



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; Other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The hearing was reconvened to allow sufficient time for all evidence of the parties to be heard. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on February 19, 2014 and ended on April 19, 2014. This was a verbal agreement for a month to month tenancy. Rent for this unit was \$375.00 per month due on the first of each month.

The tenant had claimed \$1,500.00 but has revised her claim at the hearing to \$1,553.12 comprised of the following:

Item 1. A new bed	\$335.99
Item 2. A new vacuum cleaner	\$60.00
Item 3. A bottle of wine	\$16.65
Item 4. A new phone case	\$5.60
Item 5. Replacement food costs	\$19.80
Item 6. Vagisal cream and medication for yeast infection	\$22.48
Item 7. A set of queen sheets	\$39.97
Item 8. Two flash drives for evidence	\$12.00
Item 9. Lost wages for three days	\$230.63
Item 10. Reimbursement of rent	\$760.00
Item 11. Filing fee	\$50.00
<b>TOTAL</b>	<b>\$1553.12</b>

The tenant testified that she was offered the unit in late January, 2014, but as the landlord wanted someone to move in sooner the tenant was not ready to move until March or April. Later the tenant approached the landlord's daughter who said the place was still available and the tenant agreed to move into the unit on February 19, 2014. The tenant testified that when she was first accepted for the unit the landlord did not inform the tenant that there had been a flood in the unit when the washing machine

hose had come off. The tenant said she was made aware of this later and was not concerned with the condition of the unit while the carpets were being dried out with fans.

The tenant testified that she was informed that her bed base would not fit into the basement so the tenant only took her mattress. The tenant testified that her sister helped her move her mattress in and the landlord was supposed to put the mattress on blocks but this did not happen. The tenant testified that after moving in her mattress she went to stay in a shelter for a few more nights until the landlord said the place was already so the tenant moved in then.

The tenant testified that after a little while of living in the unit she noticed a bad smell. The tenant testified that the landlord's daughter informed the tenant that the unit had suffered with a black mould issue for four years; however, the tenant had not been made aware of this prior to moving in. The tenant testified that she spoke to family and friends about this issue and was advised to find somewhere else to live. The tenant testified that the rent for this unit was affordable and she could not find anything else she could afford so she continued to live there. During this time the tenant testified she started to experience symptoms such as fatigue, headaches, vomiting, memory loss, muscle weakness and a yeast infection. The tenant testified that she had never experienced anything like this before but noticed that the other female tenants living upstairs also had Vagisil creams that they used so they could also have been subjected to the same kind of contaminant.

The tenant testified that she was exhausted all the time. The first symptoms started in March and after two weeks became much worse. The tenant's eyes were also very watery, her chest was sore and she experienced heart flutters. The tenant testified that at first she ignored the symptoms and put it down to anxiety but as she became worse she started to sleep more, was forgetting things and was spitting up blood. The tenant booked a doctor's appointment but before she went to the doctors she had a bad episode at work and was sent to the walk in clinic. The clinic then had to send the tenant to the lab for blood tests. At the lab the tenant was so weak they would not let

her leave so the tenant had to call a friend who took the tenant back to her house to sleep. Later that day the tenant felt well enough to drive home.

The tenant testified that she later fell ill again on April 15 and went to see her sister who is a registered nurse. Her sister did some standard tests and took the tenant to the hospital. The hospital carried out other blood tests and hooked the tenant up to heart machine and kept the tenant overnight. The tenant's friend took the tenant home the next day and the tenant's sister took the tenant back to the doctors for the results of the blood tests. The tenant testified that her doctor mentioned that it was strange that the tenant's hemoglobin was at 128 at the lab on April 15 and that it was at 134 at the end of the day. The tenant testified that the blood tests show that there was a high level equal to 4.8 of carboxyhemoglobin in the tenant's blood. The tenant testified that these levels were already dropping as the tenant had moved out into a clean environment by this time.

The tenant testified that her doctor told the tenant to get a carbon monoxide detector and test the air in the unit. The tenant testified that they tested this machine and it beeped four times. When they took it into the unit it beeped four times twice then after 20 seconds it beeped four times again, paused for a further 20 seconds then beeped four times again. The tenant and her friend who accompanied the tenant then opened the window to let in fresh air and the machine stopped beeping. The tenant testified that the landlord had said there was a carbon monoxide detector in the basement but that the landlord had to replace it. The tenant questioned if this detector was working if the landlord had to replace it or was it just a smoke detector.

The tenant testified that she went to stay at a friend's house prior to moving her belongings from the unit and bought a bottle of wine for her friend's mother to say thank you. The tenant testified that she left her mattress, her sheets, a rhinestone phone case and vacuum at the unit as she did not want to bring any contaminants into her new environment. The tenant testified that she had to replace food that she had purchased as she had nowhere to put it and it went off and had to purchase vaginal creams and

medication to deal with her yeast infection. The tenant also requests that the landlord buy the tenant a new bed as the one the tenant purchased for \$335.99 is too lumpy for the tenant to sleep on.

