



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THAMES INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNR MND MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 7, 44, 45 and 67 for rental loss due to the breach of a fixed term lease and for other damages;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order for a rebate of 50% of the rent from November 2014 to January 2015 and a refund of all rent paid for February 2015 pursuant to sections 32, 33 and 65 as compensation for neglect of the landlord to repair for mould in the unit;
- b) To refund the security deposit;
- c) To reimburse the tenant for moving expenses and other expenses; and
- d) To recover the filing fee for this application.

### **SERVICE:**

Both parties attended and both parties agreed they received each other's Application for Dispute Resolution by registered mail. I find that they were legally served with the documents according to sections 88 and 89 of the Act. However, I find the tenant was served with the documents late; the landlord said their forwarding address provided by them was incorrect and the Application had to be re-sent.

### **Issue(s) to be Decided:**

The tenant had a fixed term lease expiring August 31, 2015. The tenant vacated before the end of the fixed term. Is the landlord now entitled to a Monetary Order for rental loss and filing fee?

Has the tenant proved on the balance of probabilities that they are entitled to refunds of rent and the security deposit and other expenses as claimed?

**Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in September 1, 2014 on a fixed term lease expiring on August 31, 2015, a security deposit of \$650 and key deposits of \$170 were paid and rent was \$1300 a month. The home is described as having three levels, with two bedrooms and two bathrooms and the living areas on the top floor. It is undisputed that the tenant gave Notice to End their tenancy on January 12, 2015, vacated with most of their belongings on January 27, 2015 and removed the rest of their belongings on or about February 3, 2015 when a final inspection was done. The tenant paid rent for February 2015.

The landlord stated they were able to re-rent for March 25, 2015 and claims as follows:

- i. \$787.50 rental fee to professional to re-rent
- ii. \$650 for half of the rent for March 2015.
- iii. \$97.37 for personal items sent for cleaning.

The tenant states that in conversations with the property manager, he promised them that they could break the lease on two weeks notice and the landlord would reimburse moving costs, overpaid rent and refund 30% of their rent from November 2014 until they vacated. The landlord denies making such a blanket promise; he said that he always made it clear that the landlord would suffer rental loss but would negotiate for breaking the lease, moving costs and a rebate of rent of 30%. Although they met, the parties never reached a settlement agreement; a CD was submitted as evidence but it was late. The landlord objected to the admission of the CD as evidence as it was so late they could not respond and the tenant made recordings of conversations without their knowledge; they allege these conversations might have been edited by the tenant to put forward their viewpoint.

The tenant moved into the unit on September 1, 2014 and on November 16, they discovered mould in one of the bedrooms which they had been using as storage. They contacted the landlord and he had a professional attend on November 17, 2014 to view and repair any damage. The professional contractor cleaned and treated the ceiling and walls with chemicals and said there was no longer any mould. He said in his letter that in his experience, mould like this often appears if there is high humidity in the room while contents are placed against a wall preventing air circulation. He set up a blower and dehumidifier in the affected bedroom. On January 7, 2015, he returned to check for mould. He said there was no longer furniture or contents against the walls and there

was no new mould but he chose to do another cleaning and treating. He said at that time the tenants no longer wanted the dehumidifier as it used too much electricity. On February 12, 2015, the tenants had vacated so he returned and opened up the walls and ceiling in the affected unit and the laminate floor around the walls. He confirms that there was no new mould in ceiling, walls or floor. The tenant claims as follows:

- i. \$1500: Pillow top mattress
- ii. \$392 for 2 Bedframes
- iii. \$56 bed slats and \$80 shipping for bed frame
- iv. \$168: mattress cover for king bed.
- v. \$336 : bed sheet set
- vi. \$180: moving expense
- vii. \$60 waste disposal fee
- viii. \$1300 refund of February rent
- ix. \$1950: 50% of rent Nov. –Jan. (3x\$650)
- x. \$100: Electrical bill
- xi. \$20 : cheque cancellation fee
- xii. \$9 (\$3x3): last minute bank withdrawal
- xiii. \$161.25: employee fee for shift cover: female tenant said she had to meet the landlord, cleaning persons etc. so she needed an employee to cover.
- xiv. \$82: mail forwarding
- xv. \$30: mileage and gas for run around and meet contractors and go to bank.
- xvi. ? medical costs of an unknown amount for both tenants.

