



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**Landlord** – OPR, MNDCL-S, MNRL-S, FFL

**Tenant** – CNR, MT, ERP, RP, RR, OLC, PSF, MNDCT

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- more time to make an application to cancel the landlord's 10 Day Notice pursuant to section 66;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord had an assistant attend the hearing on their behalf to assist with submissions.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

Both parties acknowledged receipt of each other's Application for Dispute Resolution (the Application) which were sent by registered mail. In accordance with section 89 of the Act, find that the parties are duly served with each other's Applications.

The landlord acknowledged receipt of the tenant's evidence by registered mail on April 24, 2019. The landlord referred to evidence provided showing that it was received by Canada Post, from the tenant, on April 17, 2019. The landlord indicated that the tenant's evidence was served late and the landlord did not have an adequate chance to respond to the tenant's evidence. The landlord stated that this is the reason why their submitted response was provided late to the Residential Tenancy Branch and the tenant.

The tenant stated that the Canada Post date is not accurate and that they actually mailed the evidence on April 16, 2019. Having reviewed the testimony and evidence provided, in accordance with sections 88 and 90 of the Act, I find that the landlord was deemed served with the tenant's evidence on April 22, 2019, five days after the Canada Post date stamp.

The landlord testified that they handed one evidence package to the tenant with the Application and posted a second evidence package to the tenant's door on April 25, 2019.

The tenant stated that the landlord's second evidence package was actually just left on their doorstep and confirmed that they received it on April 27, 2019, due to not being at the residence for a couple days. The tenant submitted that it was received late and that they did not have a chance to respond to it. Based on the testimony of the parties, I find the tenant is duly served with the landlord's evidence packages, pursuant to sections 88 and 71 (c) of the Act, which allows an Arbitrator to find a document sufficiently served for the purposes of the Act.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. Rule 3.3 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended

to be relied on at the hearing for a cross application must be received by the other party not less than 14 days before the hearing.

I find that the tenant did not serve the landlord with their evidence in accordance with the rules. I further find that the landlord did not serve their second evidence package in accordance with the rules, which was submitted in response to the tenant's late evidence. As the landlord was able to submit written responses to the tenant's late evidence, I accept the tenant's evidence for consideration. As the tenant served their evidence package to the landlord late, I accept the landlord's second evidence package in response to the tenant's evidence.

#### Preliminary Matters

At the outset of the hearing the landlord and tenant agreed that the tenant moved out of the rental unit as of April 29, 2019, and that the landlord now has possession of the rental unit. The landlord requested to withdraw their Application for an Order of Possession.

The landlord's request for an Order of Possession is withdrawn pursuant to section 64 of the Act.

As the tenant has moved out of the rental unit, they indicated that they were only pursuing the monetary amount of their claim and requested to withdraw all claims associated to the continuation of the tenancy.

The tenant's Application for cancellation of the 10 Day Notice, more time to dispute the 10 Day Notice, repairs/emergency repairs to be completed, for the landlord to comply with the Act and for the landlord to provide services or facilities are withdrawn, pursuant to section 64 of the Act.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and/or for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

Written evidence was provided that this tenancy began on October 01, 2018, on a month to month basis with a monthly rent of \$1,400.00 and a security deposit in the amount of \$700.00.

The tenant provided in evidence:

- A copy of a home inspection report which indicates 100% moisture content in one of the walls in the east side bedroom with visible mold growth and 15% moisture content in the west side bedroom. The report indicates that mold requires moisture content of 19% for mold growth;
- Various pictures from the interior of the rental unit showing mouse droppings, the exterior of the rental unit and pictures of a mattress with mold on it;
- Correspondence between the tenant and the landlord regarding mold issues, lack of water and other repairs in which the landlord responds to each message;
- A copy of an e-mail from the tenant to the landlord dated March 01, 2019, regarding the tenant rejecting the landlord's offer of a \$700.00 rent reduction to be effective the following November or December. The letter refers to a de-humidifier that had been running 24 hours a day, due to the daughter's room flooding, time invested in cleaning up water with a carpet cleaner, mold in the tenant's son's room, a mouse problem that the landlord responded to on January 8, 2019, and water problems which resulted in 14 days without running water as well as 22 days without a shower due to other plumbing issues. The tenant requests one month's rent in compensation;
- A copy of an e-mail, which shows that the tenant sent it to themselves on March 28, 2019, regarding, among other things, ongoing mold issues in her son's bedroom, issues with drinkability of the water as indicated by the company who installed the new pump and a leak behind the washer which is leaking into back bedroom behind the washer and causing mold and dampness which the tenant states is affecting her health and resulted in the tenant not being able to sleep in the room anymore in addition to other repairs which the tenant does not consider to be as urgent;
- Correspondence between the tenant and the landlord regarding a schedule for a realtor to show the house to possible purchasers after March 01, 2019;
- Copies of estimates for new mattresses;
- A copy of a letter dated April 02, 2019, from a medical professional regarding the tenant's health problems due to ongoing mold exposure in the rental unit; and
- Copies of five invoices for the cleaning of the rental unit and carpet from November 2018 January 2019.

The landlord provided in evidence:

- A copy of a statement in which the landlord indicates that the tenant was only without water for nine days due to frozen pipes which the landlord attended to as soon as they were able to, that the landlord attended to the rental unit regarding mold in the west bedroom but found that moisture content was at 12% in December 2018, that the cleaner hired by the tenant charged unreasonable rates with the landlord not being given an opportunity to do the cleaning themselves and that they have attended to the mice situation when informed about it as confirmed by the tenant;
- The landlord provides a chronological list of events which shows that the landlord responded to any issues with the tenant in a timely fashion including the flood that occurred in November 2018 for which no source was found by the landlord and moisture content was measured at acceptable levels throughout the unit, mold in one of the bedrooms, a small leak in the roof and the water pressure issues for which the landlord was affected as well and took multiple steps to fix the issue which was due to cold weather as well as some mechanical issues with the landlord providing drinking water as well as for cleaning and flushing the toilets.
- In the list of events, the landlord submits that she did not know about the washer leaking until receiving an evidence package from the tenant on April 03, 2019, for a different hearing and immediately attempted to repair it but that the tenant is now denying access to the rental unit;
- A copy of a 10 Day Notice dated March 05, 2019;
- Witness statements from three different parties who indicate that black spots were minimal and the unit did not smell musty when they attended the rental unit, which was in December 2018 for the first witness, March 07 and March 17, 2018 for the other witnesses;
- A copy of a statement from the company that performed the pump repair, dated April 04, 2019, stating that they had not performed any water tests and that they themselves are not a certified lab for water testing;
- A copy of an electronic message exchange between the landlord and the tenant starting from August 29, 2018, in which the landlord asks the tenant to check on the bait for mice and the tenant responds that they have not seen any mice for days as of February 2019. The parties also discuss issues with water pressure in January 2019, with the landlord communicating the steps being taken up until the water is fully restored as of February 21, 2019; and

- A copy of a Monetary Order Worksheet showing the landlord's monetary claim of \$4,900.00 which includes unpaid rent for March 2019, April 2019 and May 2019 as well as the tenant's security deposit of \$700.00 for cleaning and repairs.

The tenant confirmed that they did not pay the monthly rent for March 2019 and April 2019 due to numerous issues with the tenancy. The tenant submitted that they are seeking the equivalent of three months' rent as compensation due to the reduced services and failures to repair which have occurred since the beginning of the tenancy.

The tenant referred to pictures in their evidence showing mildew and mold as well as an inspection report that the tenant had completed which confirms excessive moisture content in one of the walls in the east bedroom. The tenant stated that they had cleaned the rental unit in such a manner that there was no musty smell when the landlord had realtors show the property on two occasions.

The tenant testified that there was a flood in the rental unit on November 02, 2019, which required a dehumidifier for two weeks and which impacted the tenant's utility bill. The tenant stated that she did not provide any utility bills in evidence to prove the actual amount of the loss for the continual running of the dehumidifier during this period. The tenant stated that they used their own steam cleaner to try to remove the water but that her steam cleaner broke and she had to hire a cleaner for which the tenant provided invoices.

