



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF MNDCT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants were represented at the hearing by their agent, S.E.

Both parties agreed that the landlords received the tenants' application for dispute resolution and evidentiary package in person. I find that the landlords were served with this application and evidence in accordance with sections 88 & 89 of the *Act*.

The landlords explained they served their evidentiary package on February 22, 2019 to an adult who answered the door at the address provided to them by the tenants on their application for dispute resolution. The landlords said they did not know who this person was but this person who received their evidence informed the landlords that it would be given to the tenants. Residential Tenancy Policy Guideline #12 notes:

Where a landlord is personally serving a tenant, the landlord must leave a copy with the tenant, or by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. The landlord must leave a copy for each cotenant. This requires actually handing a copy of the document to the person being served. If the person declines to take a copy of the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

I find the landlords have failed to provide sufficient evidence that the person with whom they left their evidence resided with the tenants. The landlords did not provide a proof of service document signed by this person, nor did the landlords identify if this person adequately understood the nature of the documents being received. For these reasons, I decline to consider the landlords' evidentiary package.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award? Can the tenants recover the filing fee?

### Background and Evidence

The parties explained this tenancy began on October 1, 2018 and ended on November 15, 2018. Rent was \$1,600.00 per month and a security deposit of \$800.00 paid at the outset of the tenancy continues to be held by the landlords.

The tenants said they were seeking a monetary award of \$12,580.00. However, a calculation of their monetary order worksheet notes a request for compensation as follows:

ITEM	AMOUNT
Replacement of 3 beds	\$1,700.00
Loss of toys, bedding etc.	400.00
Replacement of clothing/bedding	1,200.00
Hotels	340.00
Meals	610.00
Temporary Rental	200.00
Return of Rent for October to November	3,200.00
Damage	800.00
Moving Costs	250.00
Hydro	300.00
Filing Fee	100.00
<b>TOTAL =</b>	<b>\$9,100.00</b>

I will therefore consider the tenants' application for \$9,100.00 as it is described in the table above. The tenants argued they suffered significant financial loss after the discovery of black mould in the rental unit. The tenants argued this mould caused both medical and financial hardship for them. As part of their evidentiary package the tenants included several photos purporting to show the presence of mould in the property, along with several text messages exchanged between the parties and two letters given by the landlords to the tenants.

The tenants testified that because of the presence of mould in the property they were forced to vacate the rental property and to relocate to temporary accommodation in both hotels and short-term accommodation. The tenants argued they had incurred significant financial loss associated with the rapid manner in which they were forced to find alternative accommodation, along with the expenses related to food purchased in restaurants while they were away from their rental unit. The tenants advocate explained she had received all receipts associated with these expenses from the tenants but had herself misplaced them and was therefore unable include them with the tenants' application for dispute.

The tenants said they had not yet provided the landlords with a forwarding address because they had yet to secure long-term accommodation. The tenants described in detail the items which were "destroyed" by the presence of mould in the rental unit. These included children's toys and clothing, along with several pieces of furniture. The tenants alleged the remediation company which had been hired by the landlords to address the mould issue were not properly qualified to consider the substance. Furthermore the tenants alleged the mould had caused significant health problems for both themselves and their children. The tenants said they feared living in the rental unit and alleged the landlords took no steps to consider their hardship, expenses or health.

The landlords acknowledged the presence of mould in the rental unit but argued no mould had previously been found in the unit prior to the tenants' arrival and they stated several, significant steps were taken to address the mould issue once it was identified to them by the tenants. The landlords alleged that despite several warnings, the tenants had failed to take steps to ensure that mould would not form in the rental unit. The landlords noted that no fan was present in the bathroom and they had instructed the tenants to open the window to allow ventilation. Furthermore, the landlords said the remediation company they hired confirmed mould was present only on the wall and the bed and tests to the walls documented no moisture in the walls. The landlords said the

tenants' actions in failing to ensure proper ventilation had caused water to accumulate on the walls and for water to pool on the floor, leading to surface mould.

The landlords detailed the actions which were taken by the remediation company to test for the presence of mould explaining several tests were performed revealing no issues related to health and safety and these tests concluded that the presence of mould had been a result of the tenants' inaction, specifically their failure to adequately wipe down surfaces to remove mould spores.

### Analysis

The tenants have applied for a monetary award of \$9,100.00 representing loss which is purported to have resulted from their tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove their entitlement to a claim for a monetary award.

Residential Tenancy Policy Guideline #16 notes, the purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish all of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

While the tenants have provided sufficient evidence to show the presence of mould in the rental property, I find the tenants failed to demonstrate the actual monetary amount

of damage or loss and failed to show that the damage or loss arose as a result of the landlords' actions or inactions. The tenants advocate stated during the hearing that she received numerous receipts and invoices from the tenants; however, she explained these were misplaced prior to the hearing. If the tenants and their advocate knew in advance that these items were misplaced prior to the hearing, I find many alternative avenues could have been taken by the tenants or their advocate to demonstrate their purported expenses. These include compiling bank statements or contacting the businesses for duplicate copies. These steps were not taken and I find little evidence exists demonstrating the actual monetary amount of damage or loss.

By the tenants own admission the landlords hired a remediation company to attend the property. The tenants disputed the qualifications of this company and argued the company was ill-equipped to conduct adequate testing. I find this argument to be based on speculation and not to be supported by any evidence showing the remediation company was not qualified to attend the property. Furthermore, the tenants argued they suffered from significant health effects as a result of the presence of mould, however, these allegations are not supported by any medical evidence describing any effects they may have suffered. Section 26 of the *Act* notes, "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement." I find the tenants have not demonstrated their entitlement to a monetary award nor have they shown the landlord did not comply with the Act, the regulations or the tenancy agreement. I therefore decline to order a return of rent paid. Their application for a monetary award is dismissed without leave to reapply.

As the tenants were unsuccessful in their application they must bear the cost of their own filing fee.

The tenants' application for a return of the filing fee is premature as they have not provided their forwarding address in writing to the landlords. Only this portion of their application is dismissed with leave to reapply.

### Conclusion

The tenants' application for a monetary award is dismissed without leave to reapply. The tenants must bear the cost of their own filing fee.

The tenants' application for a return of their security deposit is dismissed with 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: March 18, 2019

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Residential Tenancy Branch