



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT, MNSD, FFT
MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to cross-applications for dispute resolution under the *Residential Tenancy Act* (the “Act”). The Tenants applied for a monetary order for damages and/or compensation, and for the return of the security deposit and pet damage deposit. The Landlord applied for a monetary order for damages and/or compensation against the security deposit and/or pet damage deposit, and for monetary compensation for unpaid rent. Both parties also applied for the recovery of the filing fee paid for their Application for Dispute Resolution.

The Landlord and one of the Tenants were present for the duration of the teleconference hearing. The parties confirmed that the Notice of Dispute Resolution Proceeding package for each application, along with copies of each party’s evidence was exchanged as required.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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.

Issues to be Decided

Are the Tenants entitled to the return of their security deposit and pet damage deposit?

Should the Landlord be allowed to retain any amount of the security deposit and/or pet damage deposit?

Are the Tenants entitled to monetary compensation?

Is the Landlord entitled to monetary compensation for damages and/or unpaid rent?

Should either party be granted the recovery of the filing fee paid for their Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on November 15, 2017 and ended on April 8, 2018. Monthly rent was \$1,300.00 at the beginning of the tenancy and changed to \$1,350 starting in February 2018 when an additional \$50.00 was charged for the Tenants to park their trailer on the property. The tenancy was for a fixed term of 11.5 months, set to end on October 31, 2018.

The tenancy agreement was submitted into evidence and confirms the details as outlined above.

As the outset of the tenancy, the Tenants paid \$650.00 for a security deposit and \$1,300.00 for a pet damage deposit. The Landlord is still in possession of the full deposits in a total amount of \$1,950.00.

The rental unit in dispute is a motorhome that the Landlord rented out fully furnished. The monthly rent included the use of the property where the motorhome was parked during the tenancy.

The Tenants have applied for a total of \$4,800.00. Their application states that they are claiming \$2,600.00 for the return of double their deposits, as well as \$2,200.00 for compensation due to costs incurred from mould in the rental unit.

The Landlord has applied for a total of \$15,264.48 for damages and unpaid rent to the end of the fixed term tenancy.

The Tenant provided testimony that she started getting sick shortly after moving into the rental unit. She advised the Landlord of this in January 2018 and stated that the Landlord responded by telling them to clean the rental unit. The Tenant stated that she has a mould allergy and found black mould throughout the rental unit, including around the windows, in the bathroom, around the skylight, under the mattress and on their belongings, such as boots, a purse and sandals.

The Tenant testified that she was told by the Landlord to keep the blinds closed in the rental unit.

The Tenant noted that she felt better when away from the rental unit, and would feel sick when staying at the rental unit again. She testified that one of her dogs began losing fur around its neck and the vet advised them that this could be due to mould.

On March 30, 2018, the Tenant stated that she talked to the Landlord and advised him that they would like to give notice due to the concerns with the mould. However, when the Landlord said no, the Tenants moved to a hotel for one week. The Tenant stated that they provided written notice to the Landlord on March 31, 2018 that they would be moving out as soon as possible due to the concerns with the presence of mould.

The Tenants returned the keys to the Landlord on April 8, 2018, the same day they participated in a move-out inspection with the Landlord. The Condition Inspection Report was submitted into evidence and signed by both parties on move-in and move-out.

The Tenant testified that as they did not have a forwarding address as of April 8, 2018, they provided a friend's address on the move-out Condition Inspection Report. They provided their current address on or around May 9, 2018 as confirmed by both parties.

The Tenant stated that their claim for \$2,200.00 in compensation includes replacement costs for the following items damaged by mould: \$159.00 for a suitcase, \$160.00 for leather boots, \$75.00 for a purse, and an unspecified amount for an iPad. Photos of the purse, the suitcase and the iPad were submitted into evidence.

The Tenant has also claimed \$500.00 for a vet appointment for her dog due to concerns with mould exposure, \$658.00 for the cost of staying in a hotel for one week and an unspecified amount for missed days of work. An invoice from the vet was submitted into evidence. Although difficult to read due to poor quality, the invoice appears to state an amount of \$519.15. An invoice for a hotel was also submitted into evidence and was also submitted in poor quality, although appears to state an amount of approximately \$630.00.

