doors and the proximity of the doors which would require replacement of four doors. However the landlord has not shown that this damage was not already in place at the start of the tenancy as no move in condition inspection report was completed by the previous landlord. Consequently I find the landlord has not met part 2 of the test for damage or loss claims and the landlords claim for \$439.00 is dismissed without leave to reapply.

With regard to the landlords claim for the replacement costs of the dehumidifier; the tenants agree that they inadvertently removed this at the end of the tenancy and are willing to return this to the landlord. I therefore ORDER the tenants to return the dehumidifier to the landlord by April 06, 2013. If the tenants fail to return the dehumidifier by this date the landlord is at liberty to file a new application to recover the cost of this loss.

As the landlord has been partially successful with his claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the amount of **\$201.20**.

### Conclusion

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

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$201.20**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I ORDER the tenants to return the landlords dehumidifier to the landlord by April 06, 2013.

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 26, 2013

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Residential Tenancy Branch



