



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDC, FF

### Introduction

This hearing concerns the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. The tenant attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the "item was unclaimed by recipient." Ultimately, the hearing package was returned to the tenant ("sender").

As the hearing package was served by registered mail, pursuant to section 90 of the Act which speaks to **When documents are considered to have been received**, it is deemed to have been received five (5) days after mailing. In this case, as the hearing package was mailed on December 27, 2013, I find that for the purposes of the Act the landlord is deemed to have received the hearing package on January 02, 2014, as January 01, 2014 is a Statutory Holiday.

### Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The unit which is the subject of this dispute is located in the basement portion of a house. The landlord occupies the 2 levels of the upstairs portion of the house.

Pursuant to a written tenancy agreement the term of tenancy was from November 01, 2012 to October 31, 2013. Monthly rent of \$1,000.00 is due and payable in advance on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$250.00 were collected.

By letter dated August 15, 2013, the tenant gave notice to end tenancy effective August 31, 2013. The tenant's evidence is that she ended the tenancy prior to the date specified in the tenancy agreement as the end of the tenancy because of concerns related to mold found in the unit.

Thereafter, in response to applications by both parties a hearing was held on December 09, 2013, with a decision issued by that same date (files # 811988 and 812755). During that hearing the disposition of the security deposit and pet damage deposit were resolved by way of "Settlement Agreement" reached pursuant to section 63 of the Act, which addresses **Opportunity to settle dispute**. In short, it was agreed that the landlord would repay the security and pet damage deposits in the total combined amount of \$750.00 (\$500.00 + \$250.00) by way of cheque in an envelope post-marked "by January 19, 2014 at 5:00 p.m."

However, during the present hearing the tenant stated that she has not yet received the landlord's cheque. Accordingly, she inquired during this hearing about the doubling provisions set out in section 38 of the Act, which speaks to **Return of security deposit and pet damage deposit**. As that particular matter is not before me, the parties are informed that either of them has the option to make related inquiries of an Information Officer at the Branch, and / or the tenant has the option of having that particular matter decided by an Arbitrator by way of filing another application for dispute resolution.

The tenant's current application revolves principally around compensation sought in relation to damage or loss which she claims is the result of mold found in the unit. The tenant first took her concerns to the landlord about the discovery of mold on July 31, 2013. The landlord responded that same day by attending the unit. Thereafter, the landlord had the bedroom carpets cleaned on or about August 20, 2013.

There was also some discussion between the parties about a dehumidifier and the installation of window screens, so windows could be opened without providing access to flies or other insects and bugs. However, the tenant testified that by the time she left the unit at the end of August 2013, what had been accomplished was limited to measurements being taken of the windows.

The tenant testified that the unit was heated by way of electric baseboard heaters, and that she had access to setting the level of heat via a thermostat. The tenancy agreement provides that the tenant is responsible for paying 1/3 of the hydro and gas utilities up to a maximum of \$100.00 per month (effective from January 01, 2013). She also testified that the landlord had identified a concern about how high the hydro bill had become during some months. In the result, the tenant reduced the level of heat during

the day when no one was in the unit, and raised it again after such time as she returned home. Additionally, the tenant testified that she dressed more warmly and set the thermostat lower in order to keep the hydro bill to a minimum.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, in part, as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The Canada Mortgage and Housing Corporation ("CMHC") has made related information available online, as follows: "Fighting Mold – Tenant's Guide to Mold." Various, and in part, the CMHC document reads as follows:

Cleaning up mold can be either the tenant's or the landlord's responsibility – or a responsibility – shared by the tenant and landlord.

Molds will grow when they have moisture and nutrients. If we keep things dry, molds do not grow. High moisture levels can be the result of water coming in from the outside, through the floor, walls, roof or plumbing leaks - when there is a weakness or failure in the structure. High moisture can also result when there is not enough ventilation to expel moisture produced by occupants' daily activities like bathing, washing clothes or cooking.

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## HOW MUCH MOLD IS THERE?

### “SMALL” AREA

A small area is a patch no larger than a square metre – about 10 sq. Ft. There should be no more than three small patches in your apartment or house.

### “MODERATE” AREA

A moderate area is more than three square metre patches, or one or more isolated patches larger than a square metre but smaller than 3 [metres squared] - about the size of a 4 x 8 ft. Sheet of plywood.

### “EXTENSIVE” AREA

An extensive mold area is an area larger than 3 [metres squared] – about the size of a 4 x 8 ft. Sheet of plywood. This much mold is a health risk.

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Mold will return if you do not reduce moisture levels. If mold comes back after repeated cleaning, the conditions that caused the mold to grow must be changed. The changes may be things you can do yourself or may be work the landlord has to do.

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Basements have higher humidity levels than upper floors. In the summer, the wall surfaces are cooler and moisture can condense. Most basement floors have neither a moisture barrier nor insulation and dampness can migrate upwards from the soil.

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## PREVENTING MOLD

- Ask your landlord to find and fix water leaks promptly
- Keep the apartment dry
- Measure how much moisture is in the air
- Discard clutter and excess stored materials
- Keep the apartment clean by vacuuming regularly
- Adopt lifestyle practices that reduce moisture

## MOLD – PROOFING

### All Living Areas

- Separate footwear worn outside from footwear worn inside
- Allow good air circulation by reducing the amount of furnishings
- Heat areas of the apartment adequately
- Vacuum often
- Clean hard floors with a damp mop
- Do not bring anything into your house that is moldy or that has been stored in a moldy place
- Cut down the number of potted plants in the apartment
- Recognize conditions that lead to excess moisture and mold-overcrowding or too many pets
- Don't hang-dry laundry inside the apartment or vent a dryer into the unit
- Don't use unvented space heaters, such as kerosene or oil heaters.