The Tenant testified that they cleaned the rental unit at the time of moving out. They noted that the photos submitted by the Landlord were taken while they were still packing, and therefore they had not completed the cleaning at that time.

The Landlord provided testimony that prior to renting the unit to the Tenants, he resided in the unit for 17 months with his spouse and there was no mould present. He further stated that the mould issue began with this tenancy, from the humidity created from the Tenants and their three pets, without proper airflow and ventilation.

He testified that he did not advise the Tenants to keep the windows and/or blinds closed all the time, but instead suggested they do this on occasion after they complained about the cost of heating the rental unit. He stated that the Tenants did not have vents or windows open and did not run a fan to keep air moving in the unit.

The Landlord stated that the mould was caused during the tenancy due to poor home maintenance by both Tenants. He testified that on March 31, 2018, he received a text from the Tenants regarding the mould which included a photo. He confirmed with them at this time that he would get professionals to come and have a look.

The Landlord stated that he kept the Tenants up to date with his efforts to have professionals assess the situation and offered times to meet to go over the findings, which he said the Tenants responded saying they were not able to meet.

It was at this time that the Tenants asked the Landlord to sign a mutual agreement to end the tenancy, which the Landlord declined to do. Instead, on April 5, 2018, the Landlord stated that he picked up the Tenants' written notice to end the tenancy. The Landlord reported that the written notice did not include the date that the Tenants' items would be out of the rental unit, and also did not include a forwarding address.

When the Landlord sent documents to the forwarding address provided by the Tenants on the Condition Inspection Report, the mail was returned as undeliverable. As such, the Landlord attended the workplace of one of the Tenants to deliver the package and obtain their current forwarding address, instead of that of a friend. The Landlord stated that the correct forwarding address was obtained on or around May 9, 2018.

The Landlord provided testimony that a detailed mould inspection was completed on April 16, 2018. Information from this assessment was submitted into evidence. A receipt, dated April 25, 2018, from a professional cleaning company was submitted into evidence showing a charge of \$2,100.00 for a thorough clean of the mould present in the rental unit. The Landlord pointed out a statement from the cleaning company that reads as follows:

'This has happened due to both poor air circulation and ventilation in there, as there was no fan running, or vents or windows open, as well as a lack of maintenance/cleaning. It also looks like heat has been inconsistent and not turned on at all times. Due to there being 3 dogs, a bird, plus 2 people living in such a confined space will also make it humid, with high levels of animal dander in there. In our experience, basic weekly cleaning has not been properly maintained, and if done so in the future will make sure this place will be fine. This does not appear to be a structural issue.' (Reproduced as written)

The Landlord stated that all of the cleaning and repairs needed in the rental unit took until the end of June 2018 to complete. After this, he advertised the unit for re-rental for July 2018 on three different websites but was unable to secure new tenants. Instead, he focused on short term rentals and has been able to find some short-term rental arrangements equalling a total of approximately \$1,597.00 in net income up to the date of this hearing.

The Landlord has claimed \$344.00 for the repair of the stairs and the screen door, which the Tenant agreed to pay during the hearing and as noted on the Condition Inspection Report at move-out. The Tenant also agreed to pay \$184.59 for the refinishing of the tabletop due to stains. The remainder of the Landlord's claims were in dispute by the Tenants.

The Landlord has claimed \$473.00 for the cost of the mould and remediation inspection, as noted on the invoice submitted into evidence. He has also claimed \$2,100.00 for the cost of cleaning the rental unit, including cleaning of the mould present throughout the unit, as well as \$250.00 for his own time for cleaning. The Landlord testified that a total of 10 hours was spent removing items from the rental unit, cleaning, and putting items back after the professional cleaning and remediation was completed.

A total of \$1,087.81 was paid for new flooring material in the rental unit (carpet and vinyl), and the Landlord has paid 25% of this, claiming 75% as the responsibility of the Tenants in an amount of \$816.00. The Landlord testified that there were stains on the carpet as noted on the move-in Condition Inspection Report, but new stains occurred during the tenancy. This included stained carpet in the bathroom due to water overflow in the toilet. The Landlord submitted photos of the flooring at the time of move-out into evidence.