The landlord said there was no proof of costs of this furniture, no proof it had been disposed of and the CD recording of alleged conversations may have only one side of the conversation which was part of a negotiation. Furthermore, they said it should be disregarded as it was received late and they had not time or expertise to play it. However, the female property manager responded to the written account of its contents. When asked why they would dispose of the bedframes, the female tenant said they were 'bubbling' and some professionals that she is dealing with regarding a flood at their workplace told her that items are structurally unsound if exposed to water. She said the stains and bubbling indicate they were exposed to water.

The landlord provided evidence of invoices showing that they had all bedding cleaned and also some included personal items of the tenant. In emails from the tenant there is no mention of personal items being affected but the tenant said these items were in a closet in the room and mould is airborne so they would be affected by the mould. They said they moved any items that were not affected into the other rooms which made the unit cramped and cluttered. The landlord provided a statement from their contractor verifying dates of visit and treatment from November 17, 2015 to February 12, 2015.

New tenants moved into the unit on March 15, 2015 and no further work was done and no mould was observed according to the landlord.

The tenants provided a DVD late with an account of its contents. Most of it shows pictures of the mould. The audio portion states it confirms that moving out early is authorized, that two weeks notice will be ok and 30% compensation is offered but then the manager blames them for the mould growth, goes back on his offer of 30% compensation and authorization of 15 day notice and says that the situation needs to be over and done with. They say in the recording that the property manager threatens them to take legal steps if the release form is not signed and says they are texting and emailing him to the point of frustration. In evidence is a copy of their February rent cheque, a move-out inspection stating damages are "to be discussed", their lease agreement, a move-in report, photographs and statements of the tenants.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

Monetary Orders:

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.

The onus is on the landlord to prove on a balance of probabilities that the tenant owes half a month's rent from March 1, 2015 to March 15, 2015 plus fees to re-rent and cleaning costs of personal items. I find there was a fixed term lease which did not expire until August 2015. According to section 45 of the *Act*, a notice to end tenancy given by the tenant does not take effect until the end of the fixed term (s.45 (2) (b)). Although the tenant relies on conversations with the property manager, I find verbal conversations do not override the provisions of the *Act*. Furthermore, I find based on all the evidence provided that these conversations were in the nature of negotiations in an endeavour to settle the matter between the parties. Since the DVD was submitted late and recorded without knowledge of the other party, I give limited consideration and weight to it; however, even in it, the conversation with the property manager seems to

emphasize the problem with rental loss and obtaining a negotiated settlement. In an effort to settle, he offers some options such as 30% compensation and short notice. However, the tenants chose not to settle on those terms and to take it to arbitration instead. I find conversations or negotiations without written settlement do not override the written provisions in the tenancy agreement or the Act so I find the tenant responsible for rent to the end of the fixed term or until the landlord chooses to treat the agreement as at an end. As a result, I find the tenants not entitled to a refund of rent for February 2015.

Based on the fixed term lease, I find the tenants liable for rent until March 15, 2015 (\$650) when the landlord mitigated their losses by re-renting through an agent. The breach of the lease by the tenants also caused the landlord to incur the expense of the rental agent fee of \$787.50 (invoice included as evidence) so I find the landlord entitled to recover this expense. In the matter of the claim for extra items included in cleaning, I find the landlord was not clear on specific items to be covered. I also find it likely that the few clothing items stored in the affected bedroom did have some mould smell, even if not actual mould on them, as the photographs show an extensive spread of the mould. Therefore, I find the landlord not entitled to recover \$99.37 for the cleaning costs of the stored personal items.

