



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR MND MNDC MNSD RR FF

### Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for a monetary order for unpaid rent and for damage to the unit pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67 and an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 as well as recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

### Issue(s) to be Decided

Are either the landlords or the tenant entitled to a monetary order against the other party?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of any monetary order?

Are the tenants entitled to a rent reduction for repairs or lack of services?

Are either party entitled to recover the filing fee for this application from the other party?

### Background and Evidence

This tenancy began on August 15, 2014 as a one year fixed term with a rental amount of \$1050.00 payable on the first of each month. The landlord continues to hold a \$525.00 security deposit paid by the tenant on July 20, 2014. The tenant gave verbal notice to end the tenancy on November 25, 2015 and vacated the rental unit on December 11, 2015. In their respective applications, the landlord sought a monetary order in the amount of \$2426.00 and the tenants sought a monetary order totalling \$11,129.59.

The tenant DR ("the tenant") testified that, at move-in, he noticed a smell in the rental unit. He testified that he first notice the smell in September or October 2014. He testified that the rental unit had mould. The tenant DR testified that he identified that mould on his son's dresser and on the flooring. He submitted extensive photographic evidence showing mildew on the tenants' personal possessions including furniture as well as on windows and other surfaces within the residence.

The tenant DR testified that a restoration person attended to the residence and told the tenant that his upholstery and curtains should be cleaned so he had those items cleaned. He testified that the landlord told him he would pay this cost. The landlord testified that he did not agree to pay these costs.

The tenant DR testified that he provided a number of a mould remediation company to the landlord. He testified that, when the landlord did not take *immediate* action, he called and ordered the remediation himself. The landlord denied receiving any advance notice of the tenants' contact with a mould remediation company or notice that they had hired the company for their services.

The tenant DR testified that, over the course of his tenancy, he had to dispose of and re-purchase a mattress and box spring; that he had to purchase a HEPA-filter to breathe in the residence; that he had to clean and disinfect the rental unit. As a result of their suffering and inconvenience, the tenants sought to be compensated with the equivalent of 2 months' rent from the landlord for a total of \$2100.00.

The tenant WR testified that the cost of the mattress was \$1344.00 and the box spring was \$336.00. The tenants submitted a mattress store receipt in the amount of \$1680.00 dated November 14, 2015. He testified that the cost of the HEPA -filter was \$1407.00. He testified that the cost of the cleaning of the mould was \$5824.35 and that the cost of disinfecting was \$118.24. The tenants supplied a variety of store receipts totalling these amounts for cleaning materials purchased.

The tenants submitted a restoration report for remediation work. In the details, the report states that the client (tenant WR) “reports fungal activity to the interior surfaces of content”. The report states that, based on an inspection October 30, 2015, mould was observed around plumbing in the kitchen, bathroom and elsewhere as well as observed on the tenants’ contents. The report states that, as a result of the mould on the tenants’ belongings, mould spores would be prevalent throughout the suite. The report writer indicated that the tenants had accepted his recommendations as follows;

- Dispose of contaminated luggage, dresser, floor mat;
- Install and use HEPA filters;
- Clean bedroom end tables and headboard using HEPA vacuum & vacuum horizontal surfaces in most rooms;
- Remediate mould near plumbing.

The end of the report states, “It is my understanding that the client will be seeking reimbursement from the landlord”. An invoice dated November 2, 2015 was supplied to the tenants in the amount of \$1407.00 (for HEPA filter/vacuumping).

The landlord testified that the tenants did not pay rent for November or December 2015 and he therefore wishes to be compensated in the amount of \$2100.00 for two month’s rent. The tenant DR testified that the landlord said he did not have to worry about paying December’s rent. Further, the tenant DR testified that the tenants’ expenses for mould remediation, HEPA vacuuming and other steps taken within the residence meant that they did not believe they should have to pay rent. The tenant DR confirmed in his testimony that he did not pay rent in November or December 2015. The landlord testified that he did not waive payment of rent.

The landlord testified that he did not have any correspondence or complaints from the tenants early in their tenancy regarding mould. Further, the landlord submitted that the tenants did not provide evidence to support the claim that they were in fact allergic to mould. The landlord submitted that he did not understand why the tenants continued to reside in the unit for over 1 year and 3 months if this mould issue was so significant. The landlord testified that this residence was a new home and he referred to the report he submitted that indicates that, besides a recommendation for further investigation of a closet bedroom with elevated moisture levels, there were no signs of mould identified at that time (December 9, 2015).