The Landlord has also claimed for 75% of the cost of installing the flooring material for an amount of \$1,350.00. The Landlord stated that the carpet and vinyl flooring has not been replaced since the motorhome was new, in 1997.

As noted above, the Landlord began charging an additional \$50.00 per month for the Tenants to store their trailer on the property. The Landlord is claiming \$50.00 for the month of February 2018 and \$50.00 for the month of March 2018 as he stated that the additional amount was not paid during these months.

As for claims for unpaid rent, the Landlord is claiming \$1,350.00 in unpaid rent for the months of April, May, June, July, August, September and October 2018. The Landlord stated that when the Tenants moved out, he did not agree to sign a mutual agreement to end the tenancy and the Tenants provided notice at the end of March 2018 that they would be vacating in April 2018. The Tenants ended up moving out on April 8, 2018.

The Landlord testified regarding the Tenants breaking the fixed term tenancy agreement, as well as his difficulty in finding new tenants for the rental unit. As such, he stated that he

experienced a loss of rental income experienced from the unit remaining empty while being cleaned of mould which took until the end of June 2018. The Landlord was unable to find new tenants in July 2018, so began seeking short-term rentals for the unit.

The Landlord is also claiming \$70.03 in fees to dump a carpet and underlay pad he stated were left on the property by the Tenants, as well as three full garbage cans that remained at the end of the tenancy.

The Landlord testified that he sent four packages through registered mail to the Tenants for the Dispute Resolution Process. He is claiming a total of \$126.86 as reimbursement for the registered mail costs. Copies of the registered mail receipts were submitted into evidence.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

Tenants' claims for compensation: The Tenants have claimed \$2,200.00 as compensation for costs incurred due to mould in the rental unit.

In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

When applying the above test to the Tenants' claims, I find that they did not prove that the Landlord breached the *Act*. Although the Tenant testified that they notified the Landlord regarding the mould found in the rental unit during January 2018, the letter to end the tenancy notes that the Landlord was notified at the end of March 2018.

The letter from the Tenants to end the tenancy was dated March 31, 2018, although the Landlord stated he picked it up from the Tenants on April 4, 2018. In the letter, the Tenants state that they notified that Landlord of their concern over the presence of mould on March 30, 2018. As such, I do not find that the Landlord was provided time in which to remedy the situation before the Tenants provided notice and moved out.

The text messages submitted into evidence by the Landlord show a text message dated March 31, 2018 in which the Tenant sends a photo of a pillow with mould on it, explains that she has been sick from living in the rental unit and asks to terminate the tenancy agreement early. The Landlord responded by text message the following day, April 1, 2018, stated that he would contact a company to have them come and do an assessment of the mould situation.

As such, I find that the Landlord began dealing with the mould in the rental unit as soon as he was aware. As the date the mould was found cannot be determined prior to March 31, 2018 when the Landlord was first made aware, I cannot determine that the Landlord breached the *Act* and is therefore responsible for compensation to the Tenants. Although a landlord has a duty to maintain and repair the rental unit, a landlord must be made aware of any issues that are outside regular maintenance requirements. Once notified, a landlord must take steps to deal with repairs or other concerns brought forth.

Return of Security Deposit and Pet Damage Deposit: The Tenants paid \$650.00 for a security deposit and \$1,300.00 for a pet damage deposit. No amount has yet been returned.

As the Tenants have applied for the return of double the deposits, I refer to Section 38 of the *Act* to determine if the doubling provision applies.

Section 38(1) of the *Act* states that within 15 days of the later date of when the tenancy ends, or the forwarding address is provided in writing, the landlord must return the deposits or file a claim against them. The tenancy ended when the keys were returned on April 8, 2018 and a forwarding address was provided the same day.

