



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW DECISION

### Dispute Codes:

Landlord's application (made October 8, 2014): MNDC, MND, MNSD, FF

Tenants' application (made April 22, 2015): MNSD, MNDC; FF

### Introduction

A Decision on these matters was issued on July 23, 2015. The Tenants filed an Application for Review Consideration was granted on August 18, 2015. The Reviewing Arbitrator suspended the Decision and Order issued on July 23, 2015, pending the outcome of this Review Hearing. The Reviewing Arbitrator ordered that the Hearing be **reconvened** before me, the Arbitrator who heard the matters and made the initial Decision on July 23, 2015. The Decision on the Tenants' Application for Review Consideration should be referred to in conjunction with this Decision.

The Hearing was initially convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking a monetary award for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants filed an Application for Dispute Resolution seeking return of the security deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The matter was convened on May 13, 2015. The Landlord gave her submissions with respect to her Application for Dispute Resolution. The Tenant AH provided her submissions with respect to the Landlord's application and also some testimony with respect to her Application for Dispute Resolution. The time allotted for the Hearing ran out before the Tenant's Application for Dispute Resolution could be fully heard.

At the reconvened Hearing on July 9, 2015, the Tenants did not sign into the teleconference and therefore I found that the Tenants had abandoned their application, and I dismissed the Tenants' application without leave to re-apply. I recorded only the relevant testimony with respect to the Landlord's Application in the July 23, 2015, Decision.

### **Preliminary Matter**

At the outset of the Review Hearing, I advised the parties that I would be hearing testimony with respect to the Tenants' Application for Dispute Resolution only. The background and evidence with respect to the Landlord's Application were fully completed on May 13, 2015, and are contained in my Decision dated July 23, 2015.

### **Issues to be Decided**

1. Are the Tenants entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?
2. Are the Tenants entitled to return of the security deposit?

### **Background and Evidence**

The rental unit is the basement suite of a house. The Landlord lives in the upper suite of the house. This tenancy began on April 1, 2014 and ended on September 30, 2014. The Tenants paid a security deposit in the amount of \$600.00 at the beginning of the tenancy.

#### **The Tenants gave the following testimony:**

The Tenant AH stated that she spent 10 hours painting the rental unit before it was ready for the Tenants to move in. She testified that the Tenant AM also spent 4.5 hours painting. AH stated that the Landlord told the Tenants on March 23, 2014, that the original painting plans had fallen through and asked the Tenants if they would be interested in helping to paint the rental unit on March 29, 2014. AH testified that the Landlord said that the Tenants would be one of many people painting the rental unit, but that only the Landlord and one other person came to help with the painting. AH stated that the Landlord informed the Tenants that she was unable to help painting because of medical issues, and that the other person left after 4 hours. AH stated that the Landlord did not want the Tenants to move in until the painting was complete, so the Tenants painted until 11:00 p.m. The Tenants seek a monetary award of **\$742.00** for their labour (14.5 hours at \$51.20 per hour). The Tenants stated that they researched contractor's costs, which averaged \$51.20 per hour.

The Tenants testified that they also had to clean the rental unit before they moved in. The Tenants seek compensation in the amount of **\$150.00** for "move-in cleaning".

The Tenants testified that within two months of moving in, they decided to move out of the rental unit because the Landlord came to the rental unit at least once a day,

unannounced. They stated that the Landlord removed a special edition milk crate from outside their front door, without the Tenants' permission. The Tenants started looking for somewhere else to live in June, 2014. The Tenants provided a photocopy of a statement of a friend who stayed with AH for the month of July, 2014, while AM was away at work.

The Tenants testified that in June, 2014, they advised the Landlord that their toilet was making a very loud whistling noise and that the Landlord agreed she could hear the toilet from her suite above the Tenants. AH stated that the Landlord and several other individuals came to the rental unit on numerous occasions to inspect and repair the toilet, but it was not permanently repaired until mid-August, when AM returned from work.

The Tenants seek compensation in the amount of **\$600.00** (\$100.00 per month for the duration of the tenancy) for loss of peaceful enjoyment of the rental unit.

The Tenants stated that the Landlord had "no license to rent the suite". The Tenants stated that shortly after they moved in, they began to smell mould in the rental unit. They stated that they were concerned that the sump pump in the rental unit was not working properly. The Tenants submitted that sump pumps are "meant to be sealed", and that they ran a test by putting plastic over the sump pump. The Tenants stated that the plastic "filled up with air within 10 minutes", which indicated that the pump was not properly sealed. The Tenants testified that they asked the municipality to do an inspection and the City found that the rental unit was "not up to code". The Tenants said that if they had known that, they would not have rented the rental unit. The Tenants stated that this was the second time in less than a year that they had to move, and they seek to recover the cost of their moving expenses, in the amount of **\$446.22**. The Tenants provided a copy of their moving bill.

