



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Ucluelet First Nation  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNSD, MNR, FF

This hearing dealt with cross applications. The landlord has filed an application seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of their security deposit. 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. The parties confirmed that they exchanged and submitted evidence and a copy of their application for dispute resolution. I am satisfied that said documents have been exchanged in accordance with the Act and the Rules of Procedure.

### Issue to be Decided

Is either party entitled to a monetary order as claimed?

### Background, Evidence and Analysis

The landlord's undisputed testimony is as follows. The tenancy began on March 10, 2014 and was to end on March 10, 2015 however the tenants vacated the unit on September 30, 2014. Condition inspection reports were not conducted at move in or move out. The tenants were obligated to pay \$1300.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$650.00 security deposit.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties 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.

Firstly, I address the landlord's claims and my findings around each as follows:

The landlord stated that the tenants signed a one year fixed term agreement but “broke the lease early”. The landlord is seeking \$1300.00 per month x 5 month’s loss of revenue. The landlord stated he had attempted to rent the unit but was unsuccessful until April 1, 2015. The landlord stated that he advertised on the internet, the local trading post paper and notified the agents in his office as well as other companies of his vacancies.

The tenants dispute this claim. The tenants stated that the reason they moved out was due to the unit be infested with “black toxic mold”. The tenants stated that they thoroughly enjoyed the home and would have stayed the term had it not been for the mold. The tenants stated that they informed the landlord on July 14, 2014. The tenants stated that the landlord provided them a brochure on how to deal with humidity. The tenants stated that they were shocked and appalled at the lack of consideration or sympathy that the landlord showed. The tenants stated that their health began to decline since moving into the unit and attended to medical practitioners on numerous occasions. The tenant stated that the landlord misrepresented the property as a safe and clean unit and in addition; failed to address the urgent matter of mold in a reasonable and timely fashion.

The tenants provided photos, digital evidence and documentary evidence to support their position. The tenants gave the landlord notice on August 24, 2014 that they would be moving out by September 30, 2014.

Section 45 of the Act addresses the issue before me as follows:

#### **Tenant's notice**

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I accept the tenants' evidence that the home had become uninhabitable due to mold. I also accept that there was no willfulness by the landlord to mislead them about the property. However, I do find that the landlord did not respond in a manner that was timely and reasonable to address the mold issue and I therefore find that the tenancy ended on September 30, 2014.

The landlords' application is dismissed. As the landlords application is solely for the loss of revenue, which has been dismissed; the tenants are therefore entitled to the return of their security deposit of \$650.00, which is what the tenants filed an application for.

#### Conclusion

The tenant has established a claim for \$650.00. I grant the tenants an order under section 67 for the balance due of \$650.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords' 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: May 25, 2015

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Residential Tenancy Branch

