



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing dealt with an application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act, regulation or the tenancy agreement. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background, Evidence and Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, **the tenant must prove their claim**. 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenancy began on June 1, 1994 and ended on May 26, 2013. The tenants were obligated to pay \$1082.63 per month in rent in advance and at the outset of the tenancy the tenants paid a \$425.00 security deposit.

I address the tenant's claims and my findings around each as follows.

**First Claim** – The tenant is seeking \$20,000.00 for loss of quiet enjoyment and for the landlord and tenant obligations to repair and maintain the suite, site or property. The tenant stated that there were significant deficiencies and issues with the following items; hydro, plumbing, mold, carpet and paint.

Hydro –The tenant stated that only 3 of her 7 baseboard heaters were functional. The tenant stated that her average hydro bill was \$497.00. The tenant stated the issue arose in 2011 yet nothing was done during her tenancy.

Plumbing – The tenant stated that her kitchen sink would overflow with water from the upstairs tenants; bathroom water, kitchen water and laundry water. The tenant stated that the landlord had a plumber attend on one occasion but nothing was done during that visit. The tenant stated the plumbing issue arose in 2012 yet nothing was ever done.

Mold- The tenant stated that the mold began to develop in 1996. The tenant stated there were cracks in the foundation and to her bedroom wall; specifically behind her headboard that started to spread into the ensuite bathroom and her daughter's bedroom. The tenant stated that she has suffered significant health issues due to the mold. The tenant stated that the city of Vancouver came to inspect the property and issued a work order to remediate the problem but nothing was ever done.

Carpet – The tenant stated that the carpet was in “okay” condition when she moved in but had some paint stains on them. The tenant stated that shortly after moving in “things” began to come out of the carpet. The tenant stated that there were many black stains coming through the carpet as well as mold growth. The tenant stated that she became so angry that she withheld rent for a month and purchased carpet.

Paint – The tenant stated that the unit had never been painted while she lived there.

The landlords disputed this claim. The landlords stated that the tenant was given one month's free rent to replace the carpet as her husband worked for a carpet installation company and conducted the work. The landlords stated that the carpet was replaced in the late 1990's and haven't heard a thing about it until this application. The landlords stated that was the case for the balance of the claims made. The landlords stated that none of these issues were brought to their attention until after the landlords' had issued a two month notice to end tenancy for landlord's use of property. The landlords stated that no work order was ever issued by the city of Vancouver or anyone else. The landlords stated that the tenant was in fact the cause of these issues and is responsible for the poor condition that the unit was in. The landlords stated that the tenant had let the unit get to a level that made it uninhabitable.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

After hearing from both parties and having thoroughly reviewed all the documentation before me the tenant has failed to satisfy me of all four grounds as required, specifically; grounds #2, #3, #4. The tenant stated on numerous occasions that she had much more documentation to prove her claim but did not submit it for this hearing. Based on all of the above and on the balance of probabilities I dismiss this portion of the tenants' application.

**Second Claim** – The tenant stated she is seeking \$1500.00 for loss of personal items due to mold. The tenant did not submit an itemized list of items lost nor did she submit any receipts to indicate the cost. The tenant stated that she had purchased replacement items but did not provide those receipts.

The landlords dispute this claim. The landlords stated that the only things left behind by the tenants were of no value and mostly just rubbish. The landlords stated that they had incurred storage costs to comply with the Act but felt little if anything was of any value.

Based on the insufficient evidence submitted by the tenant I must dismiss this portion of her application.

**Third Claim** – The tenant is seeking compensation under Section 51 of the Act which is the equivalent of two months' rent at the time she moved out  $\$1082.63 \times 2 = \$2165.26$ . The tenant stated that she was given a Two Months' Notice to End Tenancy for Landlords Use of Property. The tenant stated that she was told that one of the owners was going to move in. The tenant stated that the unit remained empty until October 2014. The tenant stated that the notice was not given in good faith and that the landlords did not comply with the basis of the notice in a reasonable time frame. The tenant's brother was a witness in this hearing. The witness stated that he lives across the street and that he has not seen anyone live in the property since his sister left in May 2013.

The landlords dispute this claim. The landlord stated that the tenant failed to pay the rent for the month of May and should not be entitled to compensation as per a hearing decision issued by another Arbitrator. The landlords stated that due to the tenants' unwillingness to inform them of the issues in the unit they were "shocked" at the condition of it when they took possession. The landlords stated that the unit took extensive time and money to renovate to bring it to a level of suitability. The landlords stated that they did not take possession of the unit until June 30, 2013 as per an order of possession obtained in a separate hearing. The landlords stated that repairs were ongoing until late September 2013. The landlords stated that the delay was a result of the work needed and that it was a result of the tenants' inaction to maintain the unit in a clean manner and advise the landlords of required repairs.

The landlord stated that he has lived in the unit since October 2013. The landlord stated that he accesses the property through the back as he always parks his car in the driveway or the garage.

The tenant has not satisfied me of this claim. The witness does not have a view or vantage point of the rear of the subject property and could not comment on whether the landlord was accessing the property from the back. In addition, the landlord submitted documentation that shows his mailing address as the subject property. Based on all of the above and on the balance of probabilities I dismiss this portion of the tenants' application.

### Conclusion

The tenants' application is dismissed in its entirety.

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: January 15, 2015

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Residential Tenancy Branch

