Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAUDE, MACKAY & COMPANY LIMITED and ROD MACKAY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of a telephone conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement.

The Tenant appeared for the hearing with a Legal Advocate. The Landlord named on the Application, who was also an agent for the company named on the Application (herein referred to as the "Landlord"), also appeared for the hearing with the Co-Landlord and explained that they were both property managers for the rental unit. The parties provided affirmed oral testimony during the hearing and the Tenant's Legal Advocate only made submissions.

The Landlord confirmed receipt of the Tenant's Application and no issues were raised by the parties in relation to the service and receipt of each other's documentary evidence prior to the hearing. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. While both parties provided an extensive amount of documentary and oral evidence which I have considered, I have only documented the evidence which I relied upon to making findings in this case.

Issues to be Decided

- Has the Tenant disclosed a basis on which she is entitled to monetary compensation under the Act, regulation or tenancy agreement?

- Has the Tenant provided sufficient evidence to show the Landlord breached the Act, regulation or tenancy agreement?

Background and Evidence

The parties agreed that this tenancy for a two bedroom ground floor suite started on June 1, 2013 for a fixed term of one year that was scheduled to end on May 31, 2014. A written tenancy agreement was signed by the parties on May 15, 2013 at which point the Tenant provided the Landlord with a security deposit in the amount of $597.50. Rent under the agreement was payable by the Tenant in the amount of $1,195.00 on the first day of each month. A move in Condition Inspection Report (the "CIR") was completed by the parties on May 30, 2013.

The Tenant left the rental suite on June 24, 2013 due to health concerns and removed all of her possessions on July 15, 2013 at which point a move out CIR was completed. The Tenant's security deposit was returned by the Landlord.

The Tenant's Legal Advocate presented the following evidence and the Tenant provided oral testimony to confirm and further explain the evidence.

After moving into the rental suite on June 1, 2013, the Tenant and her husband (the "Co-Tenant") began to experience sinus and throat pain and their two children's asthma became aggravated. The Tenant submitted that this was being caused because there was no range hood to exhaust moisture from the kitchen, the bathroom fan would draw in musty air from the laundry room, and the carpet in the master bedroom and laundry room was musty smelling.

On June 24, 2013, there was heavy rainfall and this started to enter the rental suite under the back door and through the dining room wall. The Tenant was able to mop up the excess water but could do nothing about it penetrating the wall and doorway. The Tenant began to experience stinging sinus and throat pain. As a result, she contacted the Co-Landlord about the leaking water and informed her of a musty smell in the rental suite which was stated was causing her symptoms.

The Co-Landlord appeared at the rental suite shortly after with a contractor. However, the Co-Landlord disagreed that there was a strong musty smell in the rental unit. As a result, the Tenant and her family left the rental suite on the same day, June 24, 2013, and wrote an email to the Landlord which stated in part,

> *"This email is to request our rent paid and damage deposit back that has been paid for the basement suite…I know Jason mentioned that we would be out at the end of July. This obviously is conditional, based on if we can find a new place to live in such a short period of time. We are currently vacating the suite because of*

the mold smell which is causing me to be very sick. Something will need to be done regarding our accommodation arrangement's as staying with our Grandmother is only a short term solution"

The Tenant testified that they did not want to reside in the rental suite due to health concerns with the mold smell. The Tenant explained that due to financial hardship, they asked the Landlord for the return of June 2013 rent and the damage deposit so they could seek alternate accommodation. The Tenant testified the Landlord responded stating that they would not be returning any rent but they were free to look for alternative accommodation.

On June 25, 2013, the Tenant sought advice from an air quality company by telephone and explained her situation as well as contacting the local health authority about the issue. The Tenant testified that the air quality company explained to her that the symptoms were a serious health risk and they should no longer be residing in the rental suite.

The Tenant testified that this was communicated to the Landlord by e-mail on June 25, 2013. The Landlord responded by email on the same day informing the Tenant that an environmental air company had been scheduled to complete an inspection of the rental suite to take place on June 28, 2013. In the same e-mail the Landlord asked for clarification on whether the Tenant had moved out.

