



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNR, MNDC, OLC, RP, PSF, OPR, OPC, MNR, MNDS, MNDC, FF

### Introduction

In the first application, the tenant seeks to cancel a one month Notice to End Tenancy for cause. He also requests a monetary award for the costs of emergency repairs, compensation for loss suffered as a result of the substandard condition of the premises, an order that the landlords comply with the law and tenancy agreement, an order for repairs and emergency repairs and an order that the landlords provide services or facilities.

In the second application the landlords seek an order of possession pursuant to the Notice, as well as a monetary award for unpaid rent and utility costs.

The hearing of this matter started on May 4, 2016 but time did not allow completion of evidence. It was agreed on that date that the tenant would be vacating the premises on May 7 at five o'clock in the afternoon. As per the first Interim Decision rendered in this matter, the hearing was adjourned to May 16, 2016, the landlords were issued an Order of Possession for May 7 and the parties were to meet on that day at five o'clock to conduct a move-out inspection together.

The question of the validity of the Notice to End Tenancy or the issuance of repair or emergency repair orders was no longer in issue.

On the return date of May 16, 2016, the landlords alleged that thought the tenant had moved out, he had caused serious wilful damage to the premises before he left. The tenant denied it.

As per the second Interim Decision rendered in this matter, the hearing was adjourned to June 14, 2016 to permit the parties to adduce and trade evidence about the allegation of wilful damage, in so far as it might relate to credibility, a central aspect to the claims raised in this dispute.

On each hearing day all three parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant suffered loss as a result of the landlords providing a substandard rental unit or as the result of a failure to conduct appropriate repairs?

Does the tenant owe the landlords rent or money for the provision of utilities?

### Background and Evidence

The rental unit is a two bedroom, basement suite. The upper portion of the home was rented to others.

The tenancy started in March 2016. The monthly rent was \$900.00, due on the first of each month.

The landlords hold a \$450.00 security deposit and a \$90.00 pet damage deposit.

At the start of the hearing the tenant acknowledged that he had not paid April's rent or any money for May. He agreed that he owed \$185.69 for March utilities.

The tenant testifies that he encountered problems with the rental unit right from the start. He says the carpet was not clean, the fireplace did not work and his dog was choking.

He says the kitchen smelled like burnt mould and it was making him sick.

On March 1 he made a request of the landlords to attend to the various problems.

It would appear that the tenant hired a workman to repair the gas fireplace. He was reimbursed by the landlords for this cost. He complains that the fireplace still does not work, but it appears that only the automatic sparker is not working and that the fireplace must be lit with a match.

The tenant testifies that on March 4 he started to get sick and was spitting blood on March 5. The landlords hired a company to analyze the kitchen area. Apparently it was determined that the sink had a leak.

The landlords retained workmen to repair the kitchen sink and replace the counter. The work took place March 17 to 21.

The landlords offered to house the tenant in a hotel during the work. Their first choice was not acceptable to the tenant because it was not pet friendly and did not have WIFI. The landlords offered another hotel but the tenant declined it because it was not available until after 3:00 p.m. on the relevant day. The tenant says the landlords withdrew their offer of a hotel after he refused the second accommodation.

The tenant produced photos of the kitchen during the work. He says the countertop had been soaked with leaking water and was covered with "black mould." He acquired a mould analysis kit and says it tested positive for mould in the home. He produced a photo a petri dish with observable spores growing in it.

He also presented photos of dark matter in the cracks between a wall and its baseboard. He says that is mould too.

The tenant says there was mould in the bathroom too, but the landlords' analysts were not directed to test the bathroom area.

The tenant presented three videos, two of the premises March 12 and one showing the landlords' workers repairing the sink and counter on March 18.

At this point in the tenant's evidence the initial time set for this hearing ran out. The matter was reset to be heard May 16.

On May 16 no evidence was given. The matter was adjourned to permit the parties to present evidence to corroborate or rebut the allegation that the tenant had caused wilful damage to the rental unit before he left on May 7.

The evidentiary portion of the hearing was finally continued on June 14.

