



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MNDC, MNSD, FF

For the landlord – MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; A Monetary Order to recover the security and pet deposit; and to recover the filing fee from the landlord for the cost of this application.

The landlord applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to recover his security and pet deposit?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep all or part of the security or pet deposit?

### Background and Evidence

The parties agreed that this tenancy started on February 28, 2016 for a fixed term tenancy that was due to end on February 28, 2017. The tenant vacated the rental unit on February 29, 2016 however remained in possession of the unit until March 20, 2016. Rent for this unit was \$900.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$450.00 on January 31, 2016 and a pet deposit of \$450.00 on February 26, 2016.

#### **The tenant's application**

The tenant testified that he moved into the unit and the first night he spent there it was raining and moisture was coming through the walls and doors. The tenant testified that this made him sick and he experienced symptoms such as feeling restless, itchy throat, cold and shivers and vomiting. The tenant could not stay in the unit and went to friends on February 29, 2016. The tenant testified that he removed almost all of his personal belongings except a cat litter tray and some bags. The tenant then only returned to the unit on March 14 to let the mould company in to test the unit.

The tenant testified that the landlord did not notify the tenant that there was mould in the unit. The tenant testified that he had an invasive test carried out, collecting mould samples in high moisture areas. The tenant testified that toxic mould was found on these samples and although there was no visible mould it was present under the floor. This partial inspection cannot quantify how large an area of the home was contaminated by mould. The tenant referred to the report from this company provided in evidence. The tenant testified that the report states that a risk to health is present. The indoor sampling of particles showed a higher count than the outdoor samples. The report recommended a Hepa filter but the presence of mould would need to be remediated.

The tenant testified that he sent several emails to the landlord concerning this and asked the landlord to call the tenant. When the tenant received the report from the mould company he sent a copy of this to the landlord with his written notice to end the tenancy. The tenant testified that he had paid rent for March and as he could not live in the unit he seeks to recover this rent of \$900.00.

The tenant also seeks to recover his security and pet deposits of \$900.00 and the filing fee of \$100.00.

The landlord disputed the tenant's claim the landlord testified that on March 01, 2016 they received an email from the tenant who said there was mould in the unit and he was coughing and spitting up blood. The landlord offered to go to the unit the next day but the tenant refused the landlord entry to the unit without proper notice and stated that the landlord was never to come to the unit without the tenant being there. The tenant simply said the unit was unliveable.

The landlord testified that in another email the tenant agreed the landlord could keep the rent for March and just wanted his security deposit back but without proof that there was mould, the landlord needed to get into the unit before they could agree to the tenant's demands. When the landlord told the tenant she needed to come into the unit to get the problem resolved the tenant threatened to call the City Inspector. The landlord testified that the tenant became very angry and sent numerous emails and even when the landlord gave the tenant 24 hours' notice of entry the tenant said he was

not living there and the landlord should not entry. The landlord referred to email correspondence between the parties.

The landlord testified that the tenant did not call the mould experts until March 16, 2016 and in that report it states that the remediation work could be completed within two days. The landlord testified that they offered to place the tenant somewhere else for two days while the landlords had the remediation work done but the tenant said he had already rented a new place. The landlord received the tenant's notice to end tenancy and the mould report on March 16 or 18, 2016. The tenant continued to have some belongings in the unit for the next seven to ten days including cat stuff.

The landlord referred to the tenant's mould report which states that the indoor/outdoor spore counts are only higher in two places and only slightly higher in one place. Scrubbing is the only way to remove the spores and smaller particles are breathed in. the landlord testified that they were not aware of this problem before the tenant moved in and the previous tenant had experienced no problems. The landlord testified that she had some tenants living on the main floor in 2014 that said they had moisture problems but when the same mould company came out then they found no moisture and therefore the landlord was not aware of any mould in the unit prior to this tenancy. The landlord testified that the mould has been remediated and this work took five days. The landlord used another mould company and referred to their report showing no further mould in the unit.

The tenant asked the landlord if her mould company did a spore and spot test or an invasive test the tenant had done. The landlord responded that she had showed her mould company the tenant's test report after the remediation work was done and then her company did their test.

