



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

MNDC

### Introduction

This is an application filed by the tenant for a monetary order for money owed or compensation for the loss of quiet enjoyment of the rental unit.

Both parties attended the hearing by conference call and gave evidence. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served.

At the beginning of the hearing the landlord made a request to adjourn the hearing as the tenant served the landlord with their evidence on August 11, 2014 in person. Both parties agreed that this was evidence previously submitted in another dispute resolution hearing scheduled in May of 2014 which the tenants' application was dismissed with leave to reapply as the tenants failed to comply with the Act by properly serving the landlord's with sufficient details of the dispute and the tenants documentary evidence in support of these claims in a timely manner. The landlord seeks an adjournment to properly prepare in responding to the tenants claims. The landlord stated that the documentary evidence submitted by the tenant on August 11, 2014 is the same as was previously provided and that the landlord is not aware of any prejudice to them in proceeding as scheduled. The landlord's request for an adjournment was denied as the landlord is ready to proceed and has not provided any details that there would be any prejudice to the landlord in proceeding as scheduled.

The hearing was adjourned for a continuation due to a lack of time. Both parties were notified that a new Notice of Hearing letter of an adjournment would be sent to both parties. The landlord confirmed service to the listed service address. The tenant stated that they have just recently moved and has provided a new service address. The landlord confirmed that they now have the new address of the tenant. Both parties were advised that no new evidence would be accepted.

On October 31, 2014 the hearing resumed. At this time, the tenant stated that he wished to adjourn the matter to file an amended application to include the owner of the rental property. The landlord's agent stated that an adjournment was not necessary as Homelife Peninsula Property Management was properly named and is responding to the tenant's dispute as the

landlord's agent. The tenant could provide no further reasons to adjourn the hearing. As such, I find that the landlord's agent, named above is the named landlord and is responding to the tenant's dispute. The tenant's adjournment application is denied as it is deemed as unnecessary to proceed.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary order?

#### Background and Evidence

This tenancy began on May 1, 2013 on a fixed term tenancy ending on April 30, 2014 as shown by the submitted copy of the signed tenancy agreement dated April 11, 2013. The monthly rent was \$1,350.00 and became \$1,401.00 during the tenancy and was payable on the 1<sup>st</sup> of each month and a security deposit of \$675.00 was paid. A condition inspection report for the move-in was completed on May 1, 2012 and a condition inspection report for the move-out was completed on November 15, 2013. Both parties confirmed that the tenancy ended on or about January 30, 2014.

The tenant seeks a monetary order for \$25,000.00 and has submitted a monetary worksheet which consists of \$19,605.90 for loss of quiet enjoyment because of mold for the return of 70% of the total rent paid during the tenancy, \$200.00 for the cost of the difference in rent for their new rental of \$50.00 per month for 4 months, \$535.50 for moving out costs because short notice to vacate the rental due to mold, \$85.23 for the cost of a truck rental, \$84.11 for the cost of totes for moving personal belongings, \$547.83 for the cost of a washer, dryer, loft bed and master bed, \$226.09 for the cost of eating out because of mold, \$41.92 for the cost of new toothbrushes and pillows, \$85.91 for the cost of 1 night in a hotel, \$93.77 for the cost of 50% of groceries when not eating at home, \$171.14 for the cost of gas of 50% when not home, \$950.00 for the cost of furniture left behind at rental, \$150.00 for the cost of replacing bathroom products due to mold contamination, \$29.93 for prescription drugs, \$74.05 for the cost of installing a wall for storage at new rental, \$1,600.00 for the cost of loss wages due to postponing apprenticeship training, \$1,526.71 for lost wages due to being home off work, \$600.00 for the loss of quiet enjoyment for not having a fence from July to December of 2013 and \$2,000.00 for the loss of quiet enjoyment for the tree scraping against the house. The tenant has clarified that although his monetary claim totals, \$28,608.09 they are limiting their claim as per the Residential Tenancy Act to \$25,000.00.

The tenants state that the landlord knew of the mold problem at the rental property prior to the tenant moving in. The tenants state that they notified the landlord in May of 2012 at the beginning of the tenancy and then again November 15, 2013. The landlord disputes the tenants claim stating that they were not informed until November 15, 2013, when an inspection was scheduled. The landlord has submitted in their documentary evidence on page 8 an invoice from Carmichael Construction dated December 31, 2013 for an inspection on December 2, 2013 to investigate a leak in the ensuite bathroom behind the tub wall. The report states that

