



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNRT, MNSD, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages, compensation for money paid towards emergency repairs, for the return of the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Tenants and an agent (the “Tenants”) were present for the duration of the teleconference hearing, as was the Landlord and an agent for the Landlord (the “Landlord”).

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence by registered mail. The Tenants confirmed receipt of a copy of the Landlord’s evidence package by registered mail. Neither party brought up any concerns regarding service.

The 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.

### Issues to be Decided

Are the Tenants entitled to monetary compensation for damages?

Are the Tenants entitled to compensation for money paid towards emergency repairs?

Are the Tenants entitled to the return of their security deposit?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement with the details of the tenancy. The tenancy began on March 1, 2017. Monthly rent was \$2,100.00 and a security deposit of \$1,050.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties. The Landlord stated that the Tenants moved out on February 12, 2018, while the Tenants stated that they moved out on February 8, 2018.

The Tenants have applied for the return of their security deposit in the amount of \$1,050.00. The parties confirmed that the Landlord has not returned the security deposit. The parties were also in agreement that the Tenants did not provide permission in writing for the Landlord to withhold any amount from the security deposit.

The Tenants testified that they provided their forwarding address to the Landlord by phone in February 2018 and that the Landlord received the forwarding address later through a previous dispute resolution application in March 2018. The Tenants stated that the previous application was withdrawn. The Landlord stated that he received the documents regarding a previous application filed by the Tenants around March 2018 and that the application was later withdrawn.

The Landlord testified that he kept the security deposit as the Tenants did not pay rent for February 2018 and also owed money for utilities and damages in the rental unit. The Landlord submitted evidence such as utility bills and photos of the rental unit which they stated was evidence as to why the security deposit was retained. In the documentary evidence of the Landlord he made note of his own monetary claims totally over \$9,000.00.

The Tenants stated that they moved out due to a mould issue in the rental unit. They also stated that they received notice from the Landlord that he needed the rental unit for his own use. The Tenants submitted into evidence a letter dated December 28, 2017 in which the Landlord states that the fixed term tenancy is set to end on February 28, 2018.

and will not be renewed after that. The Tenants moved out in February 2018 and stated their belief that they were entitled to one month of compensation for the Landlord needing the rental unit for his own use.

Along with the claim for the return of the security deposit, the Tenants are claiming compensation totalling \$15,689.26. They provided testimony that around May 8, 2017 they noticed water leaking issues and mould in the rental unit which continued until they moved out in February 2018. The Tenants stated that they notified the Landlord as they believed there was an issue with the pipes. They also told the Landlord that the toilet was broken and was leaking water. They stated that the Landlord attended the rental unit with a neighbour who determined that there was no issue with the toilet or pipes.

The Tenants stated that mould continued to grow on the walls and in the master bedroom closet which backed onto the bathroom. They submitted photos of a corner of the wall to show mould on the wall and baseboards, as well as a video that they took of the rental unit the day they moved out. The video also shows the area of mould on the corner of a wall. The Tenants submitted a written statement dated January 24, 2018 and a written response dated January 28, 2019, both of which outline the events that occurred since noticing the water and mould issues in the rental unit.

The Tenants stated that the Landlord did not address their concerns and other than tightening the hose at the back of the toilet, did not complete repairs or further investigation. The Tenants stated that the Landlord did not offer to pay the increased electricity bill when he asked them to keep their heat turned up and did not offer to pay for a hotel or house them elsewhere to investigate the cause of the leak in the rental unit. The Tenants stated that the issue was not caused by humidity and that they had nothing in the rental unit that would have caused additional humidity.

The Landlord stated that he attended the rental unit with licensed plumbers who did not find any issues. The Landlord also stated that there was a neighbouring rental unit that had no issues, which is evidence that there were no concerns with the pipes leaking from upstairs.

The Landlord stated their belief that the issue was due to high humidity in the rental unit and he suggested that the Tenants keep their heat on and keep air flowing in the rental unit. The Landlord stated that the plumbers advised the Tenants to keep the doors and windows open. He stated that the walls did not have mould at the start of the tenancy and there was no evidence that it was caused by anything other than the actions of the

Tenants. The Landlord testified that the Tenants did not want to keep the heat on due to the cost and while they advised him that the water was leaking from upstairs, no leaks were found.

