



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on February 26, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on December 1, 2014 after the parties entered into a one year fixed term tenancy agreement. The tenancy agreement provided that the tenant(s) would pay rent of \$1500 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$750 at the start of the tenancy.

The tenants testified as follows:

- They noticed mould in the bedroom and a soft spot in the bathroom after taking possession and they advised the landlord of the problem on many occasions. There is an e-mail communicating the problem to the landlord.
- The tenants testified the landlord ignored their requests for that the mould problem be repaired.
- The landlord initially told the tenants the problem was superficial. However, the mould re-appeared in the bathroom after the tenants cleaned it.
- The tenants also found mould around many of the windows.

On February 4, 2015 the tenants advised the landlord they were looking for a place and that they hoped to be out by February 15, 2015. The e-mail records the agreement with the landlord that the landlord was to return the rent for February and the security deposit.

It is unclear exactly when the tenants vacated. The tenants testified the tenancy ended on February 1, 2015. The landlord testified it was February 15, 2015. The most likely scenario after reviewing the emails was that the tenants vacated the rental unit on or about February 8 or 9.

The landlord has returned the rent for February and the security deposit. I determined the landlord has agreed to end the fixed term tenancy agreement.

### Analysis

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32 of the Residential Tenancy Act includes the following:

**Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

the party claiming the damage or loss, in this case the tenants, bears the burden of proof and the evidence furnished by the Applicant tenants must satisfy each component of the test below:

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the Actual amount required to compensate for loss or to rectify the damage
- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

Policy Guideline #16 includes the following:

**Claims for Breach of Contract**

Prior to making a claim for breach of the tenancy agreement, the Legislation permits either the landlord or the tenant to apply for dispute resolution for an order that the other party comply with the tenancy agreement or the Act<sup>5</sup> that governs the agreement. The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that the loss resulted from the breach. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. Losses that are very unexpected are normally not recoverable. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. **A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord** (my emphasis).

Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

### Analysis

The tenants sought reimbursement of the rent for December and January. However, there is no legal basis for the return of the rent. The tenants received some value for the time they were in the rental unit. The tenants presented very little evidence as to how their enjoyment of the rental property was reduced. However, the landlord acknowledged the tenants used their labour to paint the rental property and improve it. The Tenants testified they lived in their truck for two weeks before they were to take possession of their new premises. Further, they put their goods in storage at a cost of \$350. The tenants failed to receipts to support this claim. Further, the tenants were reimbursed the rent for February.

In the circumstances I determined the tenants are entitled to compensation in the sum of \$500. They failed to produce evidence to support their claim for an award higher than this.

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$500 plus the sum of \$50 in respect of the filing fee a total of \$550.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 10, 2015

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Residential Tenancy Branch

