



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capreit Limited Partnership  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNSD, MNDC, FF

### Introduction

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

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

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

### Preliminary Matter

During the Hearing the Landlord stated that no evidence package was received from the Tenant. The Tenant states that the evidence package was sent by registered mail on July 11, 201, provided the tracking number and stated that the Landlord who is appearing for today's hearing signed for receipt of the package. Given the Tenant's evidence of tracking number and signature for receipt I find on a balance of probabilities that the Tenant's did provide a copy of the evidence package to the Landlord. This package will therefore be considered as evidence for the purposes of making a determination of the dispute.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The following is undisputed evidence: The tenancy started on January 1, 2013 and ended on February 28, 2014. Rent of \$1,241.73 was payable monthly, having increased during the

tenancy from \$1,215.00. At the outset of the tenancy the Landlord collected \$607.50 as a security deposits. The Parties mutually conducted a move-in and move-out inspection. The Tenant provided its forwarding address on the move-out inspection form. The Tenant did not receive return of the security deposit after March 31, 2014.

The Landlord does not dispute the Tenant's claim for return of double the security deposit in the amount of \$607.50.

The Tenant states that during the tenancy the Landlord entered the unit without right. The Tenant states that the Landlord posted a notice of inspection on the door of the unit for an inspection on December 17, 2013. The Tenant states that the notice of inspection took place on December 17, 2013 but argues that since the Landlord posted the notice on December 14, 2013, the inspection should not have taken place until after the deeming period of three days. The Tenant states that the notice was seen by the Tenant on or about December 15, 2014. The Tenant states that the Landlord posted another inspection notice for an inspection on February 4, 2014 but entered the unit on February 3, 2014. The Tenant states that the Landlord entered the unit without knocking and used the key. The Tenant states that her minor children were in the unit at the time and were greatly upset by the entry without their parent present. The Tenant states that the Landlord wrote a note of apology for the entrance and provided a copy of that note. The Tenant states that due to this occurrence she believes the Landlord has also entered into the unit without right on other occasions. The Tenant claims \$500.00 for the loss of quiet enjoyment of the unit. The Landlord states that no entry took place on February 3, 2014 and that the inspection took place on February 4, 2014 as indicated on the Notice.

The Tenant states that mold occurred in the unit and that the children's' doctor believes that mold in the unit may have caused her children to develop asthma and to repeatedly miss school. The Tenant states that despite asking the Landlord in December 2013 to inspect the unit for mold and to inform the Tenant of the unit's safety, the Landlord failed to do so and if they did carry out an inspection they refused to report the outcome of the inspection to the Tenant. The Tenant indicates that given her children's illnesses and as the Landlord failed to ensure the Tenant that the unit was suitable, the Tenant felt she had no choice but to move for her children's health. The Tenant states that since moving the children's asthmas has disappeared. The Tenant claims \$1,000.00 based on the cost of the move out of the unit.

The Landlord states that an inspection was carried out by a third party and no toxic mold was found. The Landlord also states that the mold that was present on the windows was cleaned by the Landlord at the end of the tenancy and has not returned for the current tenant. The Tenant argues that the appearances of mold is reduced or not present during the summer months but will appear again during rainy periods. The Tenant states that other units in the building have had mold and that tenants were relocated during the repair period for those units. The Tenants state that an agent of the Landlord indicated that mold in the building was a big issue and that windows were being replaced in units because of the mold.

### Analysis

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. Based on the Tenant's evidence that the notice for the first entry was received by the Tenant at least 24 hours in advance of the entry, I find that the Tenant suffered no loss from this entry as it was done in accordance with the Act. Given the Landlord's letter for the second entry on February 3, 2014 I find that the Tenant has substantiated that the Landlord entered the unit without appropriate notice and without permission of the Tenant. Accepting that the entry would have significantly disturbed the children and their mother I find that the Tenant has substantiated half the amount claimed of **\$250.00** for the loss of quiet enjoyment of the unit.

Overall the Tenant's evidence supports on a balance of probabilities that mold was present in the unit and I accept that the Landlord knew that the Tenant's children were experiencing some health problems while living in the unit that may have been caused by the mold. I also accept that the Landlord was aware of significant mold problems in other units. Given these circumstances, and if the Landlord did conduct a mold test to determine whether the levels or type of mold were a risk to health, it would have been incumbent on the Landlord to fully inform the Tenant of a report that shows the unit did not have a mold problem that may affect the

children's health or if mold were found to be a problem that the unit would be repaired. The Landlord provided no documentary evidence to support that any inspection for mold was carried out and no report was provided to the Tenant. I find therefore that the Tenant has substantiated on a balance of probabilities that the Landlord acted negligently in the circumstances and caused the Tenant to move. The Tenant is therefore entitled to the costs of the move in the amount of **\$1,000.00**.

As the Landlord has not disputed the Tenant's claim for return of double the security deposit, I find that the Tenant is entitled to the claimed amount of **\$607.50**. As the Tenant has been successful with the application I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,907.50**.

#### Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,907.50**. 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: July 28, 2014

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Residential Tenancy Branch