The Landlord stated that they offered to investigate the issue further but advised the Tenants that they would need access to one of the bedrooms for a few days in order to do so. The Landlord stated that the Tenants declined to have the issues investigated further as they wanted the Landlord to pay for a hotel or house them elsewhere, which the Landlord did not agree to.

The Tenants agreed that they did not allow access, as stated in their written submission dated January 28, 2019 which notes in part the following:

*He also said that he would send someone to fix the wall and he asked us to move all of our belonging while they were going to do the repairs, we asked him if he could let us live in the empty unit next door while they were doing the construction and he did not let us. He wanted us to continue paying rent while there was construction being done at the house, so we did not let them come in.*

The Landlord testified that the neighbouring unit was not empty and therefore the Tenants would not have been able to reside there. He also stated that the Tenants had the option to move out but continued to live in the rental unit despite their complaints about water leaking and mould.

The Landlord stated that they advised the Tenants at the start of the tenancy to obtain insurance, as stated on the tenancy agreement addendum, but that the Tenants did not do this. The Tenants confirmed that they did not have insurance for their belongings.

The Tenants claimed for the cost of repairs due to the mould as well as the cost of replacing items that were damaged. This includes the following amounts claimed:

Cleaning supplies	\$500.00
Carpet cleaning	\$200.00
Carpet dryer rental	\$100.00
Dry cleaning	\$253.85
Damaged clothing	\$1,000.00
Damaged art work	\$1,000.00
Damaged photos in frames	\$500.00
Damaged photo albums	\$10,000.00

Damaged furniture	\$1,227.10
Damaged furniture	\$908.31
<b>Total:</b>	<b>\$15,689.26</b>

The Tenants testified that they rented the carpet cleaning machine and the carpet dryer from a friend and therefore did not have a receipt. They also stated that they lost invaluable items such as original art work, photos of their children, family portraits and photo albums from important events in their lives. The Tenants submitted two photos of the framed photos they claimed were irreparably damaged due to mould, dry cleaning receipts and receipts for the purchase of furniture.

The Tenants also stated that the furniture costs are for the cost of furniture which was damaged by the water leak and mould. They submitted three receipts for furniture, including a receipt dated July 29, 2011 in the amount of \$1,227.10, November 22, 2014 in the amount of \$908.31 and a receipt dated February 19, 2018 in the amount of \$2,619.00. The Tenants submitted a photo of a dresser and stated that it was damaged by the mould.

The Tenants stated that they had dry cleaning costs in the amount of \$253.85 and submitted a receipt for dry cleaning dated May 20, 2017 in this amount. The Tenants also included a letter to the Landlord dated May 18, 2017 in which they remind the Landlord of his duties to maintain and repair the rental unit and request \$250.00 for the dry-cleaning costs.

Both parties submitted a number of text messages into evidence, although the majority of the text messages were not in English and no translation was provided. The Tenants also submitted a video clip regarding the photo albums in which the importance and value of the photos and is discussed.

The Landlord submitted approximately 90 pages of documentary evidence including written statements, photos, utility bills, the tenancy agreement, photos and text messages.

The Landlord stated that at the end of the tenancy a hose was found attached to the toilet that he stated had been installed without his permission. In a written submission dated January 22, 2019, the Landlord stated that the removal of this hose caused water to leak on the floor for which repairs were required. The Landlord also submitted a written statement dated February 4, 2019 in which he responds to the evidence of the Tenants.

### Analysis

Regarding the Tenants' claim for the return of their security deposit, I refer to Section 38(1) of the *Act* which states the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The parties agreed that the tenancy ended between February 8, 2018 and February 12, 2018. The Tenants stated that their forwarding address was provided over the phone as well as by registered mail through a previous Application for Dispute Resolution. The Landlord stated that the forwarding address was received through the paperwork for a previous dispute resolution proceeding filed by the Tenants.

However, as the *Act* states that the forwarding address must be provided in writing, providing it over the phone is not sufficient. As for the address provided through a previous Application for Dispute Resolution, I find that the paperwork for a dispute resolution proceeding is not service of the forwarding address for the purpose of requesting the security deposit back. Instead, I find that the forwarding address should be provided in writing separately from a Notice of Dispute Resolution Proceeding package.

