



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CMHA Kootenays  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MND, 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 money owed or compensation for damage or loss and alleged damage to the rental unit, and for recovery of their filing fee.

The landlord's agent (hereafter "landlord") and the tenant attended the telephone conference call hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and the tenant confirmed receiving the landlord's documentary evidence. The tenant provided no documentary evidence.

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 and to recover the filing fee?

### Background and Evidence

According to the undisputed evidence, this tenancy began on May 1, 2010, ended on August 31, 2013, the market rent was \$963, the tenant paid monthly rent of \$475, and the tenant paid a security deposit of \$300 at the beginning of the tenancy.

The landlord's monetary claim is \$404.60, comprised of a contractor's fee of \$89.60, and costs of repairs of \$315.

The landlord's relevant documentary evidence included the tenancy agreements, a March 28, 2013, noted as "Refusal of Entry," invoices, a work invoice, reports, a maintenance request, which includes an initial maintenance request, a follow-up letter dated March 20, 2013, and a letter and 24 hour notice to do follow-up "Mold Remediation," contractor credentials, and a photo of the rental unit taken on March 28, 2013.

In support of their application, the landlord stated that a 24 hour notice of entry was posted on the tenant's door on March 27, for the following day, for the purpose of a mold assessment due to the report by the tenant. The landlord submitted that they are entitled to be reimbursed the contractor's fee as the tenant refused the contractor's entry to her rental unit.

The landlord submitted that they are entitled to be reimbursed the fee for the costs of repairs due to the negligence of the tenant; more specifically the landlord stated that the tenant had taped a piece of plastic over the area in the rug where the mold in the rental unit was located and had a damp towel, worsening the effects of the mold. The landlord contended that a moisture report showed that there was only 1 area which had mold, the area covered by the plastic sheet. The landlord contended this was an area the tenant reported she had a spill.

In response, the tenant countered that she never informed the landlord she spilled anything at all on that area of the carpet; instead the tenant submitted that she had a small locker at the foot of the bed, and when she flipped it over, she discovered the mold.

The tenant submitted that she asked the landlord on March 15, 2013, to come over and look at the moldy area on the carpet. The tenant said that her research shows that the proper procedure for mold is to cover the spot so that mold spores do not escape and become airborne. The tenant contended that airborne mold spores would present a health hazard as she has an autoimmune disease.

The tenant further contended that she did not allow the contractor, who was not a mold remediation specialist, shampoo the carpet as this would make the mold situation worse.

The tenant testified that she requested air quality tests as there was a serious problem with mold the year before.

### 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, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the \* 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.

*Fee for denial of contractor's entry-*

I find the landlord failed to provide a proper 24 hour notice to the tenant of their entry into the rental unit as required under section 29 of the Act, as they attached the notice to the tenant's door on March 27, the day prior to the planned entry. Section 90 of the Act states that documents served by attaching to the door are deemed delivered three days later. Thus the tenant was deemed to have received the notice on March 30, 2013, and the earliest date the entry could be is March 31.

I therefore dismiss their request to recover \$89.60 for a contractor's service call on March 28.

*Mold remediation fee-*

I find the landlord submitted convincing evidence that the tenant was sufficiently warned in writing to take steps to assist the remediation specialist in addressing the mold. The specialist mentions that the mold was surface mold and not structural, and due to the moisture allowed by the tenant to accumulate, despite instructions to the contrary. The specialist contends that the actions of the tenant caused the necessity of mold remediation and I accept this evidence.

I therefore grant the landlord's monetary claim of \$315.

I allow the landlord recovery of their filing fee of \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$365, comprised of the contractor's fee of \$315 and the filing fee of \$50.

Conclusion

The landlord's application for monetary compensation is granted in part.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of the monetary award of \$365, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord 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 tenant is advised that costs of such enforcement are recoverable from the tenant.

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: November 22, 2013

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Residential Tenancy Branch

