



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Westwynd Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, MNR, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72

The Landlord applied for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. An Order to retain all or part of the security deposit – Section 38;
3. A Monetary Order for compensation – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

### Background and Evidence

The tenancy started on December 1, 2012 on a fixed term to November 30, 2013. The Tenants moved out of the unit on October 3, 2013. Rent of \$1,525.00 was payable monthly and at the outset of the tenancy the Landlord collected \$1,525.00 as a combined security and pet deposit.

The Tenants state that mold appeared in the downstairs bathroom in early August 2013 and the Landlord was immediately informed. The Tenants state that the Landlord did nothing to inspect the unit until September 4, 2014. At this time the Landlord brought in a mold inspection company that had been recommended by the Tenants. The Tenants state that this report indicated the presence of a high level of mold. The Tenants state that the first inspection indicates evidence of a flood in the first floor bathroom and recommendations were made to take the bathroom apart for further inspection. The Tenant states that the scope of the inspection was limited by the Landlord and that the further inspection recommend by the report was not done.

The Tenants argue that the appearance of mold occurred as a result of an earlier flood or water ingress and that the Landlord did not disclose this previous damage at the time of entering into the tenancy agreement. The Tenants point to an invoice indicating repairs to pipes at the unit. The Tenants argue that the unit was unfit for a rental unit and that had they known about pre-existing problems with water ingress they would not have rented the unit.

The Tenants state that months prior to the detection of the mold they all began to experience health problems, including respiratory problems, ear and throat infections, vertigo and headaches. The Tenants state that two of the Tenants are nurses. The Tenants state that the type of mold found in the house is known to be a carcinogen and a cause of the same health problems experienced by the Tenants. One Tenant provided supporting medical evidence of an allergy to molds and this Tenant states that the allergy test was done in October 2013. This Tenant states that he was previously

exposed to mold at a different residence. The Tenants state that since moving out of the unit their health has improved.

The Tenants state that it took the Landlord six weeks to attend the unit after their report of mold present. The Tenants state that this was an insufficient response given the health implications of its presence. The Tenants state that their physician had advised the Tenants to get out of the unit. The Tenants state that because the Landlord was so slow to respond to their reported presence of mold and because of the Landlord not investigating further as recommended by the inspector, they had no faith that the Landlord would act quickly to remedy the mold in the unit and had no choice but to move in order to preserve their health. The Tenants state that as they had not yet found another unit to move into, they incurred costs to move and store their belongings. The Tenants claim reimbursement of all rents paid during the tenancy and the costs of the moving and storage for a month. The Tenants state that although they missed work as a result, they are not claiming any lost income. The quantum of the Tenants claim is \$18,763.12.

The Landlord states that the Tenants caused or contributed to the presence of the mold by their living habits. The Landlord states that on September 24, 2014 the Tenants wet laundry had been left outside the dryer and had a distinct smell of mold. On this same occasion, the Landlord states that boxes of clothing were around in varying states of disarray. The Landlord states that the Tenant who had previous exposure to mold brought the mold spores into the unit.

The Landlord states that they have no information about any previous water ingress from the owner of the unit and that they took over as agents just prior to the start of this tenancy. The Landlord also states that there was some evidence of leakage or drainage sometime in the past but that as there was no current evidence of water ingress no inspection took place behind the walls or ceilings. The Landlord states that the ceilings were bone dry and that the mold was only on the surface of the ceilings and in the lower level laundry area. The Landlord states that the reference to broken pipes

in the repair invoice made previous to this tenancy was in reference to gutter pipes and not water lines or pipes. The Landlord states that the house was purchased 20 years ago and that the owner told them that no floods had occurred during the previous tenancy of six years. The Landlord states that the patches on the ceilings of the unit were old, merely cosmetic and occurred prior to October 2012.

The Landlord states that after the Tenants moved out and cleaned the unit, which the Landlord notes to have been well done, a second mold inspection took place and no longer showed high levels of mold. The Landlord states that the inspection report indicates that the Tenants likely caused the mold by their living habits. A copy of this report was provided.

The Tenants state that they keep their unit clean and have done nothing to cause the mold to appear. The Tenants state that during the tenancy when the Landlord had opportunity to view the unit, the Tenants were told that their unit was very clean. The Tenants state that the laundry seen by the Landlord had only been left for a couple of hours, that this is not their normal routine with clothing but was an exception and that as nurses they understand the connection between cleanliness and a healthy house and always kept the unit cleaned and vacuumed daily. The Tenants state that the boxes of clothing seen by the Landlord were present as they were in the process of packing to move. The Tenant who had previously experienced mold states that all the furniture from the previous unit was thrown out.

The Tenant states that the first report notes that traffic in a house with mold causes the spores to be distributed and notes that the second report showing a reduction in mold was done after the Tenants had moved out and the unit was vacant.

The Landlord argues that since the Tenants caused or contributed to the appearance of mold and because the Tenants requested the inspection, the Tenants caused the Landlord to incur costs for the first inspection. The Landlord states that a second

inspection was carried out to show that the appearance of mold was likely due to the Tenants' living habits. The Landlord claims \$840.00 for the cost of both inspections.

