



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, ERP, RP, FF

### 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 sufficiently served on the landlord by mailing, by registered mail to where the landlord carries on business. 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 an order for repairs?
- b. Whether the tenant is entitled to a monetary order?
- c. Whether the tenant is entitled to a reduction of rent for repairs, services, or facilities agreed upon but not provided?

### Background and Evidence

The tenant has lived in a rental unit in the rental property since May 1994. The present tenancy agreement provides that the tenant will pay rent of \$375 per month in advance on the first day of each month. The tenant has not paid a security deposit.

### Analysis

The tenant seeks a repair order and monetary compensation for the excessive amount of mould that exists in his rental unit. Section 32(1) of the Residential Tenancy Act provides as follows:

#### **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.

I determined the landlord has breached his obligations under section 32(1) of the Residential Tenancy Act based on the following evidence:

- The City of Vancouver Inspection department has determined that the walls/ceiling are saturated with visible mould and ordered the landlord to replace the drywall for the walls and ceiling in an order dated June 29, 2015..
- I accept the testimony of the tenant that there is an excessive amount of mould on the walls and ceiling.
- Landlord's Witness #1 testified he is a contractor and where the drywall is saturated by mould it must be replaced.

I do not accept the submission of the landlord that the tenant caused the excessive build-up of mould. The landlord failed to present sufficient evidence that would establish the tenant caused the mould.

The Residential Tenancy Act imposes an obligation on an innocent party to mitigate their loss. I determined that in many cases the claims of the tenant would not fulfil this obligation. In particular:

- I dismissed the tenant's claim that the landlord pay for the tenant's stay at a nearby hotel. I determined that while it is the obligation of the landlord to find

comparable accommodation or pay for the hotel room the landlord should not be burdened with the expense of paying for a hotel room if the tenant can be moved to is a comparable secure room in the rental property

- Similarly I dismissed the tenant's claim for the cost of a storage facility for one month. The tenant's belongings must be moved out of the rental unit. However, the landlord should not be burdened with such a cost if the tenant's belongings can be moved to a secure comparable room.

#### Application for a Repair Order

As a result of the above determination I made the following orders:

- a. I ordered that the landlord hire a licenced contractor to replace the walls and ceiling in the rental unit and fix the cause of the mould build-up.
- b. The landlord shall give the tenant 7 days written notice prior to the contractor commencing work on the repairs. .
- c. The landlord shall provide alternative accommodation for the tenant for the period of time the repairs are being made either in the form of a comparable secure room in the rental property or paying the tenant the cost of hotel accommodation elsewhere.
- d. The landlord shall assist the moving of the tenant's belonging to a secure comparable room or to a storage facility.

I further order that the repairs by completed by October 23, 2015.

#### Monetary Order:

The tenant seeks a monetary order in the sum of \$2351. An arbitrator has the jurisdiction to award compensatory damages. The arbitrator does not have the jurisdiction to put the tenant in a better position. With regard to each of the tenant's claims:

- a. I dismissed the tenant's claim of \$11.34 for the cost of registered mail postage. This claim is a cost of litigation. The only jurisdiction an arbitrator has relating to costs is the cost of the filing fee.
- b. I dismissed the tenant's claim of \$334 for the cost of Rubbermaid bins. The tenant's belongings are presently stored in cardboard boxes. The cost of purchasing bins puts the tenant in a better position. It is not compensable damages and not a foreseeable loss.
- c. I dismissed the tenant's claim of \$200 for the cost of a storage locker with liberty to re-apply. If the landlord fails to provide the tenant with a comparable secure room where his goods can be moved to the tenant has liberty to re-apply.
- d. I dismissed the claim of \$352 for the estimated cost of staying in the Patricia Hotel for 7 nights with liberty to re-apply. The tenant must vacate the rental unit for the work to be completed. The witness for the landlord estimated this might take 4 to 5 days. The landlord should be given the opportunity to provide a comparable secure room in the rental property rather than being required to pay the cost of a hotel room elsewhere. If the landlord fails to provide the tenant with a secure comparable room the tenant has liberty to re-apply.
- e. The tenant testified he threw out his golf bag because of the mould. The golf bag was old. The tenant produced evidence that a new golf bag would cost \$56. I determined the tenant is entitled to \$30 for this claim after depreciation is considered.
- f. The tenant testified he threw out his mattress because of the mould. I determined the tenant is entitled to \$110.88 which is a reasonable sum for the replacement of a mattress with depreciation considered.
- g. I determined the tenant is entitled to \$11.06 for pillow and \$54.85 for bedding set which are reasonable sums for items thrown because of the mould.

- h. The tenant testified he had to throw out his tent and is claiming \$218.40. This sum is based on the cost of a new tent. After considering depreciation I determine the tenant is entitled to \$125 of this claim.
- i. I determined the tenant is entitled to \$78.10 for the cost of a bed frame that was thrown because of the mould.
- j. I determined the tenant is entitled to \$50.36 for the cost of a bookcase that had to be thrown because of the mould.
- k. The tenant has made a claim for a number of other items. However, there is no evidence the items were thrown. The tenant testified he wanted a period to time to determine which items had to be disposed of. I dismissed the tenant's claims for loss of the following items as these claims are premature. It may be the tenant does not dispose of these items. The tenant has liberty to re-apply.
  - 2 pairs of jeans in the sum of \$35.77
  - Sneakers in the sum of \$22.32
  - Back pack in the sum of \$77.78
  - Two ball caps in the sum of \$40.32
  - Socks in the sum of \$20.03
  - Two sweatshirts in the sum of \$58.10
  - Towel set in the sum of \$36.93
  - 6 T-Shirts in the sum of \$60.27
  - 5 underwear in the sum of \$39.03
  - One light jacket in the sum of \$43.76
  - One heavy jacket in the sum of \$49.28.

Application to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided:

I am satisfied that the mould has created a serious situation for the tenant and has resulted in the reduction in the value of the rental unit. At the end of June the landlord was ordered by the City of Vancouver to replace the walls and ceilings. The landlord

has failed to take steps to start this work. The rent is \$375 per month. In the circumstances I determined the tenant is entitled to compensation in the sum of \$100 per month for the months of July, August and September for a total of \$300 for the reduced value of the tenancy.

Conclusion

**I ordered the landlord(s) to pay to the tenant the sum of \$760.25.**

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: September 15, 2015

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Residential Tenancy Branch

