



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLYWELL PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MT, DRI, FF, LRE, MNDC, MNR, OLC

### Preliminary matter

At the start of the conference call the Tenant said the tenancy had ended on June 30, 2019 and they have moved out of the rental unit. As a result of the tenancy ending the Tenant is withdrawing the following claims from the application: CNC to dispute a Notice to End Tenancy for Cause, MT more time to make the application, DRI to dispute a rent increase, LRE to restrict the right of entry for the Landlord and for the Landlord to comply with the Act, regulations and tenancy agreement. The Tenant said she will continue with her monetary claims.

The Landlord's Counsel said she understands the withdrawals and has listed the claims in the Landlord's evidence package that she thought would be removed because of the tenancy ending.

The application was amended to include compensation for the cost of emergency repairs MNR and compensation for loss or damage under the Act, regulations or tenancy agreement MNDC.

### Introduction

This matter dealt with an amended application by the Tenant for compensation for damage or loss under the Act, regulations or tenancy agreement, to recover the cost of emergency repairs and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on June 5, 2019. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties represented.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation for loss or damage and if so how much?
2. Are the Tenants entitled to recover the cost of emergency repairs and if so how much?

Background and Evidence

This tenancy started on November 1, 2014 as a 3 month fixed term tenancy and then the tenancy renewed on a month to month basis. Rent was \$1,400.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant said they paid a security deposit of \$350.00 and a pet deposit of \$350.00 at the start of the tenancy. The Landlord said the Tenants paid a security deposit of \$700.00 at the start of the tenancy. The Landlord said a move in condition inspection report was completed and signed on October 31, 2014 and a move out report was completed on July 2, 2019. The Tenant said she did not remember signing or receiving the move in report.

The Tenant said the rental unit was in very poor condition and almost uninhabitable because of mold issues in the house and problems with the electrical system. The Tenant said she wrote the Landlord on November 25, 2014 with a list of repairs that needed to be done to the rental unit. The Tenant said the roof need to be repaired, there were electrical problems with the breakers flipping off, parts of the house were not cleaned, doors were missing, the washer and dryer were dirty, there were broken lights, curtains and curtain rods were missing, the yard was a mess, the fridge leaked and there were issues with the appliances as well as other issues.

The Tenant said the house was in really poor condition and she requested the Landlord to make the needed repairs. The Tenant continued to say some of the repairs were done but not well so the rental unit continued to be in very poor condition. The Tenant said the roof leaked and water came into the walls and soaked the insulation which started a mold problem in the house. The Tenant said the mold problem was so bad it has caused her and her son to have breathing problems. The Tenant said they have not seen a doctor, but will be in the near future. Further the Tenant said they did not get a mold inspection or report on the origin and degree of mold in the rental unit, but she sent in many photographs of the mold issues in the house to support her claims.

The Tenant continued to say that because of the deplorable condition of the rental unit and the Landlord's inaction or poor repairs she has made the following monetary claim. The Tenants are requesting the return of  $\frac{1}{2}$  the rent paid from November 2014 to June 2019. The total amount of rent is  $\$1,400.00/\text{month}/2 = \$700.00/\text{month}$  times 54 months which equals \$37,400.00, but the Tenant said she is not going to count the part of the first year in the unit because the issues were not as severe. Therefore, the Tenant said her claim is for 44 months at \$700.00/month equaling \$30,800.00. The Tenant said the

rental unit should not have been rented as it does not meet health and safety standards. The Tenant said she had no evidence to prove the rental unit did not meet health and safety standards.

The Landlord said there was a chimney fire in the unit prior to the Tenants moving in and the restoration company had not finished the repairs when the Tenants moved in. The Landlord said the repairs were completed in November and December 2014. Further the Landlord said the move in condition inspection report complete and signed by the Tenant and Landlord dated October 31, 2014 lists the rental unit in good or acceptable condition with some comments of normal wear and tear. The Landlord continued to say the report does indicate the roof repairs are to be complete, which they were, electric fireplace in the living room to be replaced, which it was and lights in the living room to be fixed. The Landlord said the Tenant and he did the inspection and the Tenant accepted the rental unit as indicated by the condition inspection report. The Landlord said the inspection report indicates the rental unit was in good condition and the Tenant accepted the report.