The Tenants testified that they discovered mould on a number of their possessions when the movers came to move them out. For example, the Tenants stored a bed beside the sump pump, which was located in their bed room, and that the bed and mattress which were mouldy. In addition, the Tenants testified that a guitar case and audio cables were also mouldy. They stated that the movers suspected that the mould was caused by the sump pump. The Tenants had to dispose of the items and bought a new bed, but their insurance would not cover the cost. The Tenants provided photographs of their affected possessions, a copy of a letter from their insurance company, and a receipt along with a copy of a receipt for the new bed. The Tenants seek compensation in the amount of **\$1,408.96** for the cost of the new bed and stated that they estimate the loss of the guitar case and audio cables to be **\$200.00**.

The Landlord gave the following testimony:

The Landlord testified that the Tenant's "possession" date was April 1, 2014, but that the previous occupant moved out early so she allowed the Tenants to move in early. The Landlord stated that AH offered to help with the painting and that there was never any discussion about payment, other than the pizza and beer the Landlord provided. The Landlord stated that the previous occupant left the rental unit "spotless" and there was no need for the Tenants to clean. The Landlord provided copies of letters from a friend, previous occupants from August 2010 to April 2011, and the new occupant, who moved into the rental unit on October 1, 2014.

The Landlord testified that she has rented the suite for 13 years and has never had issues with mould in the rental unit. The Landlord stated that the sump pump is properly installed, has passed inspection and meets code. She stated that the rental unit was completely renovated in early 2011 and that the City inspected the storm system and cleared the rental property for occupancy. The Landlord provided a copy of two plumbing invoices dated May 1, 2011 and May 19, 2011, along with a Certificate of Inspection dated May 17, 2011.

The Landlord submitted that the new occupant has no complaints about mould in the rental unit. She stated that she ran two tests for mould after the Tenants filed their Application and that both came back negative. The Landlord suggested that the Tenants' possessions were wet when they moved them into the rental unit at the beginning of the tenancy and that they weren't properly dried off before they were stored. The Landlord submitted that on March 30, 2014, the maximum temperature was 10.9 C, the minimum temperature was 6.6 C and the precipitation was 4.5 mm. The Landlord provided photographs of a mould test taken beside the sump pump in the rental unit. The photographs were taken at 8:16 and 9:15 on May 19, 2015, and 9:14 on May 21, 2015.

The Landlord denied visiting the rental unit at least once a day. She stated that she never entered the rental unit without the Tenants' knowledge or permission. The Landlord stated that the rental unit and her suite share a common mail box and a common laundry area, and that she would pick up the Tenants' mail and put it through the door of the laundry room. She said that she would also leave packages that came in the mail outside the Tenants' door. The Landlord stated that the Tenants attended garden parties hosted by the Landlord and that they voiced no complaints about privacy. The Landlord provided photographs of the Landlord, the Tenants and other guests.

The Landlord acknowledged that she took the milk crate, but stated that the Tenants left it in the recycling area, which is a common area outside the door to the rental unit. The Landlord stated that she believed it was for recycling because it was left with empty bottles in it and therefore she took it to recycling.

The Landlord testified that the Tenants complained that the toilet whistled when it was refilling after being flushed, and that repairs were done promptly. She submitted that the “fill mechanism” was replaced. At the time of replacement, it was discovered that the shut off to the toilet also had to be replaced, which was also done within a few days of the original repair.

### **Analysis**

The onus is on the Tenants to prove their claim, on the balance of probabilities. I find that the Tenants have not provided sufficient evidence that damage or loss occurred due to the actions of the Landlord in violation of the Act, for the following reasons:

1. The Tenants provided photographs which show mould; however, they did not provide sufficient evidence that the Landlord’s actions or neglect caused the mould. The Tenants did not provide documentary evidence with respect to the sump pump test; however the Landlord provided documentary evidence, including the written statement of their current tenant, that there is no mould in the rental unit. The Tenants did not provide corroborating evidence with respect to their submission that the City found that the rental unit was “not up to code” (for example a letter from the City). The Landlord provided a Plumbing Certificate of Inspection from the City indicating that the rental property was cleared for occupancy and given final acceptance.
2. The Tenants stated that they felt their privacy was not respected and that they lost peaceful enjoyment of the rental unit. The Tenants did not provide documentary evidence that they wrote to the Landlord advising her of their concerns. The Landlord provided photographs of the Landlord and the Tenants socializing in the back yard.
3. There was no evidence that the Landlord and the Tenants had an agreement that the Tenants would be compensated for painting the rental unit, beyond being given early possession, pizza and beer. The Tenants agreed that the parties did not discuss monetary compensation with the Landlord before they commenced painting.

I find that the Tenants have not proven their claim for the cost of painting, cleaning, compensation for mould damage, loss of peaceful enjoyment, and the cost of moving. Therefore, I find that the Tenants are not entitled to recovery of the filing fee.

I confirm the Decision and Order of July 23, 2015, with respect to the Landlord's Application. The security deposit was set off against the Landlord's monetary award, and therefore this portion of the Tenants' claim is also dismissed.

**Conclusion**

The Tenants' Application is dismissed in its entirety.

With respect to the Landlord's Application, I hereby confirm the Decision and Orders issued July 23, 2015.

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: November 19, 2015

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Residential Tenancy Branch