The Landlord states that although the Tenants gave notice to vacate the unit the Landlord attempted to cash their October 2013 rent cheque but that it was returned NSF. The Landlord states that the tenancy agreement provides for an NSF charge of \$25.00 and the Landlord claims this amount. The Landlord states that they later deposited the Tenants' post dated November rent cheque and that the Landlord now considers October 2013 rent to have been paid in full.

The Landlord states that as the Tenants ended the fixed term early they caused the Landlord costs to re-rent the unit. The Landlord states that they signed a contract with the owner on October 5, 2013 and that the fee paid for their services which includes showing of the property and advertising, occur once every calendar year if there is a tenancy turnover. The Landlord claims \$800.00. The Tenants state that the leasing fee had nothing to do with the tenancy or the ending of the tenancy. The Tenant states further that the tenancy was ended as a result of the Landlord's acts or negligence and not due to any act or negligence of the Tenants.

The Landlord states that they had to advertise the unit as a result of the Tenant's end of the tenancy and that the advertisement was placed in a bulk advertisement. The Landlord states that the unit was re-rented for November 1, 2013 at an increased rent of \$1,600.00 for a one year term.

### Analysis

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In

a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

It is clear that mold was in the unit. The Landlord argues that it was surface mold caused or contributed to by the living habits of the Tenants. A review of the inspection report indicates generalities and does not provide persuasive evidence of causation. I also consider the Landlord's evidence of a one-time presence of damp laundry to be weak, given the Tenant's undisputed evidence of cleaning habits and the clean state of the unit during the tenancy. I do not consider the reduced appearance of mold after the departure of the Tenants to assist in the determination of causation or contribution as the first report appears to indicate that "traffic" or what I would consider normal living activities would spread pre-existing spores. I therefore find on a balance of probabilities that the Landlord has failed to substantiate that the Tenants caused or contributed to the appearance of the mold. I dismiss the Landlord's claim for the costs of the inspection reports

The Tenant's evidence of the Landlord's knowledge of the presence of mold or conditions ripe for the growth of mold is limited to an invoice noting the cleaning of gutters and repair of pipes. The Landlord's evidence that the reference to pipes was in relation to gutter pipes is entirely believable given the company on the invoice is not a plumbing company. I also consider that the Landlord, at the most, had only some knowledge of a past leak. There is no evidence that the Landlord knew or ought to have known that mold would appear. I find therefore that the Tenants have failed to substantiate that they were rented an unliveable unit. I therefore dismiss the Tenants' claims for compensation from the onset of the tenancy to the point that the Landlord was informed of the presence of mold.

The Landlord's knowledge of a past leak, however limited, should have compelled the Landlord to immediately investigate a report of mold. I find that taking six weeks to inspect the unit after being informed of the presence of mold to be negligent.

Based on the supporting medical evidence of a mold allergy, I find on a balance of probabilities that at least one Tenant suffered health problems due to the presence of the mold that visibly appeared and was reported in August 2014. I find that the Landlord's refusal to further inspect for the source of the mold to be dubious in the circumstances. I therefore find that the Tenants have substantiated their lack of faith in the Landlord's ability to maintain the unit properly and that the Tenants actions to immediately end the tenancy were reasonable in order to mitigate any further health losses. Given the lack of supporting medical evidence on extent of health problems (appearance, severity, length of time, etc) and considering that the Tenants provided no evidence of financial or wage loss in relation to the illness, I find that the Tenants have not substantiated the amount of loss claimed for the period. I find that the Tenants have substantiated only a nominal amount of **\$200.00** for adverse health effects and a global sum of **\$2,000.00** to compensate the Tenants for their loss of use of the unit for the month of October 2013 and for their moving and storage costs.

Nothing in the tenancy agreement, other than the liquidated damages clause, provides that the Tenant is responsible for re-rental costs if the tenancy is broken early. The Landlord was clear that they were not seeking liquidated damages. Further, given the evidence that this is a yearly cost only and considering that the tenancy was to end in the current year, it is apparent that this cost would accrue regardless of the tenancy ending a month early. Given these facts, I find that the costs claimed are not costs that were incurred as a result of any act of the Tenant and I dismiss the claims for re-rental fees.

Given that the Landlord has a responsibility to mitigate its losses and considering that the advertisement resulted in the Landlord obtaining a higher rent than otherwise would have for November, I dismiss the Landlord's claim as their evidence indicates that their act resulted in a profit. Based on the undisputed evidence that the Landlord incurred a

loss of \$25.00 for an NSF fee for the October 2013 rent cheque, I find that the Landlord has substantiated an entitlement to **\$25.00** and I order the Landlord to retain this amount from the security and pet deposit of \$1,525.00 plus zero interest.

As the Landlord has had minimal success with their claims I decline to consider recovery of the filing fee and I find that the Tenants are entitled to return of the remaining security and pet deposit in the amount of **\$1,500.00**. As the Tenants have been successful I find that the Tenants are entitled to recovery of their **\$100.00** filing fee for a total entitlement of **\$3,800.00**.

#### Conclusion

I grant the Tenants an order under Section 67 of the Act for the amount of **\$3,800.00**. If necessary, this order may be 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: May 20, 2014

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Residential Tenancy Branch



