



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

TENANT: MNDC, FF  
LANDLORD: MND, MNSD, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking compensation for damage to the unit site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenants' security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on August 30, 2013, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on August 6, 2013, in accordance with section 89 of the Act.

### Issues to be Decided

#### Landlord:

1. Are there damages to the unit site or property and if so how much?
2. Are the Landlords entitled to compensation for damage and if so how much?
3. Is the Landlord entitled to retain the Tenants' security deposit?

#### Tenant:

1. Are there damages or losses to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for loss or damage and if so how much?
3. Are the Tenants entitled to the return of the security deposit?

### Background and Evidence

This tenancy agreement started on June 30, 2013 as a fixed term tenancy with an expiry date of June 30, 2014. Rent was \$1,100.00 per month payable on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$550.00 on July 15, 2013.

The Tenants said at the move in condition inspection on June 29, 2013, they found the unit to have high humidity to the point that the floors were wet. The Tenant said they questioned the Landlord about this and the Landlord said the floors had been recently washed and not to worry about it. The Tenant continued to say the moisture issue in the rental unit did not go away and they started to find mold on blankets in the linen closet, in the bathroom and in the baby's room. The Tenants said by July 19, 2013 the mold issue was very severe as the baby's toys and furniture in the baby's room were covered in mold. At this point the Tenant said they talked to the Landlord about getting a building and/or a mold inspection done on the rental unit. The Landlord said he would contact a building inspection company. The Tenant's believed there was a health issue especially for their baby so they moved out of the rental unit on July 19, 2013. The Tenant said they moved in with relatives.

The Tenant said he talked with the Landlord and the Landlord agreed that they would end the fixed term tenancy and both would go their own way. The Tenant said there was nothing in writing and he did not give the Landlord any written notice they were moving out. The Tenant said they physically moved out of the unit on July 19, 2013 and then removed all their belongings on July 28, 2013.

The Landlord said he had discussed ending the tenancy with the Tenant, but the Tenant did not tell him if they were leaving and when they might leave, so when the Tenants moved out of the unit on July 28, 2013 the Landlord thought they had abandoned the rental unit. The Landlords' Legal Counsel said that the Tenants should be responsible for all or part of the fixed term rent. As the Landlord applied for \$5,000.00 compensation for repairs to the unit, which is the maximum for a \$50.00 application, the Landlord is only applying for the repairs to the unit and the question of lost rent being the Tenants responsibility was not pursued in this hearing.

On July 25, 2013 a building inspection company inspected the unit and discovered mold in the unit. The Tenants said the mold was a result of the Landlord or the building or rental unit and the Landlord said the mold was because of the behavior of the Tenants in the rental unit. The Landlord said the building inspection said the cause of the mold was most likely from showering, bathing without proper use of the exhaust fan. The report continues to say the highest concentration of the mold was in the areas around the bathroom in the rental unit. The Tenants said they used the bathroom fan almost nonstop while in the rental unit and the unit was always damp.

As a result of the mold issues the Tenants have made an application for the replacement of a couch and loveseat valued at \$1,320.00, baby toys and baby equipment in an amount of \$1,184.54, an area rug for \$110.00, dump fees of \$22.00,

cost to rent a storage unit in the amount of \$170.72 and they are requesting the July, 2013 rent of \$1,100.00 returned as they believe the rental unit was unsafe to live in. In addition the Tenants are also requesting the return of their security deposit of \$550.00. The Tenants said their total claim is \$3,907.26 plus the return of their security deposit of \$550.00 and the filing fee of \$50.00. The Tenant said all the items they are claiming were purchases in the last 2 years and some of the items have been replaced and others have not.

The Landlord said the house is 4 years old and they had the contractor and the building inspection company come to determine if there was a building problem. The Landlord said both the contractor and the building inspector said that the structure did not show any deficiencies. The Landlord said that he believes as is in the building report that the Tenants caused the mold issue because they did not use the fan in the bathroom to remove moisture from the rental unit. As a result the Landlord has made an application for \$5,000.00 to repair the rental unit for mold damage. The Landlord said the estimates for the work is for \$5,200.00 and the Landlord said the repairs have not been done to date.

In closing the Landlord said that the Tenants did not give him proper notice to end the tenancy and they have caused extensive mold damage to the rental unit. The Landlord said he is unable to rent the unit as it is and the repairs will cost him an estimated \$5,200.00. The Landlord said he believes the Tenants are responsible for the repairs to the rental unit.

The Tenant said when they moved out on July 28, 2013 the Landlord would not talk to them and they believe the rental unit was not a safe living environment especially for a baby so they had to move out. As well the Tenant said they believe the Landlord is responsible for the losses they have incurred.

### Analysis

It is apparent from the testimony that there are issues between the Landlords and the Tenants. The issues appear to have arisen as a result of the mold issue in the rental unit. The Tenants believe the mold is a result of the building structure or problem with the rental unit and the Landlord says that he concurs with the building inspection report that says the suspected cause of the mold problem was human activity by showering and not using the bathroom fan correctly. The Tenants said they had the fan on most of the time while in the bathroom so is it a problem of the Tenants not using the fan correctly or is it a problem that the fan did not have the capacity to remove the moisture for the amount of time the Tenants used the bathroom. It was agreed that the rental unit has a mold problem and needs to be repaired before new tenants can occupy the unit. I accept the building report that the mold is a result of the fan not removing the moisture from the rental unit. It is unclear as to whether the fan was not used correctly or if the fans capacity was not enough to handle the moisture in the rental unit. I find the cause of the mold issue is not proven or determined.

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord said they have not made any repairs to the rental unit as of the date of the Hearing therefore the Landlord has not proven or verified a loss. An estimate or quote on the cost to make repairs is not a proven loss as the estimate or quote may or may not be acted on. Consequently I dismiss the Landlords' claim and application for \$5,000.00 to make repairs to the rental unit.

As the Landlord has not proven an actual loss I find the Landlord has not established grounds to be granted and order to retain the Tenants security deposit. I Order the Landlord to deal with the Tenants' security deposit as provided for in the Act.

With regards to the Tenants claim for the couch and love seat, the baby toys and equipment and the area rug there are no receipts to prove the loss and many of the items are not replaced at this time, so I find the Tenants have not proven the loss or verified the loss with receipts therefore; I dismiss the Tenants' claim for the couch and loveseat, the baby toys and equipment and for the area rug due to lack of evidence. The Tenants claim for storage costs is a result of their decision to move out prior to the end of the fixed term tenancy therefore; I dismiss this claim and I find the Landlord is not responsible for the storage costs. As well the dump fee of \$22.00 is based on the Landlord's responsibility for the mold issue and that has not been established therefore the Tenants' dump fee claim is dismissed as well.

As noted above the Tenants' security deposit will be handled by the Landlord as prescribed in the Act.

As both the Tenants and the Landlords have been unsuccessful in this matter, I order both parties to bear the cost of the filing fee of \$50.00 each that they both have already paid.

Conclusion

The Tenants' application is dismissed.

The Landlords' application is dismissed.

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 06, 2013

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Residential Tenancy Branch

