



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

**Dispute Codes:** MNDC

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a 9-month retro-active rent abatement for devalued tenancy due to mould.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing. The parties were permitted to present affirmed oral testimony and to make submissions during the hearing. All of the testimony and relevant evidence that was properly served will be considered.

### **Preliminary Matter**

The tenant had submitted photographs into evidence. However, the landlord stated that none of this evidence was served to the respondent landlord, as required under the Residential Tenancy Rules of Procedure.

On questioning the applicant tenant, it was revealed that they were not aware that the evidence for their claim had to be served on the other party at least 5 days prior to the hearing, in addition to submitting it to the Residential Tenancy Branch. The tenant stated that they were told by staff at the Residential Tenancy Branch that they need not serve the evidence on the other party as the Branch serves it on the tenant's behalf.

The Residential Tenancy Rules of Procedure, Rule 3.1, requires all evidence to be served on the respondent. Rule 3.4 requires that, the applicant must file copies of all documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

Instructional information and other relevant data is contained in the application material given to each applicant and served on each respondent which also states that evidence, upon which the applicant intends to rely, must be served both to Residential Tenancy Branch and the other party.

Given the above, I find I must decline to consider the evidentiary material submitted for the hearing. However verbal testimony from both parties was accepted.

### **Issues to be Decided**

Is the tenant entitled to a retro-active rent abatement for devalued tenancy?

### **Background and Evidence**

The tenancy began on April 1, 2012 and current rent was \$750.00 per month. A security deposit of \$375.00 was paid.

A previous hearing was held on the landlord's application in which the landlord was successful in being granted an Order of Possession and a monetary order for unpaid rent and the landlord took possession of the rental unit in October 2013.

The tenant testified that they found mould in the unit and reported it to the landlord on January 25, 2012. The tenant testified that the landlord did respond and sent a person over to use bleach on the mould, which was not effective.

The tenant testified that they had many verbal conversations with the landlord over the ensuing months and received unfulfilled promises that the mould issue would be rectified. The tenant testified that this went on for approximately 9 months and the tenant is claiming a 100% rent abatement for that period in the amount of \$6,750.00.

The tenant was not able to explain why they continued for 9 months without making an application to seek an order to force the landlord to correct the mould infestation.

The landlord disputed the tenant's claim pointing out that they did respond to the report of mould without delay. According to the landlord, they found a washing machine had been hooked up improperly depositing water into the area below the tenant's suite and this caused moisture resulting in mould. The landlord testified that they addressed this problem and it successfully eradicated the mould. The landlord stated that there are occupants now living in the suite who can testify that there is no mould present.

The landlord pointed out that the tenant had used their allegations of mould as an excuse not to pay rent for several months, but the matter of mould had been dealt with. The landlord testified that they feel the tenant's claim has no merit.

### **Analysis**

An Applicant's right to claim damages from another party is covered by section 7 of the Act which states that if a landlord or tenant fails to comply with the Act, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other

for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

With respect to the tenant's application seeking 100% rent abatement from January 25, 2013 to October 25 2013, totalling \$6,750.00, I find that the tenant's evidence did not satisfy any of the above elements of the test for damages. I find that the tenant has not met the burden of proof to justify compensation under the Act. Accordingly I find that the tenant is not entitled to any rent abatement during their tenancy.

Based on the testimony and evidence I hereby dismiss the tenant's application in its entirety without leave to reapply.

**Conclusion**

The tenant is not successful in the application their claim for monetary compensation is dismissed without leave.

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 23, 2014

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Residential Tenancy Branch

