



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the landlord: MND, MNR, MNSD, OPR  
For the tenant: MNDC, MNSD

### Introduction

This was the reconvened hearing dealing with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The landlords applied for authority to retain the tenants’ security deposit, a monetary order for unpaid rent and damage to the rental unit, and an order of possession for the rental unit due to unpaid rent.

The tenants applied for a return of their security deposit and for a monetary order for money owed or compensation for damage or loss.

At the original hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the applications or the evidence.

I have reviewed the substantial amount of written evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-The original hearing was adjourned due to the length of the landlord’s testimony. When the original hearing had concluded, the landlord had not completed testimony in support of her application for dispute resolution.

The hearing was then reconvened to March 27, 2013, and notices of that hearing were sent to the parties; however due to a conflict in scheduling, the March 27, 2013, hearing had to be rescheduled with little advanced notice.

The parties were then contacted via telephone by a representative of the Residential Tenancy Branch ("RTB") and informed of the new hearing. The notices for the new hearing, for the present date of April 5, 2013, were sent to the parties.

At the hearing on April 5, 2013, the tenants and their agent appeared; however the landlord did not appear.

In response to my question, the tenants' agent said that the tenants were informed of the new hearing, and call-in information, by telephone call from the RTB, and also received a letter confirming the hearing information.

As the landlord failed to appear at the reconvened hearing to conclude presenting her evidence in support of her application, I dismiss the landlords' application, without leave to reapply.

The reconvened hearing proceeded only on the tenants' application.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary order and to recover their security deposit?

#### Background and Evidence

The evidence shows that this one year, fixed term tenancy began on September 1, 2012, ended in December 2012, was to end on August 31, 2013, monthly rent was \$1295.00, and the tenants paid a security deposit of \$650.00, according to the tenancy agreement, at the beginning of the tenancy. I note that the tenants have claimed the security deposit in the amount of \$647.50.

The tenants' monetary claim is as follows:

Security deposit	\$647.50
Return of December rent	\$1295
Increased hydro costs	\$50
Health issues	\$300

Family split	\$500
Loss of furniture	\$1250
Child's toys	\$75
Extra groceries	\$75
Mileage for travel	\$105
Male tenant's rent & food	\$300
Male tenant's rides to work	\$40
Spoiled food	\$200
Moving costs	\$750
Loss of wages, female tenant	\$546.07
Loss of wages, male tenant	\$384
<b>Total</b>	<b>\$6517.57</b>

The tenants' relevant evidence included a letter from the female tenant's employer regarding missed days from work, receipts for room and board, moving expenses, furniture receipts, receipts for petrol expenses, receipts for food, and the tenancy agreement.

In support of their application, the tenants, through their agent, submitted the following oral evidence.

*Security deposit*-The landlord failed to conduct a move-in inspection and supply a condition inspection report, despite the tenants' repeated requests. To date, the landlord has failed to return their security deposit.

*December rent*-The tenants were forced to move from the rental unit due to the hazardous condition of the rental unit, with the permeation of mould. The tenants said that they paid full rent for December, despite having been primarily gone by December 5.

The tenants said the landlord informed them that they would have to vacate in order to allow the landlords' contractors in to remediate the mould, and repair the source of the mould. The tenants' agent, who said that he was a retired building inspector, said that the rental unit was never habitable and should never have been rented out until all the repairs were made by the landlords. The primary source of the problem was a lack of ventilation.

*Increased hydro costs*-The tenants were compelled to use more hydro due to the condition of the rental unit, which meant their bills were increased in October, November, and December than as in September.

*Health issues*-The tenants and their child suffered three months of sore throats and other cold-like symptoms, due to the mould conditions in the rental unit. The tenants claim that due to this, they incurred costs for medications.

*Family split*-The tenants claimed that due to their sudden move from the rental unit, the family was forced to live apart until suitable alternate accommodations could be secured. The tenants said the separation was extremely traumatic on the family as the male tenant was separated from his spouse and child.