However, the forwarding address provided was the address of a friend of the Tenants and mail was undeliverable. Based on the testimony of both parties, I find that the correct forwarding address was provided by the Tenants on May 9, 2018, which allows for 15 days from that date for the deposits to be returned or an application for Dispute Resolution to be filed. As the Landlord applied for Dispute Resolution on May 1, 2018, I find that he applied within the timeframe allowable under Section 38(1) of the *Act* and therefore, the doubling provision of Section 36(6) of the *Act* does not apply.

As the Landlord applied within 15 days from receiving the Tenants' forwarding address, any amount awarded to him will be offset by the security deposit and any amount remaining from the security deposit or pet damage deposit will be returned to the Tenants.

The Landlord's claims will be addressed below.

Amounts agreed upon: During the hearing, and as noted on the move-out Condition Inspection Report, the Tenants agreed to pay \$344.00 for the replacement of the stairs and the screen on the door. The Tenants also agreed to pay \$184.59 for refinishing the dining room

table. Therefore, the total amount agreed upon by the Tenants is \$528.59, which will be deducted from the security deposit.

Mould remediation and inspection: The Landlord has claimed \$473.00 for the cost of inspecting the rental unit for mould. I note that in accordance with Section 32 of the *Act*, both landlords and tenants have a responsibility for maintaining the condition of a rental unit. I find insufficient evidence before me to establish that the Tenants were responsible for mould in the rental unit and should therefore be responsible for the costs of assessing the presence of mould.

With the application of the four-part test as outlined above, I find that the Landlord has not proven, on a balance of probabilities, that the mould was caused by the Tenants' breach of the *Act*. I also note that, in accordance with the *Residential Tenancy Branch Rules of Procedure*, the onus is on the party making the claim to establish the claim and provide sufficient evidence to establish the claim.

In this situation, I do not find that the Landlord proved that the mould was caused by the Tenants' breach of the *Act*. Instead, I find that there are multiple reasons why mould growth may occur and without sufficient evidence, I cannot determine that it was the actions or inactions of the Tenants that caused the presence of mould.

Cleaning: The Landlord is asking for the recovery of \$2,100.00 paid for professional cleaning, as well as \$250.00 for 10 hours of cleaning completed by his spouse. Again, I do not find that the Landlord proved that the Tenants breached the *Act* and caused mould in the rental unit.

Although the cleaning company provided a statement that the mould was caused by a lack of airflow and proper ventilation in the unit, I do not find sufficient evidence to back this statement up. I also do not find evidence that the Tenants were advised on how to care for the motorhome and did not follow the Landlord's instructions, leading to the presence of mould.

The Landlord stated that the motorhome was new in 1997 and as the Tenants resided in the unit for less than five months, I find it a reasonable determination that the mould could have been caused by many various factors over the years.

Flooring: The Landlord has claimed \$816.00 for flooring material and \$1,350.00 for installation of new floors. The Landlord stated that there were stains present at the beginning of the tenancy and these were noted on the Condition Inspection Report at move-in. However, the Landlord stated that there were additional stains at the end of the tenancy that led to replacement of some of the flooring in the rental unit.

The Landlord has paid 25% of the flooring material costs and installation and is claiming 75% of the costs from the Tenants.

I refer to *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements* which states the useful life of carpets as 10 years. As the Landlord also replaced some vinyl flooring, which is not included in the Policy Guideline, I note that none of the flooring listed in the Guideline exceeds a life expectancy of 20 years. As the Landlord testified that the flooring was new in 1997, which is 21 years ago, I find it reasonable to expect that all of the flooring was beyond its useful life expectancy and therefore ready to be replaced.

As such, despite some stains that may have occurred during the tenancy, I find that the Tenants are not responsible for the cost of replacing any flooring in the rental unit.

Trailer storage: I accept the tenancy agreement addendum submitted into evidence that outlines an additional charge of \$50.00 per month for the Tenants to store their trailer on the property. As the Landlord stated the trailer was on the property during February and March 2018, without the additional \$50.00 monthly rent amount paid, and the Tenants did not submit evidence to prove otherwise, I find that the Landlord is entitled to the recovery of an amount of \$100.00 for these two months.

Unpaid rent: The Landlord has claimed a total of \$9,450.00 for unpaid rent for the months of April to October 2018 in the amount of \$1,350.00 per month.

