



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, LRE, MNDC, MNSD, O, OLC, PSF, RP, RR, SS, FF

### Introduction

This hearing dealt with an application by the tenant for multiple orders. Both parties participated in the conference call hearing.

At the hearing, the tenant advised that she had vacated the rental unit. As all claims save the monetary claim are rendered moot by the end of the tenancy, the hearing proceeded to address solely the monetary claim.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

Most of the facts are not in dispute. The tenancy began on December 12, 2014 and rent was set at \$1,175.00 per month. The tenant vacated the rental unit on May 16, 2015. When the tenant moved into the rental unit, there were areas of the unit which had not been adequately cleaned by the previous occupant and the tenant spent time cleaning to bring the unit to a reasonable standard of cleanliness. The parties discussed the issue and the landlord told the tenant that if the cleaning issues were “really bad”, she should keep a record of her efforts and formally request compensation. The tenant did not keep a record of the time she spent cleaning the unit and did not request compensation from the landlord prior to the time she filed her application for dispute resolution.

The tenant undertook repainting the rental unit but the parties did not agree that she would be compensated for her efforts. The tenant discovered an area of the bathroom in which the drywall was weak and she filled and repainted the area, hoping that this would be effective to resolve the problem. At the beginning of January, she found that the area was moist and reported the issue to the landlord. In mid-January, either the

landlord or the strata council arranged for a serviceperson to inspect the area at which time they discovered water ingress into the wall from the unit above. The tenant provided photographs of the affected area which shows that there was also mold behind the drywall. The hole in the wall remained open for 7-8 days, after which it was patched but not fully repaired and repainted. The patchwork area remained in place for several months. Throughout this period, the tenant and landlord exchanged emails in which the tenant inquired about progress into repairing the affected area and the landlord advised the tenant that the upper tenants were responsible for repairing the area but had to first locate the source of the water ingress. In an email in late April, the tenant expressed concern about health effects resulting from mold exposure.

The tenant testified that she also discovered mold behind the countertop in the bathroom, which caused her further alarm. The landlord testified that because the repair of the leak and resultant damage was the responsibility of the occupants of the unit directly above the rental unit, he was unable to act to effect repairs more quickly.

The tenant withheld her rent in the month of May and the landlord served her with a 10 day notice to end tenancy for unpaid rent. The tenant did not pay the rental arrears and vacated the unit pursuant to the notice to end tenancy.

The tenant seeks compensation for the work performed cleaning the unit at the beginning of the tenancy, the work performed repainting the unit and her loss of quiet enjoyment as a result of ongoing repairs to the bathroom as well as recovery of the \$50.00 filing fee paid to bring her application.

### Analysis

The tenant bears the burden of proving her claim on the balance of probabilities. The parties did not have an agreement that the tenant would be compensated for repainting the unit and absent such an agreement, I find that the tenant undertook this work voluntarily and is not entitled to compensation for her labour.

The tenant advised the landlord of the moisture problem in the bathroom in January and it was not until after the landlord acted to evict the tenant for illegally withholding her rent that the issue was repaired. I accept that the landlord had little control over when the occupants of the upper unit chose to complete repairs. However, the tenant was paying rent for a unit in which she was entitled to have quiet enjoyment, which includes freedom from unreasonable disturbance, and I find that 4 months to locate the source of the water ingress and perform repairs is unreasonably long. I find that the tenant was disturbed beyond what may be characterized as reasonable, both from the perspective that repairpersons had to attend the unit multiple times and from the perspective that

the bathroom was not cosmetically pleasing for an extended period of time. I find insufficient evidence to show that the tenant's health was affected by the mold as there are no medical reports to show a connection between any health concerns and her exposure to mold, nor are there laboratory test results showing that the type of mold to which she was exposed are known to cause the symptoms of which she complained.

I find that the disturbance to the tenant was significant enough to attract compensation and I find that an award of \$58.75 per month, which represents 5% of the rent paid, will adequately compensate the tenant. I award the tenant \$235.00 which represents 4 months of disturbance. As the tenant has been just partially successful in her claim, recovering just 10% of what was claimed, I find she should recover just half of the filing fee paid to bring her claim and I award her \$25.00 for a total award of \$260.00. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I note that at the hearing, the tenant provided her forwarding address to the Residential Tenancy Branch and to the landlord. At the hearing, I advised the landlord that he has 15 days from the date of the hearing, until July 8, 2015, to either return the tenant's security deposit or file a claim against it.

### Conclusion

The tenant is granted a monetary order for \$260.00.

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: June 23, 2015

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Residential Tenancy Branch

