



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MNSD, MNDC, and FF

### Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Landlord for the cost of filing this application.

The female Tenant stated that on March 21, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Landlord did not appear at the hearing.

### Issue(s) to be Decided

Is the Tenant entitled to the return of security deposit and/or to compensation for deficiencies with the rental unit?

### Background and Evidence

The female Tenant stated that this tenancy began on September 01, 2013; that the male Tenant had a written tenancy agreement with the Landlord; and that she and a third co-tenant had a verbal tenancy agreement with the Landlord. The female Tenant stated that a security deposit of \$475.00 was paid.

The female Tenant stated that she informed the Landlord she would be vacating the rental unit on February 26, 2014 and that she and the male Tenant vacated the rental unit on that date. She stated that she believes the Landlord and the third co-tenant entered into an agreement that he could remain in the rental unit.

The female Tenant stated that on March 01, 2014 she provided the Landlord with written notice to end the tenancy and with a forwarding address, in writing. A copy of this letter was submitted in evidence.

The female Tenant stated that neither she nor the male Tenant authorized the Landlord to retain the security deposit. She stated that she has not spoken with the third co-tenant since the tenancy ended and she does not know if he is still living in the rental unit or if he authorized the Landlord to retain the security deposit.

The female Tenant stated that the security deposit was not returned to her or to the male Tenant. She stated that she does not know if it was returned to the third co-tenant.

The female Tenant stated that she does not know if the Landlord filed an Application for Dispute Resolution claiming against the security deposit.

The Tenant is seeking compensation for deficiencies with the rental unit, specifically mould growing in the bedroom; mould growing on windows in the living room and kitchen; a cracked ceiling in the living room; and water leaking through the ceiling in the bedroom.

The female Tenant stated that the deficiencies with the rental unit were first noted on November 22, 2013 and were reported to the Landlord on January 11, 2014. They stated that the Landlord agreed to inspect the deficiencies on February 23, 2014 but she failed to attend the rental unit on that date. The male Tenant stated that he believes the mould in the rental unit was due, in part, because the furnace was replaced with baseboard heaters but the ducts for the furnace are still open to the crawl space.

The Tenant submitted photographs of areas in the rental unit that were impacted by moisture.

The female Tenant stated that she has not been impacted by asthma for approximately 12 years but that the symptoms of her asthma appeared during the last few months of the tenancy.

### Analysis

On the basis of the undisputed evidence, I find that the male Tenant entered into a written tenancy agreement for the rental unit; that the female Tenant entered into a verbal tenancy agreement for the rental unit; and that a third co-tenant entered into a verbal tenancy agreement for the rental unit.

On the basis of the undisputed evidence, I find that the Applicants vacated the rental unit on February 26, 2014 and that the third co-tenant remained in the rental unit. As one of the tenants remained in the rental unit after February 26, 2014, I am unable to

conclude that the tenancy ended on that date in accordance with section 44(1)(d) of the *Act*.

After reading the letter, dated March 01, 2014, which the Tenant contends served as written notice to end the tenancy, I find that this letter did not serve to end the tenancy in accordance with section 44(1)(a) of the *Act*. Although it clearly informs the Landlord that the Applicants have vacated the rental unit, it does not clearly specify that they are ending the tenancy on behalf of the three tenants on a specific date, as is required by section 52(c) of the *Act*. Rather, the letter acknowledges that their co-tenant is remaining in the rental unit and is "taking over the tenancy agreement". In the absence of evidence that clearly shows this tenancy has ended in accordance with section 44 of the *Act*, I cannot conclude that the tenancy has been properly ended.

In determining that I have insufficient evidence to determine whether the tenancy has ended, I was heavily influenced by the female Tenant's testimony that she does not know if the third co-tenant is still living in the rental unit. I therefore find it possible that the third co-tenant is still living in the rental unit and that the tenancy has not yet ended.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits.

As the Tenant has failed to establish that this tenancy has ended, I find that I am unable to conclude that the Landlord is currently obligated to return the security deposit. I therefore dismiss the application for the return of the security deposit.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence, I find that the Tenant noted mould growing in the rental unit and moisture in the ceiling of the rental unit on, or about, November 22, 2014 and that their observations were reported to the Landlord on January 11, 2014. On the basis of the photographs submitted in evidence, I find it reasonable to conclude that there was a problem with moisture in the rental unit and that some mould was growing as a result of the moisture.

Section 32(1) of the *Act* requires a landlord to 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.

I find that the Tenant submitted insufficient evidence to show that the mould/moisture in the rental unit failed to comply with healthy, safety, or housing standards. In reaching

this conclusion I was heavily influenced by the absence of any evidence to show that such standards exist and, if they do exist, what the standards are. In the absence of proof of such standards, I am unable to conclude that the Landlord failed to comply with section 32(1) of the *Act*.

I find that the Tenant submitted insufficient evidence to show that the mould/moisture in the rental unit rendered the rental unit unsuitable for occupation by a tenant. In reaching this conclusion I was heavily influenced by the absence of any medical evidence to show that the rental unit was impacting the Tenants' health and by the absence of any evidence from a qualified professional that shows the type of mould in the unit poses a health hazard.

As the Tenant has failed to establish that the Landlord breached section 32(1) of the *Act*, I find that the Tenant is not entitled to compensation for deficiencies with the rental unit.

I find that the Tenant's Application for Dispute Resolution has been without merit I dismiss their application to recover the fee for filing the Application.

#### Conclusion

The Tenant has not established a monetary claim.

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 09, 2014

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Residential Tenancy Branch