The Tenant said she doesn't remember signing the report and receiving a copy of the move in condition inspection report.

The Landlord said he gave the Tenant a copy of the report at the inspection or with the tenancy agreement.

The Tenant said the signature on the report may not be hers.

The Landlord said he saw the Tenant sign the report on October 31, 2014.

The Landlord continued to say that the Tenants had a marijuana grow operation in the crawl space of the rental unit. The Landlord said he believes that growing marijuana in the house is responsible for the electrical and humidity issues that developed into mold issues in the house. The Landlord said when he inspected the mold it was surface mold and should have been controlled by regular cleaning.

The Tenant said she has a marijuana license to use and to grow the marijuana plants.

In the Landlord's Counsel submissions it said that the Landlord made all necessary repairs to the rental unit. As well, it says the Landlord repaired or replace all the appliances as need including the electric fireplace in the living room. Further the Landlord believes the Tenant took the electric fireplace when they moved out as well as the Landlord's washer and dryer. The Landlord's Counsel said the Tenants have caused considerable damage to the rental unit and have removed property that belongs to the Landlord. Counsel continued to say receipts for appliances purchased and repairs to the unit are submitted in the Landlord's evidence package as evidence that the Landlord met their responsibilities to repair and maintain the rental unit. Further the

Landlord's Counsel said the Landlord has a dispute resolution hearing scheduled for October 2019 to hear the Landlord's monetary claims against the Tenants.

The Tenant said in closing that the rental unit was in very poor condition and the Landlord did not take action to insure the unit met health and safety standard. The Tenant continued to say both her and her son have breathing problems because of the mold in the rental unit. As well the house was dangerous because the electrical system was problematic. The Tenant said that the house should not have been rented and the Landlord knew that so the Tenant's claim for \$30,800.00 in compensation is justified.

The Landlord said in closing the rental unit was inspected by an electrician and repairs were done as indicated by the receipts submitted in the evidence package. The Landlord said the problems with the electrical and mold were a direct result of the marijuana grow operation the Tenants had in the house. The Landlord said the Tenants' claims are not proven and are not valid and the application should be dismissed.

### Analysis

**For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.**

Further section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy.

The Landlord has submitted condition inspection reports dated October 31, 2014 and July 2, 2019. The move in report indicates the rental unit is in good or acceptable condition with some wear and tear. The Tenant said she doesn't remember signing the report or receiving the report, but the Tenant did not dispute doing the walk through. I accept the Landlord testimony and evidence that the rental unit was in acceptable condition at the start of the tenancy and that the Tenant accepted the condition of the rental unit as good or acceptable on October 31, 2019 by signing the report.

I also accept from both parties' testimony and evidence that the rental unit has deteriorated during the tenancy. The Tenant says it was due to the Landlord's neglect and the Landlord says the Tenants did not clean or maintain the property and the Tenants operated a marijuana grow operation in the rental unit which may have caused the problems.

The Tenants have not provided an corroborative evidence to prove the origin of the mold issues, electrical issues or the if the Tenants' medical issues were caused by the rental unit. The Landlord has provided photographic evidence that marijuana was grown in the rental unit and his testimony is that growing the marijuana in the house could have created the mold issues and the electrical issues. The Tenant agreed they grew marijuana in the rental unit. I accept that growing marijuana in the house could have affected the humidity and the electrical systems in the rental unit. As the Tenant has not provided any corroborative evidence to prove the source of the mold and the electrical problems such as in a mold inspection report or an electrician's report; I find the Tenant has not proven the source of these issues. 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. I find the Tenant has not established ground to prove the mold issues, the electrical problems and the Tenants health issues are **solely** the result of the Landlord 's actions or inactions. Consequently I dismiss the Tenants' application without leave to reapply.

As the Tenants have been unsuccessful in this matter I order the Tenants to bear the cost of the filing fee of \$100.00 that has already been paid.

### Conclusion

The Tenants' application 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: July 16, 2019

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Residential Tenancy Branch