On June 14 the tenant was called on to continue his testimony in support of his claim but he declined. He said that he was out of the energy to continue his application; that he still felt entitled to money but didn't expect it.

The landlord Ms. K. testifies that she had attended at the premises on May 7 at five o'clock for the move-out inspection (as per the agreement noted in the first Interim Decision) but that the tenant did not attend.

She did not enter the unit. She looked through a window and could see damage. As a result, she posted a Notice to Enter the premises in four days.

On May 12 Ms.K. entered the rental unit to find that the tenant had left two sofas, various appliances, a mattress a bar fridge, a cabinet, an office chair, a TV and a coffee table.

Three fist or foot sized holes had been punched in the dining area wall. Another, similar hole had been made in a bedroom wall. The fireplace flue had been disconnected from the wall. A rack or similar item had been ripped from the kitchen wall. There were scratches on the dining room ceiling. Some kind of sticky liquid had been splashed on the living room wall. The fridge was laying on its side.

There was no evidence of cleaning. Indeed, the bathroom sink looked like it had never been cleaned during the tenancy.

Ms. K. adduced photos of the foregoing items.

The tenant acknowledged that he had left furniture in the rental unit when he left but denies causing any damage. He says he was at the premises on the morning of May 7 and left a key and letter in the mailbox and there was no such damage at that time. He opines that it was a break in.

Ms. K. says there was no letter and no key.

### Analysis

It is not clear whether or not at the June 14 hearing the tenant evinced an intention to abandon his claim.

The landlords may have been under that impression because after the tenant's initial statement about lack of energy to continue, they confined their evidence to the state of the premises on May 12.

Regardless of the intent indicated by the tenant at the June 14 hearing, I have considered the evidence he presented and conclude that his claim for a monetary award cannot succeed.

The state of the carpet at the start of the tenancy was not an issue raised until this proceeding, indicative of it being of little significance until a dispute about other things arose. There is no evidence the tenant requested of the landlords that the carpet be cleaned or that he cleaned it during this tenancy.

The sink did leak and the kitchen counter did become saturated with water, requiring repair. It is clear that the landlords took timely steps to fix the problem and went so far as to offer to lodge the tenant in a hotel while repairs were underway.

The tenant did not offer a reasonable explanation for why he declined the second, pet friendly hotel. Any inconvenience he may have suffered during repairs in the rental unit was an inconvenience he could easily have avoided by using the landlords' offer of hotel accommodation.

It would appear that the furnace required cleaning during this tenancy. The landlords' attended to replacing the furnace in a timely manner. The tenant claimed that there was a high level of carbon monoxide in the home, caused by the old furnace. The tenant offered no corroboration of this claim.

Without some professional or convincing objective evidence of the presence of carbon monoxide and in such a concentration as to be of concern, no reasonable finding of fact can be made that the air in the rental unit was somehow hazardous or that the tenant's health or the health of his pet suffered because of it.

I have considered the tenant's photographic and video evidence regarding mould. It is not clear that the waterlogged countertop contains anything resembling "black mould." Spores growing in a petri dish to not warrant a finding that a home is somehow unsafe due to mould. Again, the lack of some professional or convincing objective evidence on this point precludes a finding in the tenant's favour.

Similarly, the dark matter lodged behind the baseboards at various locations in the rental unit, might reasonable be dirt or dust. No reasonable determination can be made based on this evidence.

In result, the tenant's remaining claims must be dismissed.

In regard to the landlords' claim, it is admitted that the April rent of \$900.00 was not paid and I award the landlords that amount. They have lost May rental income as the tenant paid nothing and by his continued occupation of the rental unit prevented them from obtaining May rent from a new tenant. I award them \$900.00 for May.

I award the landlords the undisputed amount of \$185.69 for March utilities..

As the landlords have been successful on their application I award them recover of the \$100.00 filing fee.

In reduction of this this total award of \$2085.69, I authorize the landlords to retain the \$450.00 security deposit and \$90.00 pet damage deposit.

There will be a monetary order against the tenant for the remainder of \$1545.69.

### Conclusion

The tenant's application is dismissed.

The landlords' application for a monetary award is allowed.

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 30, 2016

---

Residential Tenancy Branch