The tenant testified that since moving out of the unit she still suffers from some symptoms such as paranoia and memory loss but generally feels much better. The tenant testified that her memory loss is so bad that her doctor is referring her to a neurologist.

The tenant concludes and testified that the landlord neglected to tell the tenant about black mould, the tenant did not pressurize the landlord to let her move in sooner; the landlord lied when the landlord said the laundry room sink had overflowed when in fact it was the washer hose; the landlord's son did not live in the unit at the time the landlord was renovating the bathroom.

The tenant calls her first witness SD. The witness testified that she received a call from the tenant to pick the tenant up from the lab as she was unfit to drive. When the witness arrived the tenant was 'out of it' and did not respond to being called three times by the witness. The witness testified that the tenant was coughing a lot and there was some blood. The tenant went back to the witness's home and slept for a while and then felt well enough to drive home. The witness testified that she had been to the tenant's unit shortly after the tenant had moved in and could smell a stale smell and saw water marks or stains on the carpet.

The tenant calls her second witness MJ. The witness testified that she is the tenant's sister. The tenant came to the witness home and was very sick. The witness testified that she is a registered nurse and assessed her sister's condition by listening to her heart, taking her blood pressure and listening to her lungs. When the tenant said she had been coughing up blood the witness testified that she thought it best if the tenant went to the hospital. At the hospital the tenant had blood tests done and a friend of the tenants came to stay with her. The witness testified that the next day she went to the

tenant's doctor with her and they were told by the doctor that the tenant's carboxyhemoglobin levels were higher than a chain smokers and she must be living in a place with high carbon monoxide levels. The doctor advised the tenant to buy a carbon monoxide detector and advise the tenant not to live in the unit. The witness testified that at that point she encouraged the tenant to find a new place to live. The witness testified that she had helped the tenant move her bed into the unit and saw that the carpets were pulled up and fans were going in the basement. The witness recalls the tenant telling her that there had been some water issues which had been resolved.

The landlord asks the witness MJ if the tenant was made aware at the hospital that her carboxyhemoglobins were high or was this just at the doctors. The witness responded that she was not at the hospital at that time and they were made aware at the doctors the next day. The landlord asks the witness if the hospital had not made the tenant aware of the results of her blood tests when they released the tenant. The witness responded that when the tenant was released from the hospital she had to follow up at her doctors.

The landlord disputed the tenant's claim. The landlord testified that there was no black mould in the unit and the tenant had never notified the landlord that she was experiencing health issues until the day the tenant moved out of the unit. The landlord testified that the tenant had contacted Fortis Gas who came into the unit to test for carbon monoxide. The landlord testified that all the tests were negative for carbon monoxide; however, when the landlord asked Fortis Gas for a report showing this the landlord was told it would require a Court Order to obtain one. The landlord refers to the correspondence between Fortis and the landlord relating to this.

The landlord testified that she, her family and pets have all lived in the unit for eight years and no one has ever suffered from any health issues. The landlord testified that prior to the tenant moving into the unit there had been a small flood in the laundry room. Water from this flood did reach the edges of the room the tenant was going to use. When the tenant viewed the unit the edges of the carpet were up and the landlord had

fans going to dry the area out. At no time did this water reach the area of the room where the tenant's bed was placed. The landlord refers to her photographic evidence which shows there are no stains or black mould on the tenant's mattress. The landlord testified that family members continue to live in the home and have not suffered any health issues since this flood.

The landlord testified that the basement bathroom required some work after the landlord found a small leak in the shower. The landlord renovated the bathroom with mold resistant drywall and replaced the flooring but no black mould was found. The landlord testified that the tenant had informed the landlord's niece that the tenant had been date raped one evening and had to take medication. The landlord testified that the tenant later withdrew this claim in her written statements for this hearing; however, the tenant has spoken about rashes and health issues which may be caused by the medication taken by the tenant.

The landlord calls her witness TH. The witness is now the landlord's husband but was the landlord's boyfriend at the time the tenant resided in the unit. The witness testified that he was present when the tenant came to look at the room. This was just after the water leak in the laundry room and the carpets were wet around the edges. The tenant saw this but still wanted to rent the room. The witness testified that he was also present when Fortis Gas came to test the unit for carbon monoxide. All the tests were negative and no action was taken by Fortis. If Fortis had found any carbon monoxide the landlord would have had to have remedied this immediately. The witness testified that the landlord also had a carbon monoxide detector in the unit and this never registered any carbon monoxide.