### **The landlord's application**

The landlord testified that as the tenant moved out on March 20, 2016 without proper notice the landlord was unable to re-rent the unit for April 01, 2016. The remediation work was all completed the next week after the tenant vacated and the rental unit was ready for new tenants. The unit was re-rented for May 01, 2016; however, the tenant sent the new tenant a copy of the mould report which he had done and the new tenant emailed the landlord and said that due to the presence of mould she could not move into the unit. The landlord testified that she had informed the new tenant that there had been an issue with mould but it had been remediated. The landlord showed the new tenant the remediation report and their mould report but she had been put off by this tenant. The landlord had to advertise the unit again and it was rented for June 15, 2016. The landlord testified that due to the tenant's actions the landlord not only lost rent for April but also for May and half of June, 2016. The landlord seeks to recover a loss of rent for April of \$900.00 from the tenant.

The landlord testified that the tenancy agreement has a clause that provided for liquidated damages to be charged if the tenant ends the tenancy before the end of the fixed term. As the tenant ended the tenancy after less than a month the landlord seeks to enforce this clause and to recover \$500.00 from the tenant for liquidated damages.

The landlord testified that in the tenancy agreement the tenant is required to pay 27 percent of the utilities. The landlord testified that the tenant's share of the water bill for this period of his tenancy is \$25.12. The tenant's share of the hydro has not yet been confirmed as the landlord has not provided

a copy of the hydro bill in evidence or to the tenant with a written demand for payment within 30 days. The landlord agreed that the copy of the hydro bill that was provided in evidence is for a period of December 24, 2015 to February 24, 2016 when the tenant did not reside in the rental unit.

The landlord testified that as the tenant had a cat in the unit which was not caged the tenant is required to clean the carpets at the end of the tenancy and failed to do so. The landlord testified that the carpets had been professional clean at the start of the tenancy as indicated on the move in condition inspection report. The landlord referred to the invoice from the carpet cleaner and seeks to recover the amount of \$117.86.

The landlord testified that the tenant had not even vacuumed the carpet and it was full of cat hairs. As the carpet cleaning company would have charged the landlord to vacuum before they cleaned the carpets the landlord completed this work and seeks to recover \$25.00 from the tenant. The tenant also pulled up the carpets in the bedroom of the unit and these had to be re-stretched and the baseboards refitted. This work was completed by the landlord's husband and the landlord seeks to recover \$55.00 for this work.

The tenant disputed the landlord's claim. The tenant testified that he had actually moved out on March 01, 2016 and only left the cat litter tray and some bags in the unit. The tenant testified that the tenant that was due to move in contacted him and asked for a copy of the mould report after she spoke to other tenants living in the building. The tenant testified that he did not have a copy at that time and told her to speak to the mould company. The mould company sent a copy of the report to the tenant again and he passed it on to the new tenant at her request. The tenant testified he did speak to the new tenant on the phone and they spoke about the remediation period and that she would be able to get a new report done. The tenant testified that all he was trying to do was to provide the new tenant with information she asked for. The tenant testified that due to the mould he had a right to end his tenancy early.

The tenant disputed the landlord's claim for liquidated damages as he had a right to end his tenancy before the end of the fixed term because of the mould. The tenant disputed the landlord's claim for Hydro as the tenant has not yet seen a copy of the Hydro bill.

The tenant agreed with the landlord's claim for the utilities of \$25.12 for water, for the cost of carpet cleaning of \$117.86 and for the vacuuming and stretching of the carpet of \$80.00. The tenant agreed the landlord may retain these amounts from the security deposit.

The landlord asked the tenant if he claims he did not have the report when the new tenant spoke to him then how did the tenant send it to the landlord on March 16. The tenant responded that he had not saved a copy of the report on his emails and had to ask for a new one to be sent. The landlord asked the tenant if the landlord had offered him alternative accommodation when the remediation work was done as the mould was reported as only a moderate problem and did the tenant say he did not want this as he had found a new place to rent. The tenant responded that the moment the landlord got the mould report she also got the tenant's notice to end his tenancy and did not offer alternative accommodation. They only spoke about doing the move out report. The landlord asked the tenant if he emailed the landlord and told her not to contact him by email anymore. The tenant responded only because the landlord got angry at him.

