



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Associa British Colombia Inc./ Homestead Estates  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This is an application, brought by the tenant, requesting a monetary order in the amount of \$3257.50, and requesting recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally, and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Issue(s) to be Decided

The issue is, whether or not the applicant has established monetary claim against the respondents, and if so in what amount.

### Background and Evidence

The parties agree that this tenancy began on May 28, 2010 with a monthly rent of \$975.00.

The parties also agree that this tenancy ended on May 31, 2015, and, at that time, the tenant agreed to allow the landlords to retain \$114.25 of the security deposit towards carpet cleaning.

The parties also agree that the landlords returned the remainder of the tenant's security/pet deposits to the tenant.

The tenant testified that, on January 24, 2015, she discovered that there was a leak in her rental unit, when she noticed that the carpet was damp, and that her furniture, a desk, two wall units, and a cabinet had water damage. There had never been any issues with water leaking before she discovered this incident.

The tenant further testified that, at first when she called the landlords nothing was done, however when she called back, approximately one hour later, the manager came down and cut open the wall to attempt to find the problem.

The tenant further testified that the landlords did not take reasonable steps to resolve the issue and she had problems of molding musty smells right through to the end of the tenancy. Due to the bad smell in the bedrooms they had to sleep in the living room and could not use the bedrooms.

The tenant further testified that she used heaters to attempt to dry out the carpets but she believes the landlords did not take reasonable steps.

The tenant states that she is therefore requesting that the landlords pay for the replacement cost of the damaged furniture, and she is also requesting one half the rent back for the period of time that the rental unit was not usable due to the molding musty smell in the bedrooms.

The tenant is also requesting that the landlords return the money that was deducted for carpet cleaning, as she believes the carpets should have been thrown out at the end of the tenancy.

The landlords testified that, they do not believe they should be held liable for the damage to the tenant's furniture, as this damage occurred before they were even aware of any leak, and therefore the tenant should be claiming that on her tenants insurance.

The landlords further testified that they do not believe they should be paying the tenant for loss of use of the bedrooms because as of February 20, 2015 the unit was dry and there was no further leaking issues after that date, through to the end of the tenancy.

The landlords further testified that they used the mold inhibitor on the carpets and the carpets were cleaned twice, after which they got no further complaints from the tenant, or any further requests to clean or remove the carpets.

The property manager further testified that she was in the rental unit on April 8, and although there was some staining to the carpet there was certainly no musty or mildew smell.

In response to the landlord's testimony, the tenant testified that she did make numerous complaints that the carpet should be taken out as there was a musty smell, however all the complaints were made verbally to the resident manager, and nothing was put in writing. Even though she complained frequently nothing was done to rectify the situation.

### Analysis

It is my decision that I will not allow the tenants claim for the cost of replacing furniture that was damaged from the leak at the rental property as this damage was not the result of any willful or negligent actions on the part of the landlord. Prior to this incident, there had been no indication that there was any water leaking into the rental unit, and therefore there is nothing the landlord could have done to prevent the damage to the tenants furniture, and therefore the landlord is not liable for that damage. This is the sort of damage that is normally covered by tenants insurance.

It is also my decision that I will not allow the tenants claim for the return of the money paid for carpet cleaning, because the tenant agreed in writing to allow the landlord to keep \$114.25 for carpet cleaning.

It is also my decision that I will not allow the majority of the tenants claim for loss of use of the rental unit. The tenant reported the leak to the landlords on January 24, 2016, and the landlords had repaired the leak, treated the carpets with the mold inhibitor, and clean the carpets twice all by February 20, 2015. The landlords testified that after that date they had no further complaints from the tenant, and no further requests for carpet cleaning, or for the removal of the carpet, and although the tenant claims that she verbally told the resident manager of the ongoing problem, nothing was ever put in writing, and therefore it is basically just the tenants word against that of the landlords.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met, and I therefore will

only allow a rent reduction for one month to cover the period of January 24 through February 20, 2015. It is my decision that it is reasonable to reduce the rent by one half for that one month period.

Having only allowed a small portion of the tenant's claim, I will not allow the tenants request for recovery of her filing fee.

Therefore, pursuant to section 62 and 67 of the Residential Tenancy Act I allow \$487.50 of the tenants claim and the remainder of the claim is dismissed.

### Conclusion

I have issued an order for the respondents to pay \$487.50 to the applicant, and the remainder of this claim has been dismissed without leave to reapply.

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: May 31, 2017

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Residential Tenancy Branch