



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MND, MNR, MNDC, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties for dispute resolution. The Landlord filed on March 14, 2013 and amended April 23, 2013, pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for damages and loss – Section 67
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application (\$100) - Section 72.

The tenant filed on March 19, 2013 for Orders as follows;

1. An Order for return of security deposit - Section 38
2. A monetary Order for loss – Section 67
3. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given opportunity to settle their dispute, present relevant evidence, and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties each acknowledged receiving all of the evidence of the other, inclusive of document, photographic and digital submissions. The parties were apprised that despite their abundance of evidence only relevant evidence would be considered in the Decision.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?  
Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

## **Background and Evidence**

The undisputed evidence in this matter is as follows. The rental unit is an apartment / condominium unit. The tenancy began July 01, 2013 as a written fixed term tenancy agreement ending June 30, 2013. However, the tenancy ended February 28, 2013 by agreement of the parties with a Mutual Agreement to End the tenancy signed by both parties to this end and provided into evidence. During the tenancy the payable rent was in the amount of \$1500.00 per month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$750.00 which the landlord retains in trust. The parties agree there was move in and move out mutual condition inspections conducted and recorded on a condition inspection report (CIR). The landlord applied to keep the security deposit within the required 15 days.

**The landlord** seeks loss of revenue to the end of the fixed term in the sum of \$6000.00. as the tenant vacated earlier than the end date of the tenancy agreement. The parties were apprised that the tenancy ended by mutual agreement, and therefore the landlord cannot now treat the agreement as not being at an end or that the tenant breached the agreement – for which the landlord now seeks to be compensated. The parties were apprised this portion of the landlord's claim would be dismissed.

The landlord also seeks to recover costs for mould remediation, inclusive of re-painting the rental unit, as well as for the replacement of the laminate flooring of the unit. The landlord claims the tenant's conduct, by their lack of venting the rental unit, caused excessive moisture within the rental unit during the colder months of the year - which in turn caused a build-up of moisture, leading to the formation of mould inside the unit, and causing the laminate flooring to buckle. The tenant claims their conduct had nothing to do with the problems associated with the formation of mould, or the issues respecting the flooring. The tenant testified that they routinely vented the rental unit to excess, using the venting mechanisms provided within the unit – to the point that the venting function and associated noise were intrusive and disturbing to the tenant. None the less, the tenant claims that mould was present when they first moved in and that they alerted the landlord, whom does not dispute the account. The tenant testified the problem escalated once the rainy season started, as rainwater entered the unit windows, contributing to the ambient moisture within the unit. The parties acknowledged the tenant alerted the landlord of the water ingress issue to no avail and the problem continued. The parties provided evidence the landlord and the strata were informed of the water ingress and responded by dispatching several contractors to investigate the potential causes for the moisture in the rental unit. The landlord provided the results of several investigations;

- One contractor suspected an internal plumbing leak as they were aware that the residential complex had plumbing leaks in the near past, and that 2 other units below the tenant had similar condensation problems as in the subject unit. This contractor recommended a *mechanical company* to investigate for leaks.
- The mechanical contractor determined it was not a plumbing issue and recommended a *structural engineer* for advice.

Neither party provided further reports; and, the strata management company report concluded in their letter of April 18, 2013, *that no test or exploratory openings were performed to assess the condition of the building envelope or other structural components as recommended.*

None the less, during all these investigations and attempts to remediate the potential sources of condensation/ moisture, the tenant was naturally advised to continue all venting efforts until a solution was found. The tenant testifies they had no choice but to heed this advice as they had no other remedy at their disposal. The landlord testified that they determined the tenant was not following advice to constantly vent the unit and that this resulted in all the claimed damages, and that the tenant agreed to these damages in the CIR. The tenant disputes that their conduct resulted in damage to the landlord's unit and that the CIR does not state they assume responsibility for any damage.

**The tenant** provided into evidence a high definition video recording of the area they claim was affected by water ingress from the windows during rainfall. It is evident from the video the subject bedroom windows being severely overwhelmed and allowing water onto the internal sills and the bedroom. The video also shows severe mould growth above the windows and condensation on the window glass. The tenant claims that as a result of the growing mould and water ingress and condensation in the second bedroom they moved out of that bedroom in November 2012 and did not use or furnish it since. The tenant and landlord agreed to end the tenancy and the tenant vacated, and claims they had to pay the strata a moving in and out fee of \$350.00, for which they also seek compensation. The tenant seeks compensation as rent abatement for the 4 months they did not use the second bedroom. The tenant also seeks recovery of their security deposit.

### **Analysis**

The onus is on the respective parties to prove their claims, on balance of probabilities. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

#### **Landlord's claim**

In this matter the landlord must establish, on a balance of probabilities that they have suffered a loss due to the tenant's failure to comply with the Act. And, if so established, did the landlord take reasonable steps to mitigate or minimize the loss? Section 7 of the Act outlines the foregoing as follows:

#### **Liability for not complying with this Act or a tenancy agreement**

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test set out by Section 7.

1. Proof the loss exists,
2. Proof the damage or loss occurred *solely* because of the actions or neglect of the tenant 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 landlord followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

I find it is clear from all of the evidence that the rental unit suffers from a severe and persistent presence of moisture. I find the landlord's evidence is inconclusive – with the investigative trail stopping after the involvement of the mechanical contractor and the tenant's departure. I find I prefer the overall evidence of the tenant, primarily their video evidence of the conditions within the unit during a rainfall.

I find the landlord has not proven that *solely* the tenant's conduct was the source of the claimed damage, or that their negligence and non-compliance with the Act resulted in the landlord's losses. On the balance of probabilities I find the landlord has not met the test for damage and loss and as a result **I dismiss** the landlord's application for *damages and losses of revenue* in its entirety, without leave to reapply.

#### Tenant's claim

It is agreed by the parties that the tenant incurred problems of mould in the rental unit and that as a result the tenant was unable to occupy one of the bedrooms of the unit for a period of time before they vacated. I find the tenant should be compensated for this lack of use of the unit as a reduction in the value of the tenancy agreement. I find the tenant's claim of \$500.00 for each month they were prevented from using the second bedroom is not extravagant. I find the tenant is entitled to a rent abatement of \$2000.00 per month, to a total of **\$2000.00**, without leave to reapply.

I find the tenant has not sufficiently supported their claim for the \$350.00 moving in and out fee they claim. In the absence of a receipt they incurred the cost; **I dismiss** this portion of their claim, without leave to reapply.

I find that as the landlord has not established a claim to the security deposit, it is only appropriate I Order its return to the tenant in the full amount of **\$750.00**.

As the tenant has been partially successful in their claim they are entitled to recover their filing fee of **\$50.00**.

Therefore: *Calculation for Monetary Order,*

Rent abatement	\$2000.00
Return of security deposit	<b>750.00</b>
Filing fee	<b>50.00</b>
<b><i>Total of monetary award for tenant</i></b>	<b><i>\$2800.00</i></b>

### **Conclusion**

The landlord's application **is dismissed**, without leave to reapply.

**I grant** the tenant a Monetary Order under Section 67 of the Act for the amount of **\$2800.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

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: May 03, 2013

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Residential Tenancy Branch