*Loss of furniture and toys*-The tenants submitted that the mould forced the tenants to discard their furniture and their child's soft toys, for health purposes.

As to the *remaining claims*, and in further explanation of their application, the tenants' agent said that as the rental unit was not habitable from the start of the tenancy, the tenants were forced to vacate by the landlords in December 2012 due to impending repairs and remediation work. The landlords were agreeable to keeping the family together and to pay the hotel bills when they believed that their insurance coverage would pay the costs of a hotel and the remediation work; however, when the landlords discovered their insurance company would not pay due to a pre-existing condition being the source of the repairs, the landlords became hostile towards them. It was at that time the landlords demanded the tenants end the tenancy, leave the hotel they were staying in, which forced the tenants to seek immediate alternate accommodations.

The tenants were unable to find other accommodations immediately, which caused the female tenant and child to live with her family and the male tenant to live with his family, both in other towns. Increased food costs resulted from the move as the tenants could no longer buy food in bulk.

Neither tenant is able to drive, which necessitated that someone drive them to work. Also due to the sudden move, the tenant lost time from work. The tenant's agent said that as of the day of the adjourned hearing, the tenant had lost her job.

The tenants incurred extra moving costs due to the sudden move, according to the tenants.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenants in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

*Security deposit*-As the landlords' application has been dismissed, I find the tenants are entitled to a return of their security deposit and I approve their monetary claim of \$650.00.

*December rent*-The tenants provided undisputed evidence, in the absence of the landlords, that they paid the rent for December and did not have the use and occupation of the rental unit beginning in early December. I therefore find the tenants are entitled to a return of their rent for December in the amount of \$1295.00.

*Increased hydro costs*- The tenants said that the hydro usage increased in October, November, and December, but as this is the time of year in which the heating would likely be used more than in September, and as the tenants had no basis to compare their bills for the same time period, I find the tenants submitted insufficient evidence of increased hydro costs. I therefore dismiss their monetary claim of \$50.00.

*Health issues*-I find the tenants submitted insufficient evidence that their health suffered as a result of the condition of the rental unit. I saw no specific doctor statements or medical reports to confirm their claim, and I therefore dismiss their monetary claim of \$300.00.

*Loss of furniture and toys*-I find that the tenants failed to prove that it was necessary to dispose of their furniture due to mould and I therefore dismiss their monetary claim for \$1325.00.

*Family split, extra groceries, mileage for travel, male tenant's rent & food, male tenant's rides to work, spoiled food*-I am not convinced the landlords were negligent in causing the tenancy to end early as I find the tenants submitted insufficient evidence that the landlords unreasonably delayed in addressing the mould issue. I also cannot conclude that the restoration project took an unreasonable amount of time to complete.

I also do not find that the claimed damages were a foreseeable result of the condition of the rental unit.

I am also not convinced by the tenants' evidence, as these receipts were all drawn from the same receipt book, although several different persons were named.

I therefore find no legal basis to award the tenants compensation for not being able to live together, or being unable to buy in bulk, or for not living in the same town so as to incur traveling costs. I therefore dismiss their monetary claim for these issues.

*Loss of wages*- The tenants submitted no evidence of lost income and due to this lack of proof and no legal basis, I dismiss their claim for \$930.07.

*Moving costs*- I find no legal basis for awarding the tenants costs of moving as the tenants made choices in how they chose to move and as I have previously found that the landlords did not unreasonably delay in addressing the mould issue. I therefore dismiss their claim for \$750.00.

Due to the above, I find the tenants have proven a total monetary claim of \$1945.00, comprised of their security deposit of \$650.00 and December rent of \$1295.00.

### Conclusion

Due to the landlords' failure to attend the adjourned hearing prior to completing presentation of their application, I dismiss the landlords' application, without leave to reapply.

The tenants have established a monetary claim of \$1945.00.

I therefore grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$1945.00, which I have enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of enforcement may be recoverable from the landlords.

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* and is being mailed to both the applicant and the respondent.

Dated: April 15, 2013

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Residential Tenancy Branch