The tenant indicated that there were plumbing issues with water pressure and drainage in January 2018 and February 2018 and the tenant's family was without water for a long period in February 2018. The tenant stated that they also had to deal with continual mouse droppings during the tenancy.

The landlord testified that they are seeking the unpaid rent for March 2019, April 2019 and lost rental income for May 2019. The landlord submitted that they are seeking to retain the security deposit for damage to the rental unit. The landlord stated that they did not know when the tenant was going to move out of the rental unit which prevented the landlord from showing the rental unit. The landlord confirmed that they did not advertise the rental unit for rent nor intended to rent it out at this time and have only had showings to potential purchasers of the property.

The landlord stated that they thought all the tenancy issues had been rectified as of March 01, 2019. The landlord referred to witness statements from different realtors who had been in the rental unit on March 07, 2019 and March 17, 2019, who did not smell

anything irregular and did not see the extent of the mold as indicated by the tenant. The landlord submitted that she did not know about the washer leaking until receiving the tenant's evidence package on April 03, 2019, for a separate hearing. The landlord testified that they put up a notice for entry on the tenant's door for the purpose of doing the repair shortly after becoming aware of the required repair but that they have not been granted access.

### Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 65 of the Act allows for past or future rent to be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement for services or facilities agreed upon but not provided. I find that the tenant bears the burden to prove that they are entitled to a rent reduction due to services or facilities agreed upon but not provided.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I find that the tenant's claim is not seeking compensation for specific expenses incurred but rather a global amount of compensation as a result of ongoing issues since the beginning of the tenancy.

I find that that it is undisputed that a flood occurred although the tenant has not provided any evidence to demonstrate that it occurred due to a violation of the tenancy agreement or the Act by the landlord. I find that the landlord attended to the unit and took measures to find the source of the leak in order to make sure that it would not happen again and provided a de-humidifier. I find that there is no evidence or testimony provided as to the source of the flood and that there is no correspondence from the tenant regarding leaks or any other issues until December 2018.

Based on the evidence provided, I accept the landlord's testimony that the tenant chose to use their own cleaner after the flood and did not give the landlord a chance to do the cleaning themselves. I find that the tenant, by using their own cleaner, did not allow the landlord to mitigate potential losses for the cost.

I find that the landlord responded in a reasonable amount of time to the reports of mold in December 2018 and, based on a balance of probabilities and evidence provided, I accept the landlord's submissions that she found moisture contents at an acceptable level but still provided a dehumidifier for the bedroom. I find that the landlord took action when the tenant continued to indicate that mold continued to be an issue in the son's bedroom and proceeded to rectify an issue with a leak when the weather allowed.

Although the tenant may have been impacted by the de-humidifier's effect on their utility bill after the flood and in December 2018, I find that they have not provided any evidence of what the exact amount of that loss is or that it was due to the neglect of the landlord in violation of the tenancy agreement or Act.

I find that it is undisputed that there were issues with mice in the rental unit; however, I find that the correspondence between the parties indicates that the landlord responded to the issue in a reasonable manner when informed about it. I find that the issue with mice was currently resolved with the landlord continuing to monitor the situation.

I find that there is no indication that the tenant advised the landlord that they have not been able to use any bedrooms or lost a mattress due to mold in the letter to the landlord dated March 01, 2019. I find that the tenant's e-mail of March 28, 2019, shows it as only having been sent to their own e-mail address. Considering the above, I accept the landlord's testimony that they were not aware of the contents of the inspection report or any other issues such as the washer leaking until receiving the printed e-mail in the tenant's evidence package on April 03, 2019, for a separate hearing. I accept the landlord's testimony that they were not aware of any issues which occurred after March 01, 2019, as the tenant confirmed that they had cleaned the rental unit in a manner that resulted in it being suitable for showing for the landlord's realtor. I find that the tenant did not dispute that they denied access to the rental unit as of April 05, 2019, due to losing confidence in the landlord's intent to adequately perform the repairs, which is a breach of section 29 of the Act.