The landlord asked the tenant why he did not have a medical report done to confirm his symptoms were caused from the exposure to mould. The tenant responded that he did not have time to go to the doctors and did not have BC medical. The tenant testified that he is hyposensitive and gets sick easily so he acted on his symptoms and moved out.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

#### **The tenant's application**

The tenant seeks to recover the rent paid for March as he could not live in the unit due to mould issues. Having considered both parties arguments I find the mould issue in this unit is documented as being moderate in the flooring and moderate in two of the living room area tested for Chaetomium spores and Stachybotrys spores and elevated spore counts in the third test area for Penicillin/Aspergillus spores. The report goes on to provide recommendations for the remediation of the mould spores and recommends limited access until remediated. The report also notes that remediation should take two days; however, I find the tenant had already made the decision to vacate the rental unit prior to the professional report being completed based on his symptoms.

I am satisfied from the evidence before me that the tenant did not seek a professional opinion about his symptoms from a doctor and made the assumption that his symptoms were caused from exposure to the mould spores. Without further evidence from the tenant such as a doctor's letter outlining his symptoms or that they were so severe that he should remove himself from any contaminated areas, I find the tenant's evidence, standing alone, is not definitive proof that his health was so severely affected by the mould present in the unit and not caused by some other source or a previous health concern.

I find that the level of spores was only elevated in one area and that the landlord was willing to get into the unit to remediate this situation in a timely manner. I further find I prefer the landlord's evidence that she was willing to provide alternative accommodation to the tenant while any work was carried out but was prevented from doing any work by the tenant. Consequently, I find the tenant did not provide the landlord with the opportunity to rectify the situation and the tenant ended the tenancy prematurely. The tenant's request to recover rent paid for March, 2016 of \$900.00 is therefore dismissed.

I will deal with the matter of the security and pet deposit under the landlord's application. As the tenant's application has no merit I find the tenant's application to recover the filing fee is dismissed.

#### **The landlord's application**

With regard to the landlord's application to recover a loss of rent for April; I refer the parties to s. 45(2) and (3) of the Act which states:

*(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

*(a) is not earlier than one month after the date the landlord receives the notice,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

*(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

It is therefore my decision that there is insufficient evidence to show the landlord failed to comply with the *Act*. As I am satisfied that the landlord would have complied with the *Act* had the landlord been given the opportunity to do so then I find the tenant ended the tenancy before the end of the fixed term and the landlord suffered a loss of rent for April, 2016 of **\$900.00**. Consequently, I find in favor of the landlord's claim to recover this amount.

With regard to the landlord's claim for liquidated damages of \$500.00; I am satisfied that this is a genuine pre-estimate of the costs to re-rent the unit. As the tenant ended the tenancy prematurely then the landlord may enforce this provision under the tenancy agreement. I therefore allow the landlord's claim to recover liquidated damages of **\$500.00**.

With regard to the landlord's claim for the tenant's share of the Hydro bill; the landlord provided a Hydro bill in evidence that was for a billing period prior to this tenancy commencing and this bill has therefore not been considered. The landlord is required to provide a copy of the utility bills to the tenant with a written demand for payment within 30 days. If the tenant then fails to make a payment the landlord is at liberty to file a claim to recover the cost of the utility bills. Consequently, I find the landlord's application to recover the utilities for Hydro is premature and is dismissed with leave to reapply.

With regard to the landlord's claim for the tenant's share of the water bill and for carpet cleaning, vacuuming and carpet stretching, the tenant did not dispute these charges and agreed the landlord may deduct them from the security deposit. I therefore find the landlord may deduct the amount of **\$222.98** comprised of \$25.12 for the water usage, \$117.86 for carpet cleaning and \$80.00 for the landlord's work to vacuum and stretch the carpets.

I order the landlord to retain the security and pet deposit in partial satisfaction of their claim pursuant to s. 38(4)(b) of the *Act*.

As the landlord's claim has merit the landlord is entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount pursuant to s. 67 and 72(1) of the *Act*.

Loss of rent for April	\$900.00
Liquidated damages	\$500.00
Water bill, carpet cleaning and carpet stretching	\$222.98
<b>Subtotal</b>	<b>\$1622.98</b>
Less security and pet deposit	(-\$900.00)
Plus filing fee	\$100.00
<b>Total amount due to the landlord</b>	<b>\$822.98</b>

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$822.98**. The Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: August 03, 2016

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Residential Tenancy Branch