As I do not have confirmation that this was done, and the Tenants' address was not confirmed with the Landlord during the hearing to ensure they have the correct address, I cannot find that the Tenants' forwarding address has been provided for the purpose of requesting the return of the security deposit. Therefore, the Tenants must provide their current forwarding address to the Landlord in writing and the Landlord has 15 days from receipt of the forwarding address to comply with Section 38(1) of the *Act*. Should the

Landlord not comply with Section 38(1), the Tenants may reapply for the return of double their security deposit, pursuant to Section 38(6) of the *Act*.

Although the Tenants applied for compensation for damages as well as compensation for emergency repairs, they clarified that both of these claims were included in their Monetary Order Worksheet which outlined claims in the amount of \$15,689.00. The emergency repair costs were regarding the rental of equipment to clean the carpets. The Tenants testified that the monetary claims were regarding the water leaking and mould issues in the rental unit that were caused by an issue in the rental unit that the Landlord did not sufficiently respond to.

Section 7 of the *Act* states the following regarding compensation to a party:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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.

Both parties have a duty to repair and maintain the rental unit as stated under Section 32 of the *Act*. The Tenants stated that they advised the Landlord regarding the water leaking and the mould and that nothing was done to fix the issue. The Landlord testified that the Tenants concerns were addressed, and no issues were found. The Landlord stated that that the issues were caused by the Tenants and humidity in the rental unit and that he took reasonable steps to investigate and resolve the issues.

As stated by rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter, the Tenants bear the burden of proof. When parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim.

The parties were not in agreement as to the cause of any issues in the rental unit, and I do not find that the Tenants submitted sufficient evidence to establish that there were water and/or mould issues in the rental unit and that they were caused by the Landlord's breach of the *Act*. The Tenants submitted a photo of a wall, a dresser and two frame photos stating the presence of mould. There were no photos submitted of the additional damaged items such as the clothing or artwork, and no evidence submitted regarding water leaks in the rental unit or damage to the carpet.

I also do not find sufficient evidence to establish that the Landlord did not take reasonable steps to respond to the concerns of the Tenants or to meet his responsibilities under the *Act* to repair and maintain the rental unit. Accordingly, I am not satisfied that the Tenants have established that the Landlord breached the *Act* which is an essential part of determining whether compensation is due.

As stated in Section 7(2) of the *Act* and in Policy Guideline 16, a party claiming a loss must also do what is reasonable to minimize their losses. The Tenants have claimed compensation for the loss of clothing, art work, photos, and furniture and testified that they did not have tenant's insurance. The tenancy agreement addendum was submitted into evidence and recommends that the Tenants purchase insurance. The Landlord stated that he advised them to do this as well. Had the Tenants had insurance, it is likely that the replacement costs for some of their personal items would have been covered.

Both parties also noted that the Landlord offered to investigate the water leak but required that the Tenants move some of their belongings out of the way and provide access to the bedroom where the issues were occurring. However, the Tenants stated that they did not agree to this as the Landlord declined to house them elsewhere.

As stated in Section 32 of the *Act*, both parties have responsibilities to repair and maintain the rental unit and therefore I find that the Tenants should have provided reasonable access to their rental unit to address their concerns. Had they found they were entitled to compensation for costs incurred during the repairs, they had the option



to file an Application for Dispute Resolution. As such, by not allowing access to the rental unit and by not having insurance, I am not satisfied that reasonable steps were taken to minimize their potential losses.

I also note that while both parties submitted many text messages into evidence in which they state they discussed the concerns regarding the water leaking and mould, the text messages are not in English and no translation was provided. Therefore, I was not able to consider the majority of the text messages as evidence in this decision.

As I am not satisfied that the Tenants proved that the Landlord breached the *Act* and I am not satisfied that the Tenants took reasonable steps to minimize their losses, I do not find that the Tenants have established that they are entitled to compensation. Therefore, the Tenants' application for compensation for damages and for emergency repairs is dismissed, without leave to reapply.

Although the Landlord submitted testimony and evidence regarding his own monetary claims, this decision is only regarding the claims as stated on the Tenants' Application for Dispute Resolution. Both parties are at liberty to file a new Application for Dispute Resolution should they find that there are any additional claims remaining from this tenancy.

### Conclusion

The Tenants' Application for Dispute Resolution for the return of the security deposit is dismissed, with leave to reapply. The Tenants' application for monetary compensation is 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: February 20, 2019

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Residential Tenancy Branch