For the above reasons, I find that the tenant did not mitigate any damages claimed after March 01, 2019, as they have not demonstrated that they provided the landlord any written notice concerning mold or other repair issues until April 03, 2019, at which time



they chose to deny access for the landlord to address the issues. I find that the only confirmed correspondence between the parties after March 01, 2019, until April 03, 2019, is regarding access to the rental unit for showings. For the above reasons, I dismiss the tenant's monetary claim for any issues which occurred after March 01, 2019, without leave to reapply.

I find that it is undisputed that there were water pressure issues starting in January 2019 and no running water at all for a period in February 2019. I find that the tenant did experience a reduction in the value of the tenancy due to the issues with access to running water; however, I accept the landlord's submissions that they did what they were able to in order to mitigate the water issues by providing water to the tenant when required.

Having considered all of the above, I find that the water pressure and water access issues are the only actual reduction in services or facilities that the tenant has sufficiently demonstrated a loss which meets the test of the four elements required as set out above. I find that the landlord had offered a half month's rent in compensation to the tenant which was rejected by the tenant. I find that the tenant's correspondence to the landlord dated March 01, 2019, seeks only one month's rent in compensation for all the issues that had occurred up until that point, including the water pressure issues.

For the above reasons, I find that the landlord's offer of a half month's rent reduction is reasonable. Therefore, I find that the tenant is entitled to a half month's rent compensation in the amount of \$700.00 for services or facilities agreed upon but not provided, subject to any set-off with the landlord's claims below. I dismiss the remainder of the tenant's monetary claims without leave to reapply.

Regarding the landlord's claim to retain the security deposit for costs associated to cleaning the house, cleaning the carpets and repairing damage to the yard that occurred as a result of the tenancy, I find that the landlord had just obtained possession of the rental unit shortly before the hearing. I find that the landlord has not provided any evidence or testimony of repairs undertaken as of the date of the hearing and that the landlord's claim for damages is premature. For the above reasons, I dismiss the landlord's claim for money owed or for compensation for damage or loss under the *Act*, regulation or tenancy agreement, with leave to reapply.

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant

has a right to deduct all or a portion of rent under the *Act*. I find that the tenant did not provide any evidence that they were entitled to deduct any amounts from their rent.

Residential Tenancy Policy Guideline # 3 establishes that in a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

As this tenancy was on a month to month basis, I find that it ended on April 30, 2019, based on the 10 Day Notice being served to the tenant in March 2019. Although the landlord states that they did not know when the tenant would move and did not advertise the rental unit for rent due to this, I find that the evidence and testimony demonstrate that the landlord's efforts were focused on selling the property as opposed to re-renting. I find that there is no evidence that the tenant denied access to any potential renters viewing the rental unit.

For the above reason, I find that the landlord is not entitled to any unpaid rent for May 2019 as this tenancy ended on April 30, 2019, and the tenant moved out prior to the end of April 2019. Therefore, I dismiss the landlord's claim for unpaid rent owing for May 2019, without leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Having reviewed the evidence and testimony, I find that it is undisputed that the tenant did not pay the monthly rent for March 2019 and April 2019. Therefore, I find that the landlord is entitled to a monetary award of \$2,800.00 for unpaid rent owing for those months. I have set off the tenant's compensation below.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in their application for unpaid rent and to retain the security deposit, I allow them to recover their filing fee from the tenant.

### Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlords to recover unpaid rent, to retain the tenant's security deposit and to recover the filing fee:

<b>Item</b>	<b>Amount</b>
Unpaid March 2019 Rent	\$1,400.00
Unpaid April 2019 Rent	\$1,400.00
Less Half Month's Rent Compensation	-700.00
Less Security Deposit	-700.00
Filing Fee for this application	100.00
<b>Total Monetary Order</b>	<b>\$1,500.00</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 07, 2019

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Residential Tenancy Branch