### Closets and Bedrooms

Get rid of unused clothes and other stored items. Keeping your closets and bedrooms tidy makes it easier for air to circulate – and harder for mold to grow.

Do not humidify unless necessary. If your physician advises you to humidify, measure the relative humidity first. Cycle the humidifier on and off to maintain the desired relative humidity. Allow the room to dry the following morning.

## TIPS IN SELECTING AN APARTMENT THAT IS NOT MOLDY

When you look for an apartment, there's a lot to consider. Location combined with availability may be a determining factor. The "Relocating" section of *The Clean Air Guide* is a good starting point for selecting apartments with good indoor air quality. If mold is a major concern for you, avoid apartments with one or more of these features:

- located in a basement;
- located on an upper floor of a building with a wet, moldy basement;
- no bathroom fan or fan doesn't work;
- no kitchen exhaust fan or fan is a re-circulating fan;
- an old carpet;
- known history of roof or plumbing leaks;

- difficult to heat because it is leaky or inadequately insulated

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, the related provisions of the Act, and other relevant information available in the public domain, the various aspects of the tenant's claim and my findings around each are set out below.

**\$1,000.00:** *reimbursement of rent paid for August 2013*

The tenant testified that she slept away from the unit for 3 nights during August, and that for 2 weeks she slept at the unit but outside of her bedroom because of certain physical discomforts and health concerns. Ultimately, the tenant claims that it was on the advice of her physician that mold was contributing to her physical discomfort, and that she should move from the unit.

In preparation for carpet cleaning, the tenant's evidence is that she packed / removed many of her possessions from both bedrooms. After the carpets were cleaned on or about August 20, 2013, the tenant's evidence is that there were several days when they were still not completely dry, and that the moisture contained therein was absorbed by her socks and soaked onto her skin.

Arising mainly from the inconvenience / disruption resulting from carpet cleaning, I find on a balance of probabilities that the tenant has established entitlement to compensation in the limited amount of **\$150.00**.

**\$750.00:** *compensation for 2/3 of damaged shoes*

**\$450.00:** *damaged dresser*

**\$500.00:** *damaged mattress*

**\$400.00:** *damaged bed frame*

**\$10.00:** *damaged storage box*

**\$20.00:** *damaged laundry bin*

**\$15.00:** *damaged side table*

While the figures set out above generally reflect estimates of replacement costs, for the most part the tenant has discarded the above items and has not presently replaced them. The exception to this may be an unknown number of pairs of new shoes the tenant testified she has purchased since the end of tenancy.

I find on a balance of probabilities that the tenant contributed to the growth of mold in the unit, unwittingly, by establishing a routine of leaving the heat low during the day, and

increasing it only after she had returned home. It is noted that this routine was established as a means of minimizing the hydro costs for heating the unit.

I also find that it was relatively late in the tenancy when the tenant discovered mold and brought it to the landlord's attention. After being informed, I am satisfied that the landlord undertook to take steps in a timely fashion to address the tenant's concern. For example, bedroom carpets were professionally cleaned and windows were measured for the purpose of screen installation within 2 or 3 weeks after the landlord was informed.

Further, there is no documentary evidence before me from appropriate health or local government officials which speaks conclusively to building deficiencies as a contributing cause of mold, either directly or indirectly. In other words, I am unable to find that the unit does not comply with "the health, safety and housing standards required by law."

In the result, I find that the tenant has failed to meet the burden of proving entitlement to any of the costs claimed in this aspect of her application, and it is therefore dismissed.

\$100.00: *mailing costs*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is dismissed.

\$50.00: *filing fee for application previously heard (file # 812755)*

In addition to other things, in her previous application the tenant sought to recover the \$50.00 filing fee. In the decision dated December 09, 2013 the Arbitrator found, in part, as follows:

At the outset of the hearing, the tenant was advised that her application for monetary compensation was being refused, pursuant to section 59(5)(c) of the Residential Tenancy Act (Act), because her application for dispute resolution did not provide sufficient particulars of her monetary claim for compensation, as is required by section 59(2)(b) of the Act. The tenant is at liberty to re-apply for her monetary claim as a result, with the exception of her security deposit and pet damage deposit which were resolved by way of a settlement agreement described below.

I find that the Arbitrator's determination that the tenant had the option to reapply for her monetary claim applies to compensation for damage or loss under the Act, Regulation or tenancy agreement, for which the tenant has re-applied in this current proceeding. I find that the previous Arbitrator's finding does not include the related \$50.00 filing fee, which was paid for that particular proceeding, a separate and distinct proceeding from the current proceeding. This aspect of the application is therefore dismissed.

**\$50.00:** *filing fee for current application*

As the tenant has achieved a measure of success with her current application, I find that she has established entitlement to recovery of the full filing fee.

**Total entitlement: \$200.00** (\$150.00 + \$50.00)

#### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$200.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

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: April 11, 2014

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Residential Tenancy Branch