The tenant in their claim must likewise prove on a balance of probabilities that the landlord through act or neglect violated their tenancy agreement or the Act and that this violation caused them to suffer loss. I find section 32 of the Act requires a landlord to provide and maintain the property in a state of repair that complies with health, safety and housing standards required by law and makes it suitable for occupation by a tenant. I find the weight of the evidence is that this landlord did not by act or neglect violate their duties under the Act. I find the move-in report signed by the tenant noted lots of minor damages but no water or leaks were noted in the second bedroom. When the tenants chose to look in this second bedroom which they used for storage two and a half months later, they discovered on November 16, 2014 a spread of mould on the floor and wall. I find the landlord fulfilled his obligation as set out in Residential Tenancy Guideline 5 to minimize the loss by having a professional contractor attend the premises the next day. I accept the contractor's reports that he cleaned up the mould and left a dehumidifier and fan there to circulate the air. I find the landlord also offered to remove and clean the tenants' bedding which had mould on it and this was done in November according to the receipts provided as evidence. I find the landlord's evidence credible that this got rid of any mould as the contractor confirmed this on January 7, 2015 on a follow-up and again in March when parts of walls were removed to ensure there was no mould.

However, as the parties agreed, the tenants did lose use of a bedroom for a time and had some cluttered living conditions for about 3 months. Although the landlord was not neglectful, this loss devalued the tenancy. Based on the description of this unit as having large living areas, two large decks, two bedrooms and baths, I find it reasonable to allow the tenant 20% devaluation of the tenancy for three months. Rent was \$1300 so 20% devaluation is \$260 a month or \$780 for the approximately three month's loss of use and resulting clutter of other areas. In respect to the claim for loss of goods, \$1500: Pillow top mattress, \$392 for 2Bedframes, \$56 bed slats and \$80 shipping for bed frame, \$168: mattress cover for king bed, and \$336: bed sheet set, I find insufficient evidence to support their claim. They provided no invoices of original cost, no evidence of actual disposal and insufficient evidence that this was caused by the landlord's act or neglect. As noted above, Policy Guideline 5 imposes a duty to minimize loss. I find that the tenants did not minimize loss if they did discard all this bedding, especially after having it cleaned at the expense of the landlord. Therefore, I dismiss this portion of their claim and the claim for the waste disposal fee. I also find insufficient evidence that the act or neglect of the landlord caused them to move. I find the weight of the evidence is that the landlord addressed the issue promptly and a contractor said he cleaned it up the next day after the complaint. I find the weight of the evidence that they did not have to move as the mould was gone but they chose to move and not finalize any settlement negotiations with the landlord. Therefore I dismiss their claim for moving expenses, mail forwarding and running around to meet contractors (for which there is insufficient evidence).

I also dismiss their claim for \$100 for an electrical bill as there is insufficient evidence that the landlord through act or neglect caused the mould; the evidence indicates that if the tenants had acted promptly to inspect that bedroom, the damage could have been avoided or minimized. I also find insufficient evidence that their electric bill was increased and in what amount. As I find the tenants were responsible for rent to the end of the fixed term, I find they are not entitled to recover the \$20 cheque cancellation fee and last minute bank withdrawals that are associated with rent for which they were liable. I find the landlord may according to section 29 of the Act enter the unit on 24 hour notice; I find insufficient evidence that the tenant had to miss a shift in work to meet cleaners as the landlord could have done this. Also, the landlord in emails indicated flexibility in meeting the tenant so this could have been done outside of work hours. I dismiss this portion of their claim.

The tenants claimed medical costs of an unknown amount. They said they could not afford a doctor's investigation to prove their illness was the result of the mould. I find insufficient evidence that any of their rashes or illness was the result of an act or neglect of the landlord. I find the landlord's evidence more credible that illness if suffered may

have been caused by a flood in their workplace where mould control chemicals were used. Although the tenant minimized the situation, I find as a fact that they had a flood at their workplace for they admitted it and there was some mould control used. I dismiss this portion of their claim as there is insufficient evidence provided that their illness is a result of the situation in their home.

The landlord did not claim for cleaning or damages.

**Conclusion:**

I find the tenant is entitled to the balance in the monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application. I find the tenant is entitled to recover half their filing fee of \$100 due to their limited success.

Calculation of Monetary Award:

Landlord: half month rent March 1-15	650.00
Rental fee to realtor	787.50
Filing fee	50.00
Less security and key deposit	-820.00
Balance owed to Landlord	667.50
Less devalued tenancy award	- 780.00
Less partial filing fee to tenant	- 50.00
Balance is Monetary Award to Tenant	- 162.50

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 06, 2015

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Residential Tenancy Branch