The Tenant pointed to an email she sent to the Landlord in response to a request for further information on her medical issues dated June 26, 2013. In the email the Tenant writes that she has been experiencing sore throat and sinus pain since moving into the rental suite and after the flooding incident of June 24, 2013 she had been experiencing a severe burning sore throat. The Tenant further explains in the email that the pain subsided when her and her family left the rental suite on June 24, 2014 but returns whenever she re-enters the rental unit.

An inspector from the city health authority visited the rental suite on June 28, 2013 to inspect it. Also in attendance were the Tenant and the Co-Landlord. The city inspector then produced a written report of his findings which was provided into written evidence. On the same day, an inspection was also completed by the environmental air company.

The Legal Advocate first pointed to the city health authority report and explained that it indicated high moisture levels in the base of the walls in the living room, kitchen, master bedroom and the children's bedroom. The city inspector noted in the report that these areas showed "evidence of some work on the wall in the area in the past". It was also

observed that where the water was reported to have entered from the outside of the house, the soil was found to be very moist and that there appeared to be no concrete foundation in this area and that water could have possibly entered the kitchen area outside of the door. The Legal Advocate pointed to the conclusion of the city inspector who wrote the “moisture issues should be rectified before the suite is re-tenanted.”

The Landlord responded in an email to them on the same day (June 28, 2013) acknowledging that there was an issue with water ingress as a result of the heavy rain event but that this did not render the suite uninhabitable.

The Tenant testified that they spoke to the city inspector by email on the same day as his report was completed and he confirmed the rental suite should not be occupied by the Tenant or any other party until the moisture issues were rectified. This was forwarded to the Landlord.

The Legal Advocate also pointed to the environmental air company’s report dated July 8, 2013 where the environmental manager conducting the inspection noted several issues with the rental suite, namely:

- high moisture readings recorded along the exterior bedroom walls,
- drywall bubbling and patching which indicated potential previous water incursion or pipe leaks
- the bottom 15 cm of drywall appeared to have been previously replaced
- cabinet below the bathroom sink showed signs of water damage potentially caused by a leaking faucet or piping
- the cement walkway at the side of the house appeared to be allowing run off water to leak against the side of the house
- a musty odor was detected in the bottom corner of the main bedroom
- the exterior soil on the south wall was wet allowing for water ingress
- overflowing gutters allowing pooling of water adjacent to the building
- missing strip of siding and a hole in the southwest corner of the exterior wall, allowing ingress of moisture
- there was wood siding instead of a concrete foundation.

On June 28, 2013 and June 29, 2013 the Tenant and her family visited their doctor who provided letters which confirmed that they had likely suffered from mold exposure and that they should not return to the rental unit until the mold is cleared. These letters were provided into written evidence by the Tenant.

The Tenant sent an e-mail to the Landlord on June 28, 2013 asking the Landlord to provide them with more suitable accommodation as they were currently living with the Tenant's mother in law. However, the Landlord refused.

The Tenant asserted that instead of taking steps to remedy the problem, the Landlord stated that he assumed the Tenant wanted to move out as soon as possible. The Tenant testified that she did not want to move out but wanted the Landlord to make the rental suite habitable and provide her with alternate accommodation in the interim time.

When the Tenant was asked when the tenancy had ended, the Tenant was unable to provide an exact date. The Tenant explained that because the Landlord had refused to provide alternate accommodation, the Tenant had no choice but to end the tenancy and find a new place to move that did comply with the Act. The Tenant did acknowledge that by July 5, 2013 it had been agreed between the parties that the Tenant had been given permission to vacate the rental suite without penalty.

In relation to the Tenant's monetary claim, the Tenant testified that since moving out of the rental suite on June 26, 2013, the Tenant and her family had to reside in her mother in law's residence which was a small space where they had to sleep on the floor. The Tenant claims for the cost of having to eat out because they were unable to store and cook food to the extent they could have in the rental unit. The Tenant also claims for June 2013 rent because the Landlord had provided her with a rental suite that was not suitable for occupation.

The Tenant testified that her and her family suffered extra expenses such as increased commuting costs as her mother in law's residence was further from work than the rental unit. The Tenant also claims for loss of childcare services which she lost because the child minder she had employed could not travel to her mother in law's address.