The witness testified that there were no stains on the tenant's mattress; the landlord also did her due diligence when the shower was found to have a small leak and the witness and landlord took steps to remedy this working in the basement for many hours without any health problems. The witness testified that no mould was found in the basement.

The tenant asks the witness where he said the flood happened. The witness responded and testified that they thought at first it had come from the washing machine but later found the problem was from the sink where the washing machine drains into. Rota Rooter was called and they came and snaked the line. The tenant asked the witness why the landlord's daughter told the tenant that a hose had come off the washing machine. The witness responded that the problem was with the sink not the washer. The tenant asks the witness if they had a discussion about black mould and why was there a fan in the bathroom. The witness testified that no black mould was found and the fan was placed in the bathroom to dry the area out when the landlord and witness were fixing the leak. The tenant asks if there was a smell in the basement. The witness responded that there was a smell at first due to the flood from the sink.

The tenant asks the witness if there was no black mould in the unit why did members of the landlord's family tell the tenant there had been mould for seven years and why did the landlord and witness wear masks when doing work in the bathroom. The witness responded that the landlord's family members are not mould experts and they wore masks when doing this work as it was dusty when they pulled up the old linoleum.

The landlord testified that the tenant stated she became sick quickly. The landlord asks the tenant that if she went to the hospital on April 18 and was released on April 19, if the tenant had such concerns that the unit was affecting the tenant's health why did the tenant not inform the landlord at that time so the landlord could have looked into it. The tenant responded that she remembered telling the landlord that she was not feeling well. The landlord asks the tenant if this was when the tenant was hung over. The tenant responded no. the landlord asks the tenant if the doctor at the hospital asked the tenant about her living conditions if they thought the tenant had carbon monoxide poisoning. If this was the case why was the tenant released from hospital the next day. The tenant responded that the hospital did not ask these questions and it was the tenant's doctor who mentioned carbon monoxide poisoning when the doctor had the results of the tests



The landlord asked the tenant how the tenant could explain that when Fortis Gas did their tests that they did not find any carbon monoxide in the unit. The tenant responded that the test was not done until May 08, 2014, the tenant was sick in April and the landlord must have covered it up. The tenant testified that the landlord said she would call Fortis Gas so the tenant contacted them to see if the landlord had called in. Fortis gas informed the tenant that no one had called from the landlord so that is why they went out and did tests at the unit on May 08, 2014. The tenant testified that the landlord must have also cleaned the stains off the tenant's mattress. The landlord responded and stated the reason they did not call Fortis Gas was because no one experienced any health concerns and the landlord's carbon monoxide detector did not register and issues. The Landlord disputed that they cleaned the tenant's mattress; if they had it would show signs of water.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established,

the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Having considered the evidence before me I am not satisfied the tenant has met the burden of proof to show that the unit had carbon monoxide which affected the tenant's health. The test results and information from the tenant's doctor are not definitive proof that the tenants health condition was solely caused by carbon monoxide poisoning or from black mould and not due to another source or a previous health condition. If the unit had carbon monoxide in it to the extent that caused the tenant to experience such health concerns then other residents of the unit prior to, during and after the tenant resided in the unit would also have been affected to some degree. I further find that if Fortis Gas had found any trace of carbon monoxide in the building they would have dealt with this accordingly due to the health risks. I therefore find the tenant's claim for lost wages, reimbursement of rent, the costs of Vagisal cream and medication and the wine are dismissed.

With regard to the tenant's claim that there was black mould in the unit which damaged the tenant's bed and prevented the tenant removing her mattress, queen sheets, vacuum cleaner and phone case from the unit due to contaminants from the black mould. I have applied the same test as above for damage or loss claims. I am not satisfied that the tenant has sufficient corroborating evidence to satisfy the burden of proof that there was black mould in the unit or that her bed, queen sheets, vacuum or phone case were contaminated by black mould. The landlord's photographic evidence clearly shows that there is no staining on the tenant's bed. The tenant's photographic evidence does not show black mould in the unit. Consequently, I dismiss the tenant's claim for replacement costs of these items.

With regard to the tenant's claim for loss of food items, As it was the tenant's choice to vacate the unit without proper notice or without informing the landlord of the tenant's concerns then the tenant cannot hold the landlord responsible for the loss of any food

because the tenant no longer had anywhere to store the food. Consequently, this section of the tenant's claim is dismissed.

With regard to the tenant's claim for the cost of two flash drives containing evidence for this hearing; there is no provision under the *Act* for costs incurred by a party in the preparation and presentation of evidence. This section of the tenant's claim is therefore dismissed.

As the tenant's claim has no merit I find the tenant must bear the cost of filing her application.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply

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 18, 2014

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Residential Tenancy Branch

