



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for unpaid rent, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The two parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation, to authority to retain the tenant's security deposit, and to recover the filing fee?

### Background and Evidence

The landlord is claiming unpaid rent of \$850 for the month of September 2013. The landlord testified that the tenancy was to start on September 1, 2013, for a 6 month fixed term, monthly rent was \$850, and the tenant paid a security deposit of \$425.

The landlord did not provide documentary evidence.

The landlord testified that the tenant moved into the rental unit on August 31, 2013, directly after the previous tenants vacated.

The landlord said that he informed this tenant and his previous tenants that he would return to the property on August 31 at 3:00 for an inspection of the premises; however the previous tenants did not have their personal property out of the rental unit.

The landlord submitted that he informed the tenants that he would be back at the home in one hour, but when he returned, the tenant's personal property was piled up and he could not get into the rental unit for an inspection.

The landlord confirmed that the tenant sent a text message that there was mold in the rental unit, specifically the carpet and underlay and that the rental unit would need repainting. According to the landlord, he informed the tenant that would be acceptable and asked if the two parties could meet.

The landlord admitted that he used a moisture meter and found moisture in the concrete, or the foundation, but his carpet expert said the carpet did not need replacing.

The landlord submitted that the tenant did not provide him with an opportunity to remedy the moisture issue and that there was no mold growing up along the walls.

The landlord said the remediation work dealing with the moisture took 2 weeks, as he took his time due to the empty rental unit, but the work could have been completed within a matter of days.

In response, the tenant submitted that there was mold growing up the walls, under the window sills and in the closet, categorizing the rental unit as being "infested" with mold. The tenant further submitted that the carpet was damp and in a rotting state.

The tenant submitted that she had viewed the rental unit prior to agreeing to rent; however the previous tenants' belongings covered up the mold. According to the tenant, the previous tenants informed her that they were forced to throw out clothes and belongings as they were covered in mold. The previous tenants said that they were unaware of the significant presence of mold until they were moving out.

The tenant said there were no opportunities to inspect the rental unit provided by the landlord.

The tenant did not provide documentary evidence.

### Analysis

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

Although the landlord failed to provide a copy of the tenancy agreement, the parties agreed and I therefore find the landlord and the tenant entered into a valid, enforceable tenancy contract and that the tenant was responsible for paying rent, beginning September 1, 2013, according to the terms of the agreement, whether she moved in or not, subject to the landlord's requirement under section 7(2) of the Act to take reasonable steps to minimize his loss.

In this instance, the landlord, in order to minimize his loss, was required to take steps to re-rent the rental unit when he learned that the tenant was not moving into the rental unit, in this case, September 1, 2013. Instead the landlord stated that he took his time to remediate the wet carpet and foundation for 2 weeks, after admitting that the work could have been completed within a matter of days.

I therefore find the evidence shows that the landlord delayed in getting the rental unit ready for re-rental and consequently I find the landlord failed to take reasonable measures to minimize his loss of rent revenue. As a result, I find the landlord failed to comply with section 7(2) of the Act and I dismiss his claim for \$850. I also dismiss the landlord's request to recover the filing fee of \$50.

As I have dismissed the landlord's claim against the tenant's security deposit, I order that the landlord return to the tenant her security deposit of \$425.

### Conclusion

The landlord's application for monetary compensation is dismissed and I have ordered the landlord to return the tenant's security deposit.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$425, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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: December 02, 2013

---

Residential Tenancy Branch