The Tenant testified that the stress of the situation led to her having to withdraw from classes she was undertaking and as a result she lost tuition fees for these classes which could not be refunded. The Tenant claims for both the mental and physical pain she suffered from this tenancy. The total amounts claimed by the Tenant from the Landlord are as follows:

- Rent for June 2013 in the amount of $1,195.00
- Tuition not refunded in the amount of $105.96
- Gasoline and transport costs in the amount of $132.19
- Extra food expenses in the amount of $134.82

- Moving expenses in the amount of $500.00
- Loss of amenities during June 24 to July 5, 2013 in the amount of $825.00
- Physical pain and suffering for medical issues in the amount of $496.00
- Mental pain and suffering for the distress, inconvenience and anxiety in the amount of $1,100.00

The Tenant and her Legal Advocate submitted several times during the hearing that the Landlord had failed to comply with Section 32(1) of the Act from the onset of the tenancy and therefore the Tenant was entitled to the above amounts claimed in her Application. The Tenant and her Legal Advocate submitted that the inspection reports indicate chronic and ongoing problems with moisture penetration into the suite. Therefore, it was highly unlikely that the Landlord was unaware of the ongoing moisture and potential mold problems.

The Landlord provided documents showing the sale of the property to the current owner who purchased it in 2007. The document also states that the property was built in 1905. The Landlord testified that it was likely that the property had undergone multiple renovations, repairs and additions prior to the owner's purchase of it. The Landlord testified that no major renovations, repairs or mold issues had been discovered or remedied after the owner had purchased it in 2007 and no issues of mold or moisture had been raised by previous renters.

The Landlord explained that at the start of the tenancy, they had completed a move in CIR which the Tenant signed confirming the rental suite had been received in clean condition without the presence of any mold. The Landlord testified that before the rain event of June 24, 2014, the Tenant had made numerous requests for repairs to the rental unit, such as a loose kitchen faucet, a slow draining bathroom sink, pest issues of which none were identified, request to remove a screen door, an appliance defect, and unsatisfactory carpet cleaning due to the Tenant's allegation of sharp objects in the carpets.

The Landlord explained that for all of these issues raised by the Tenant, each one was rectified and he provided invoices for these repairs in support of this. The Landlord also testified that the Tenant made a number of complaints regarding noise coming from children's footsteps in the upstairs residence.

The Landlord submitted that at no point from the start of the tenancy to June 24, 2013 was any reference made to the physical symptoms or repairs that the Tenant testified to

despite them having daily e-mail, telephone and text communication with the Tenant and her family.

The Landlord testified that during the rain event of June 24, 2013 there was no evidence to show that there was a musty smell or visible mold. The Landlord submitted that it was highly unlikely that the water penetration in the rental unit could have resulted so quickly into a musty smell and/or mold that would have caused the throat and sinus issues mentioned by the Tenant.

The Landlord submitted that in the e-mail correspondence, the Tenant had been asked a number of times to provide information of her medical issues as this was the first time, on the day of the rain event, he was learning that the Tenant had medical issues. The Landlord testified that he observed the drain outside the door to the kitchen was blocked due to the rain event and this was a clear explanation of how the water entered into the kitchen. As a result, a call was made to a plumbing company for them to look into this issue. The Landlord testified that the suite appeared dry and clear and that they would have put fans and blowers into the rental unit but there was nothing to clean, remediate or dry out because the Tenant had mopped up the water.

The Co-Landlord testified that she attended the rental suite on an emergency basis with the maintenance contractor and at no time was a musty smell detectable despite several entries in and out of the rental unit.

The Landlord testified that the emails received from the Tenant on January 24, 2013 were the first notification of the physical symptoms the Tenant was experiencing and more importantly they were giving notice to vacate the rental unit due to the water ingress within 24 hours, providing no opportunity for the issues to be investigated and remedied.

The Co-Landlord testified that she had attended the rental suite a number of times prior to the tenancy and neither her nor previous renters had complained of or were aware of any mold, musty smells, or moisture issues.

The Landlord testified that he understood the Tenant's concern which is the reason why he arranged for a professional air quality company to complete an inspection of the rental suite with a view to assess the issues and determine any remedy that was required. The Landlord submitted that he agreed that the Tenant could terminate the lease without penalty if they felt they could no longer reside in the rental suite. The Landlord referred to a text message sent to him by the Co-Tenant, also named on the tenancy agreement where he writes "[Co-Landlord] we are moving out we will be out

end of the month and as requested we will like a damage we need that to move into new place. [Tenant] will be sending you an e-mail." [Reproduced as written]

The Landlord submitted that they were not willing to reimburse the rent for June 2013 because the Tenants did not carry insurance which would have covered them for this situation. The Landlord submitted that the Tenant did not bring their alleged repair issues or medical issues with regards to suspected moisture or mold to the attention of the Landlord until June 24, 2013.

