



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the tenants for a monetary order and an order for the return of double their security deposit. The tenant NL appeared at the hearing to represent both himself and his wife. In this decision where I refer to the tenants in the singular form, it is NL to whom I refer.

The tenant gave evidence that he served the landlord with his application for dispute resolution and notice of hearing via registered mail sent on February 2, 2015. The Canada Post tracking service shows that the registered letter was refused by the recipient on February 6. The landlord cannot avoid service by refusing to accept registered mail. I found that the landlord was served in accordance with the Act and the hearing proceeded in his absence.

### Issue to be Decided

Are the tenants entitled to a monetary order as claimed?  
Are the tenants entitled to double their security deposit?

### Background and Evidence

The tenants' undisputed evidence is as follows. The tenancy began in May 2014 at which time the tenants paid a \$497.50 security deposit. In early December, the tenants detected an unusual odour and discovered that clothing which had been stored was covered with mildew, there was mold on a mattress and on a number of walls. The tenants pulled up part of the carpet and discovered that the floor beneath the carpet was damp. The tenants summoned the landlord who viewed the unit and advised the tenants that the mold had developed because the tenants did not open windows to ventilate the unit and did not adequately clean. The tenant testified that he opened the windows daily.

The tenants were not satisfied with the landlord's response and spoke with a company that had previously managed the unit. The company told the tenants that they believed the same issue had arisen before and the landlord had changed the windows in the unit to address the issue.

The tenants spoke with the landlord at some point in December at which time the landlord said that if they could not live in the home, they should clean it and leave peacefully. On December 30, the tenants sent the landlord a letter advising that they could no longer live in the unit. On January 2, the parties again spoke at which time the landlord demanded that the tenants pay rent for the month of January. The parties entered into a written mutual agreement to end the tenancy which set the end of the tenancy at January 25. The tenants paid \$1,000.00 in rent for January but vacated the rental unit on January 7. The parties completed a condition inspection of the unit on January 7 and the tenants wrote their forwarding address on the condition inspection report.

The tenants seek to recover the rent paid for January, double their security deposit, the cost of dry cleaning clothing affected by mildew, the cost of staying in a hotel for 2 days at the beginning of January and the \$50.00 filing fee paid to bring their application.

### Analysis

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return the deposit in full to the tenant or file an application for dispute resolution to make a claim against the deposit. Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security deposit.

I find that the tenants paid a \$497.50 security deposit and vacated the rental unit on January 7, 2015 and that the landlord received the forwarding address in writing on the same date. I find that the landlord failed to comply with section 38(1) and is now liable to pay the tenants double the security deposit. I therefore award the tenants \$975.00.

In order to succeed with the remainder of their claim, the tenants must prove that the landlord breached the Act or tenancy agreement, that they suffered a compensable loss as a result and that they made reasonable efforts to minimize their losses.

I accept that the rental unit had a significant mold problem, but I am not persuaded that the problem was caused by the landlord. The tenants' photographs show that there was significant mold growth which would have taken some time to develop. The

tenants bore an obligation to keep the rental unit in reasonably clean condition and had they met that obligation, I find it likely that they would have discovered the mold growth before it caused the damage to their furniture or grew to the extent shown in the photographs. While a lack of venting in the rental unit may have contributed to the tenants' losses, I am not persuaded that it is directly responsible for the losses the tenants seek to recover.

In order to end a month-to-month tenancy with less than one full month's notice, the Act requires tenants to give the landlord written notification that they believe he has breached a material term of the tenancy and to also provide the landlord with a reasonable opportunity to repair the breach. Instead, the tenants advised the landlord that they would be vacating the unit immediately because they believed his advice to move meant they could move without following the notice provisions of the Act. I find insufficient evidence to support the tenants' interpretation of the landlord's comments. I find that the landlord was justified in demanding that the tenants pay rent for January.

With the exception of the landlord's failure to deal with the security deposit as is outlined above, I find that the tenants have failed to prove that the landlord breached the Act or the tenancy agreement and therefore their claim for compensation must fail.

As the tenants were successful in their claim for double their security deposit, I find they should also recover the filing fee paid to bring their application and I award them \$50.00 for a total entitlement of \$1,025.00. I grant the tenants a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The tenants are awarded \$1,025.00.

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: August 12, 2015

---

Residential Tenancy Branch