As the parties had a fixed term tenancy agreement, set to end on October 31, 2018, I refer to Section 45 of the *Act*. Section 45(2) states that a tenant may end a fixed term no earlier than the end of the fixed term as stated in the tenancy agreement and with not less than one month notice.

As the Tenants provided notice on March 31, 2018 that they would be vacating as soon as possible, and they moved out of April 8, 2018, I find that they did not follow the proper process for ending a fixed term tenancy as outlined in the *Act*.

However, as the Tenants have claimed that they ended the tenancy early due to the concerns with mould, I refer to Section 45(3) that states if a landlord is in breach of a material term of the tenancy, the tenancy may be ended early. However, this Section also outlines the process for ending the tenancy due to the landlord's non-compliance with a material term of the tenancy which include a tenant notifying the landlord in writing and providing the landlord with reasonable time in which to correct the issue.

I find insufficient evidence to establish that the tenancy was ended due to a material breach by the Landlord as I do not find that the proper process for ending the tenancy for this reason was followed.

As such, I find that the Tenants were not in compliance with Section 45(2) of the *Act* and ended their fixed term tenancy early. As the Tenants provided notice on March 31, 2018 and did not include the date they would be vacating, I find that it would have been difficult for the Landlord to take steps to re-rent the unit. Therefore, I find that the Landlord experienced a loss of \$1,350.00 for the month of April 2018.

The Landlord has also claimed rental loss for the remaining term of the fixed term tenancy, ending on October 31, 2018. However, I note that in accordance with Section 7(2) of the *Act*, a party claiming a loss must do what is reasonable to minimize the loss. As the Landlord did not start advertising the unit for rent until July 2018, I find that they did not take steps to minimize their losses.

Although the Landlord has claimed that the unit was unable to be rented prior to completing the cleaning and mould removal which was completed at the end of June 2018, I find insufficient evidence before me to prove that the Tenants were responsible for the mould in the rental unit and therefore, I cannot find that the Tenants should cover the rental costs during the time period that the rental unit was being repaired.

Garbage removal: The Landlord has claimed \$70.03 for the cost of removing items left behind at the rental property, as well as three bags of garbage that remained at the rental unit at the end of the tenancy.

In accordance with Section 21 of the *Residential Tenancy Regulation* (the “*Regulation*”), a Condition Inspection Report is evidence of the condition of the rental unit at the beginning or end of tenancy, unless there is significant evidence proving otherwise. As the parties were not in agreement as to whether the garbage and items were left by the Tenants, I find that I cannot determine that the Tenants left the garbage behind and therefore are responsible for the costs of garbage removal.

As the parties agreed to the condition of the unit on April 8, 2018 as noted on the Condition Inspection Report, and the garbage or additional items were not mentioned, I decline to award this amount to the Landlord.

Registered mail: The Landlord has claimed for \$126.86 for the recovery of registered mail costs. However, registered mail costs are not expenses that are compensable under the *Act*, and instead are costs that may be incurred by both parties through the Dispute Resolution process. As such, I decline to award this amount to the Landlord.

Filing fees: Both parties applied for the return of the \$100.00 filing fee paid for the Application for Dispute Resolution. However, as both parties were partially successful in their applications and both parties paid this fee, I find that the amounts offset each other and therefore, I decline to award the recovery of the filing fee to either party.

As the Landlord is entitled to monetary compensation as outlined in the analysis above but is still in possession of the Tenants' damage deposit and pet damage deposit, the Landlord may retain the deposits towards the total amount owed, pursuant to Section 38(4)(b) of the *Act*. The Landlord is issued a Monetary Order in the following amount:

Repair of stairs and screen	\$344.00
Tabletop refinishing	\$184.59
Trailer storage February & March 2018	\$100.00
April 2018 rent	\$1,350.00
<i>Less security deposit</i>	<i>(\$650.00)</i>
<i>Less pet damage deposit</i>	<i>(\$1,300.00)</i>
Total owing to Landlord	\$28.59

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$28.59** as outlined above. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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: October 1, 2018

Residential Tenancy Branch