A witness for the landlord (Witness YW) testified that he conducted the home safety inspection on December 9, 2015 specifically to investigate whether there was any

mould still within the rental unit. The witness testified that he found no extra moisture in most of the rental unit and no mould in any of the rental unit.

The landlord submitted photographic evidence showing a mostly clean residence with no indication of mould or mildew. The landlord included the report that showed photographs of a rusty plumbing regulator valve and some areas with prior water damage. The report with these photographs indicated that these moist or wet areas could lead to mould and should be monitored.

The landlord noted that the investigative report submitted by the tenants provided no date, no evidence of payment and appears to be an estimate for potential work. I note that the tenants submitted a copy of an invoice from the restoration company but there was no indication with respect to payment. The landlord also pointed to the dates on email correspondence submitted. The landlord submitted that the tenants often requested compensation for their expenses instead of prior authorization or requesting the landlord take steps to make repairs.

The landlord sought to recover \$551.46 for "mould fraud". He explained in his testimony that he believes the tenants are abusing the dispute resolution process by bringing their claim and that he should be compensated for having to respond with his own report and materials as well as to attend this hearing. The landlord also sought \$300.00 to fix the kitchen sink: he testified that the tenants altered the kitchen sink.

### Analysis

Section 32 of the Act and Policy Guideline No 1 provide information regarding the obligations of both the landlord and the tenant with respect to a tenancy and the tenanted property.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

With respect to maintenance of the rental unit and repairs including remediation of mould, health and housing standards are at issue. I accept the testimony of the landlord (and his witness) that the landlord made efforts to address the tenants' concerns regarding mould in the rental unit by two inspections. I find that the landlord would have

been able to conduct the inspections and take responsibility for any remediation of mould in the rental unit had he been provided with a full request from the tenant.

Section 33 defines emergency repairs as urgent, necessary for health or safety and made for the purpose of repairing leaks or plumbing fixtures. I find that the types of repairs sought by the tenant were emergency repairs. Section 33(2) of the Act states that a tenant may have emergency repairs done only when; the repairs are needed; the tenant has made at least 2 attempts by telephone to the emergency contact person and the tenant has, after those contact attempts, allowed the landlord a reasonable time to make the repairs. In this case, I find that the tenants chose to take matters into their own hands. The tenants arranged for a mould investigation without consulting the landlord or allowing him sufficient time to make his own arrangements to address this mould issue.

Furthermore, I find that the tenants authorized remediation work on the landlord's rental unit as well as undergoing extra cleaning of the residence and the items in the residence without consultation with the landlord. Therefore, as the tenants did not seek the landlord's prior authorization for the remediation and cleaning work, I find that the tenants are not entitled to recover the costs they have submitted.

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the Act; a tenant is expected to pay rent; a landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, the tenant may be entitled to damages. In this circumstance, I find that the tenants have shown that they suffered some inconvenience as a result of the condition of his unit. However, I also find that they did not follow the requirements of the Act in seeking repairs (or in this case remediation) or in mitigating any claim they may have. I dismiss the tenants' claim in its entirety.

I dismiss the landlord's claim with respect to the kitchen sink and the "mould fraud" claim as the landlord presented insufficient evidence (receipts and/or evidence of wrongdoing by the tenants) to support these claims.

The landlord sought to recover the outstanding rent for both November and December 2015 totalling \$2100.00 and retain the tenants' security deposit towards that amount. I find that, in accordance with section 26 of the Act regarding the payment of rent, and as the tenants resided in the unit for both November and a portion of December 2015 without rent payment to the landlord, the landlord is entitled to recover the \$2100.00 in rental arrears. As well, pursuant to section 72, the landlord is entitled to retain the tenants' security deposit towards these rental arrears.

I find that the landlord is entitled to recover his \$50.00 filing fee for this application as he has been partially successful in his dispute resolution application.

Conclusion

I grant a monetary order to the landlord in the amount of \$1625.00.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 8, 2016

---

Residential Tenancy Branch