the floor in bathroom is wet under the linoleum and should be replaced. The main bathroom tub enclosure is also leaking. The floor is damp under the linoleum. Both bathrooms have mold. The landlord also refers to page 9 of their documentary evidence of a second invoice from Carmichael Construction dated November 22, 2013. The description in the invoice states, den has water stains and mold on ceiling. Ensuite has mold and is wet. May be leaking downstairs. The landlord states that upon being notified the landlord addressed the issues in a reasonable amount of time. The landlord states that work was to begin in December 2013 to resolve issues. The landlord states that no work was started as the tenancy ended. The tenant has referred to an undated letter from the tenant's documentary evidence package under statements from MCE. The letter states that MCE was a previous tenant who moved into the rental on May 1, 2010 and moved out on April 30, 2012 after experiencing strange smells and health issues. The writer states that mold was infesting the home in various places and that the landlord replaced the flooring in the bathroom and the sink, but that the smell and problems persisted. The tenant has also submitted a copy of MCE's signed lease agreement with the named landlord which confirms the tenancy. The tenants state that the inspection reports from the landlord's contractor confirm mold. The landlord clarified that this confirmation was for mold detected after the landlord was notified in November of 2013.

The tenant has provided copies of pay stubs which show that the tenant worked 77.5 hours at \$20.62 per hour for the pay period March 21, 2013 at Lakeview Power Systems Inc., 51.5 hours at \$20.62 per hour for the pay period December 30, 2013 and 24 hours at \$23.00 per hour for the pay period January 14, 2014. The tenant states that he missed 20.5 hours for the December 30, 2013 and 48 hours for the January 14, 2014 pay periods. The tenants have provided copies of credit card statements for charges made that required eating out because they could not cook at home.

The tenant states that mould was found in the house and suffered a loss of quiet enjoyment as the landlord failed to act and remedy the situation. The tenant also states that the back yard was not useable because there was a fallen fence, tree noises and the garage doors.

The tenant states that a mold specialist was retained by the tenant and an inspection was conducted that determined that there was mould present. The tenants seeks a monetary claim of \$25,000.00 for the loss of quiet enjoyment, pain and suffering for living in a mould environment, which consists of recovery of 70% of the rent totalling, \$19,605.90. The tenant states that this consists of 12 months at \$1,350.00 and 8 months at \$1,401.00.

The landlord has disputed the claims made by the tenant that notification was made to the landlord in May of 2012 and has confirmed in her direct testimony that mould was not discovered until the landlord was notified in November of 2013.. The landlord states that the issue comes down to the tenant taking a proactive stance and is obligated to mitigate the issue/losses by informing the landlord. The landlord has claimed that they were first notified in November of 2013. The landlord has stated that upon being notified the landlord immediately engaged a contractor to inspect the rental. The contractor confirmed mold at that time. The

landlord states that the mold in place was not a new thing, but something that took time to grow. The landlord states that the tenant has provided no evidence to show that the landlord was properly notified of the mold issue in May of 2012. The tenant has reiterated that the landlord had to have known based upon the former tenant, MCE's letter that was submitted. The tenant also relies on a copy of the condition inspection report which states, "ceiling has hole + yellow stain". The landlord disputes this stating that there is no evidence of notification to the landlord of mold other than that there was a hole and a yellow stain.

### Analysis

Based upon the testimony of both parties and the documentary evidence which includes but is not limited to, emails, letters/statements, photographs, receipts/invoices and inspection reports, I find on a balance of probabilities that the tenants have failed to provide sufficient evidence to satisfy me that proper notification was given to the landlord in reporting a mold problem.

The onus or burden of proof lies with the party who is making the claim. In this case the burden falls to the tenant. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The tenants have failed to provide sufficient evidence to satisfy me that the landlord was informed prior to November of 2013 of a mold issue.

Section 32 of the Residential Tenancy 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 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.

I also find there is insufficient evidence that the tenant notified the landlord of any concerns regarding moisture in the unit, heating in the unit, or mould in the unit, and then provided the landlord with sufficient opportunity to properly address these concerns prior to ending the tenancy. The tenant has failed to provide sufficient evidence to show that the landlord was negligent.

The tenant had a duty to mitigate, to notify the landlord to maintain reasonable health and cleanliness throughout the rental unit. The tenant has not provided any details of a source of

the mold or that the landlord was negligent in remedying the issue. On this basis, I find that upon being notified the landlord acted reasonably and undertook reasonable steps in a timely manner to address the tenant's concerns. Albeit the tenant vacated the rental unit before repairs could be completed. The tenant has failed to provide any evidence of deficiencies in the rental property that would cause an excessive amount of moisture and a lack of proper ventilation. As a result, the tenant's claims in this application have failed and is therefore dismissed.

### Conclusion

The tenant's application is dismissed.

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: November 13, 2014

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Residential Tenancy Branch