The Landlord pointed to the fact that prior to June 24, 2013 the suite had been tenanted and all service requests had been promptly responded to. The Landlord also explained that they were not willing to provide alternative accommodation because they felt that certain areas of the suite were still habitable and that the owner was willing to reduce the rent by $500.00 until the rental unit had been properly investigated to determine if there was mold present or until such time the Tenant and her family found alternative accommodation.

The Landlord testified that the medical evidence provided by the Tenant was not useful in this case because any doctor would likely agree that these symptoms were consistent with mold exposure.

The Landlord also could not provide a definite date on when the tenancy had exactly ended but testified that they had allowed the Tenant to break the tenancy and by July 5, 2013 the Tenant had informed them that they would be indeed moving out of the rental suite.

When the Landlord was questioned about the environmental company's report, the Landlord submitted that the Tenant had only alluded to part of the report that identified areas where potential water ingress had occurred. However, the Landlord submitted that at no time did the report suggest that there was a serious and dangerous mold issue that rendered the rental suite uninhabitable. The Landlord quoted certain sections of the report as follows: "No noticeable differences were noted in the general air quality upon entering the suite, although a musty odor was detected in the bottom corner of the main bedroom which may indicate potential mold growth or excess moisture in that area; "Evidence of minor water damage was observed on the kitchen floor adjacent to the door"; "The cabinet below the bathroom sink showed signs of water damage potentially caused by a leaking faucet or piping. No visible mould was observed in this area." [Reproduced as written]

The Landlord also pointed to the laboratory analysis in the same report that was conducted of the air samples collected. The Landlord explained the report stated that there was no high concentration of molds found inside the rental suite apart from one, Penicillium/Aspergillus which the environmental manager noted “slightly elevated indoor levels may be the result of potential mold growing within the wall cavities along the north and south walls where the highest moisture readings were found”. The Landlord also referred to the environmental manager’s note that low moisture levels were found in the living area. In the conclusion section of the report, it was noted, “The airborne concentrations of the Penicillium/Aspergillus mould found during this investigation are not considered to be high” [Reproduced as written]

The Landlord submitted that the evidence provided by the environmental manager was a more thorough and invasive investigation than that done by the city inspector and clearly showed that there was no serious mold issue in the rental suite that posed a danger to the Tenants which was the basis on which they vacated the rental unit. The Landlord submitted that by the time they received this report on July 8, 2013, the Tenant had already decided to move out of the rental suite and end the tenancy. Therefore, there was no opportunity given to the Landlord to remedy the issues detailed on the environmental manager’s report.

The Landlord reconfirmed their position that although a water intrusion did occur after a heavy rainfall, it did not necessarily render the suite uninhabitable but the Tenant gave notice the same day due to a suspicion and fear that the suite was affected by mold without giving any opportunity for the Landlord to identify this was the case or remediate the water ingress in order to continue with the tenancy.

The Tenant was questioned as to why she had not brought the kitchen hood, the faulty laundry room fan and the musty smelling carpets to the attention of the Landlord at the start of the tenancy or during the three week period. The Tenant sought to dampen the seriousness of the medical complaints she was experiencing, testifying her medical complaints worsened after the rain event when she eventually linked it together with the moisture issues in the rental unit. The Tenant also confirmed that the doctor who produced the medical letters did not attend the rental suite.

The Landlord and Tenant provided conflicting evidence and testimony on how the tenancy was ended. The Landlord re-iterated the Tenant e-mailed him on the day of the rain event to say that she wanted her damage deposit and June rent back and this was evidence that she wanted to end the tenancy. In addition, the Co-Tenant sent him a text message stating that they would be out of the rental suite by the end of July.

The Tenant disputed this stating that this was not evidence that they had ended the tenancy but that they were leaving the rental suite because of the mould smell which was making them sick. The Tenant also suggested that the Landlord was not permitted to accept the Co-Tenant's instructions to end the tenancy as it was only the Tenant that had continual communication with the Landlord.

Analysis

A party making an Application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities which the party making the claim must meet.

