



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPB, MND, FF; MT, CNC, CNE, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to section 55;
- an order of possession for breach of an agreement with the landlord, pursuant to section 55; and
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 66;
- cancellation of the landlord's 1 Month Notice pursuant to section 47;
- cancellation of the landlord's 1 Month Notice to End Tenancy for End of Employment (the "End of Employment Notice") pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "Regulation") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenants and landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties confirmed receipt of each other's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the parties were duly served with the applications.

Preliminary Issue – Settlement of Tenancy End Date

At the outset of the hearing the tenants indicated that they planned to vacate the rental unit on July 31, 2016. Consequently the tenants testified they no longer sought more time or cancellation of the 1 Month Notice. The tenants testified that they did not work for the landlord and applied for the cancellation of the End of Employment Notice in error. Accordingly, these portions of the tenants' claim are dismissed.

Section 63 of the *Act* provides that if the parties settle their dispute during a hearing the Director may record the settlement in the form of a Decision or an Order. Pursuant to the above provision, discussion between the parties during the hearing led to a settlement / resolution. Specifically, the parties agreed and confirmed as follows;

1. the tenant and landlord agree that this tenancy will end no later than Sunday, July 31, 2016 at 1:00 p.m., and,
2. the landlord will receive an order of possession effective July 31, 2016 at 1:00 p.m.

So as to perfect this settlement agreement, I grant the landlord an order of possession, effective 1:00 p.m. July 31, 2016.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants authorized to obtain a return of all or a portion of the security deposit?

Is the landlord entitled to a monetary order for damage to the rental unit?

Is either party entitled to recover the filing fee for their application?

#### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on October 1, 2015 on a fixed term until September 29, 2016. Rent in the amount of \$2,200.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$1,100.00 at the start of the tenancy.

The rental unit is located in the basement of the landlord's house. On May 30, 2016 the tenants advised the landlord that they had found mold in the rental unit. Specifically,

mold was found in two bedrooms on the wall, bed linens, some sweaters and a passport. The landlord inspected the rental unit this same date and verified mold growth on the above items. The parties agreed the tenants would immediately clean the mold.

On the morning of May 31, 2016 a general contractor inspected the rental unit but performed no repairs. Later that same day upon instruction by the general contractor the landlord's son cut a small hole in the bedroom wall and lifted some floor boards to assess for dampness. The landlord's son found both areas were dry but observed condensation on the metal framed windows. The landlord's son taped the drywall hole but did not replace the removed floorboards. Later this evening the landlord attended the rental unit at which time the tenants and landlord engaged in a verbal altercation. During this heated exchange the tenants reported to the landlord other deficiencies within the rental unit which included a leaking hot water tank and moisture/water collection at the front door.

On June 2, 2016 as a preventative measure the landlord had the pipes drained by a contractor.

On June 4, 2016 another contractor attended the rental unit and repaired the leaking hot water tank.

On July 19, 2016 the drywall was repaired however the floorboards remained unsecured at the time of the hearing.

### *Tenants'*

Although the landlords had the rental unit inspected, the tenants elected to have an inspection completed by a professional they chose. The inspection was completed on June 11, 2016. The tenants provided a copy of the inspectors report. In summary the report indicated that a leaking hot water tank likely contributed to the increased humidity levels that led to mold growth. The report also suggested the use of the installed dehumidifier during the winter months and during rainy times when all windows and doors are shut.

The tenants are seeking a total of \$2,637.00 in a monetary order. In particular they seek one month's rent in the amount of \$2,200.00 in compensation for the unknown health risks and the inconvenience of the drywall hole along with the removed floorboards. Additionally the tenants seek \$337.00 in passport replacement costs and \$100.00 reimbursement for the independent mold assessment they had done.

The tenants seek to obtain a return of all or a portion of the security deposit.

The tenants also seek to recover the \$100.00 filing fee for this application from the landlord.

### *Landlord*

The landlord did not dispute the growth of mold; however she contended that this mold growth was a result of the tenants inadequate cleaning and failure to use the dehumidifier. The landlord testified that at the start of the tenancy she specifically instructed the tenants to utilize the dehumidifier; however upon inspection of the mold on May 30, 2016 the tenants admitted they had not used the dehumidifier in the recent months. The landlord has provided a witness statement from the July 4, 2016 inspecting contractor indicating that the mold growth was a result of improper cleaning. The contractor also indicated in his statement that the use of a dehumidifier and bathroom fan after showering are preventative measures that can be used to reduce mold. The landlord also submitted a witness statement from the first inspecting contractor that indicates it is his opinion the mold was due to the humidity within the rental unit.

The landlord is seeking \$710.00 in damages, specifically to cover the estimated cost of repairs that will need to be done to the rental unit upon the tenants' vacancy. The landlord confirmed these repairs have not taken place yet and consequently could not provide invoices for any work done.

The landlord also seeks to recover the \$100.00 filing fee for this application from the tenants.

### Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Upon review of the parties witness statements from varying professionals, it becomes clear that the mold was a result of increased humidity. The rental unit is a basement that invariably incurs higher humidity levels than an above ground rental unit. I do not find that the mold growth was a result of the landlord's negligence. Rather I find that as tenants of a basement they were subjected to an increased probability of mold growth and had a responsibility to deter it with the use of the installed dehumidifier. Reports from both the landlord and tenants inspections suggest the use of the dehumidifier. The fact that a dehumidifier is installed and provided by the landlord is an indicator it should be used. The tenants did not dispute the landlord's allegation that they stopped using the dehumidifier in recent months. The landlord sought to rectify the mold issue and other related deficiencies within a reasonable amount of time. Upon notification of these issues, the landlord immediately had inspections and repairs conducted to the pipes and hot water tank. For these reasons, I find that the tenants did not satisfy the element of neglect to prove a loss. Accordingly, I do not award the tenants' any compensation.

Because the tenancy has not yet ended I find the tenants' application to the return of all or a portion of the security deposit premature. For this reason I dismiss this portion of the tenants' application with leave to reapply. The security deposit is to be returned in accordance with section 38 of the *Act*.

Although the landlord testified to the estimated costs in repairing the rental unit, I find the claim to damages premature as the tenants had not vacated the rental unit at the time the application was made and the landlord had not conducted these particular repairs prior to the hearing. For these reasons I dismiss the landlord's application for damages with leave to reapply.

As neither party was successful in the application, I find that neither party is entitled to recover the \$100.00 filing fee paid for the application.

### Conclusion

The tenants' application for a monetary order for damages is dismissed without leave to reapply.

The tenants' application to obtain a return of all or a portion of the security deposit is dismissed with leave to reapply.

The landlord's application for damages is dismissed with leave to reapply.

I grant the landlord an order of possession, effective 1:00 p.m. July 31, 2016. The tenant must be served with this Order. If the landlord serves the Order of Possession on the tenant and the tenant fails to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

**This Decision and Settlement Agreement is final and binding on both parties.**

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: July 28, 2016

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Residential Tenancy Branch