Awards for compensation are provided in Sections 7 and 67 of the Act. Accordingly, an Applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

If a party is unable to meet any of the requirements of the above test, then the Application must fail.

Section 32(1) of the Act requires a landlord to provide and maintain the rental unit in a state of repair that complies with the health, safety and housing standards required by law and make it suitable for occupation by the tenant.

Therefore, I first turn my mind to the Tenant's consistent and continual allegation that the Landlord violated Section 32(1) of the Act from the onset of the tenancy.

The Tenant claims that right from the start of the tenancy her medical symptoms were brought on by the lack of a kitchen hood, a faulty laundry fan which did not extract excess moisture from the rental unit, as well as musty carpets. However, the Tenant provided no conclusive evidence to show that these three issues were the direct cause of the Tenant's and her family's medical symptoms.

The Tenant made no mention of these three repair issues to the Landlord at the start of the tenancy when the move in CIR was completed which indicated the rental suite was

received in good and clean condition. Furthermore, the Tenant did not bring these repair issues or her medical problems to the Landlord during a period of over three weeks starting from the first day of the tenancy to the rain event of June 24, 2013.

In analyzing the medical evidence provided by the Tenant, I find that this evidence was produced after the rain event occurred and the doctor producing the letters made findings based on information relayed to him by the Tenant and her family. The doctor also did not attend the rental suite to determine if the symptoms displayed by the Tenant and her family were directly related to alleged mold in the rental unit. I also note that the doctor writes in the letters that the symptoms were consistent with mold exposure and not that mold in the rental unit had caused the Tenant's symptoms. Therefore, I have placed little evidentiary weight on these letters and I do not find them to be conclusive evidence that the Tenant was exposed to mold in the rental unit from the onset of the tenancy.

During the rain event of June 24, 2013, the Tenant acted on the same day to inform the health authority of the issues with the suite which I find was a very quick response. Therefore, it would be reasonable to conclude that if the Tenant was experiencing throat and sinus problems from the start of the tenancy and prior to the rain event, and that this was aggravating her children's asthma as she testified, then this certainly would have been cause to bring this **immediately** to the attention of the Landlord during the three week time period at the beginning of the tenancy. I do not accept the Tenant would have allowed her and her family to endure such serious medical issues without even making any mention of this to the Landlord in writing or otherwise if she truly thought it was caused by mold in the rental unit.

The Landlord explained that the Tenant had made multiple repair requests during the period of June 1 to June 24, 2013 and each time the Landlord acted diligently and immediately to make the repairs. I find that during these times, the Tenant made no mention of the three issues which she alleged were the cause of the moisture issues in her rental unit, and because the Tenant had made multiple repair requests, it was reasonable to expect that there was ample time and opportunity for the Tenant to bring such serious issues to the Landlord's attention in addition to the repairs she did report.

The Tenant and Legal Advocate asserted that the evidence suggested the Landlord was aware of the moisture and potential mold problems in the rental unit. In this respect, I turn to Section 32(1) (b) of the Act, which requires a Landlord to provide a rental suite suitable for occupation that takes into consideration the age, character and location of the rental unit.

The Landlord provided supporting evidence to show the rental property was an old building built in 1905 and was purchased by the owner in 2007. The Landlord testified that the new owner made no changes to the rental unit and the Tenant provided no supporting or corroborative evidence to suggest otherwise.

After taking into consideration the age of the property, I find it was highly likely that the property would have been built under different building regulations using materials which would have slowly deteriorated over a long period of time under the humid and wet weather that location generally experiences. I also find that older properties such as this one were built during a time when the building codes were not as extensive and strict as the current ones.

The Tenant points to the inspection reports as evidence that previous work had been done to the rental unit and claims this was evidence that the Landlord knew of the moisture issues and potential of mold growth. However, I have examined the inspection reports provided into written evidence by both parties and I find that neither report makes a conclusive finding that it was the current Landlord that had carried out previous work to the rental suite that would have led to the water ingress into the rental unit. Taking into consideration the age of the property, it is highly likely that during the many years, several changes would have been made to the rental unit and I find that this is not sufficient evidence to show that the Landlord carried out prior work or knew of the moisture issues in the rental unit.

In relation to the Tenant's allegation that there was mold in the unit which was resulting in her medical symptoms and creating a dangerous environment for her family to live in, I make the following findings. The city inspector's report makes no mention of any visible mold in the rental unit. The environmental report only indicates a small amount of visible mold found in the **upper** unit but no visible mold was found in the Tenant's rental unit. No visible mold was noted on the move in CIR and the Tenant did not alert the Landlord to any visible mold at the start or during the tenancy.

Therefore, on the balance of probabilities, this evidence suggests that given the lack of any visible mold in the Tenant's rental unit, it would not have alerted the Landlord to any ongoing mold and moisture issues prior to the rain event. Furthermore, in absence of visible mold, the Landlord would not have had any indication that further investigation and analysis of the rental unit was warranted.

Based on the foregoing, I find that there is not sufficient evidence to show that the Landlord knowingly provided the Tenant and her family a rental unit that contained

moisture and mold issues which did not comply with the housing, health and safety standards.

The next issue I must turn my mind to is the action taken by the Landlord once he had been alerted of the rain event on June 24, 2013 by the Tenant.

I find the Co-Landlord attended quickly and diligently with a maintenance contractor on the same day of the rain event to assess and deal with the Tenant's complaints. The Co-Landlord testified that there was no evidence of a musty smell and no obvious damage or dampness could be observed. I find that this is supported in part by the contractor's report which states that there was no noticeable difference in the general air quality upon entering the suite. Furthermore, I find that a property of this age would have likely exhibited some form of a musty smell. However, a musty smell is not sufficient evidence to show mold was present in the rental suite.

I accept the Landlord's evidence that by the time the environmental report had been rendered detailing the extensive findings from a more thorough investigation, the Tenant had already ended the tenancy and informed the Landlord that they were not going to return to the rental unit.

The Landlord and Tenant provided conflicting evidence and testimony on how the tenancy was ended. In analysing the communication that took place between the parties, I find that the evidence suggests that the Tenant was seeking to end the tenancy because of alleged mold issues which were unproven at the time. The Tenant's husband is a Co-Tenant named on the written tenancy agreement. Therefore, I do not accept the Tenant's submission that the Co-Tenant did not have authority to end a tenancy as co-tenants are jointly and severally responsible under a tenancy agreement.

Section 45(3) of the Act provides for the steps a tenant must follow when ending a tenancy. If a landlord fails to comply with a breach of tenancy agreement, and this was not corrected after the tenant provided the landlord with written notice of the breach and a reasonable period to correct the breach, then a tenant may end a tenancy. In this case the Tenant was bound to a fixed term tenancy of one year which had just shortly commenced.

I find the Landlord acted in a reasonable manner by allowing the Tenant to end the tenancy without any penalty. I also find the Landlord provided further remedy to the Tenant by allowing her to store all her personal property in the rental unit for two weeks free of rent during the time the Tenant searched for another rental unit to move to.

Based on the foregoing, I find that there was insufficient evidence before me to prove the Landlord provided the Tenant with a rental suite that was unfit for occupation, which would be a breach of the Act. Rather, I find the Tenant chose to leave the rental suite of her own accord based on an unproven fear that the rental suite was affected by mold. There is also no evidence to suggest the Landlord forced the Tenant to vacate the suite.

Notwithstanding the Tenant's argument that the health authority inspector stated that the rental suite should not be occupied until the moisture issues are rectified, I find the Landlord took diligent action in assigning a professional company to conduct a thorough inspection of the rental unit in order to determine the exact remediation work that was necessary for the tenancy to continue.

Under Section 7(2) of the Act, a party making a claim for compensation for a breach by the other party must do whatever is reasonable to minimize the loss.

In this case the Tenant did not have insurance which would have mitigated her loss by providing her with temporary accommodations during the remediation period. In addition, I find the Tenant failed to give the Landlord an opportunity to investigate and identify the issues and for the items on the inspection reports to be remedied before choosing to end the tenancy. The Tenant decided that it was in her best interest to move out of the rental suite and incurred the resulting losses claimed without mitigating these losses. Therefore, as the Tenant has failed to meet the four part test outlined above, the Tenant's claim must fail.

Conclusion

The Tenant has provided insufficient evidence to meet the burden of proof for the test for loss. Therefore, the Tenant's Application is dismissed without leave to re-apply.

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: February 26, 2015

Residential Tenancy Branch