



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 621 CONSTANCE HOLDINGS  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The owner of the landlord company (the "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the tenant's notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

### Issue to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in 2014 prior to the landlord purchasing the subject rental property and ended on September 2, 2018. Monthly rent in the amount of \$950.00 was payable on the first day of each month. A security deposit of \$475.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the subject rental building is a 50-year-old wood frame building containing four separate rental units. The tenant did not dispute the above testimony.

The landlord testified that a tenant in a different unit informed the landlord that there was mold in his apartment. The landlord commissioned a mold assessment report for that unit which was conducted on July 23, 2018 and entered into evidence. The mold assessment report states in part:

After a thorough investigation, including appropriate fungal and moisture testing, the property can be classified as:

‘Major Problem’ is applied to: visibly mould contaminated surfaces that are larger in an area than 100 ft<sup>2</sup>, or very heavy and continuous growth covering less than 100 ft<sup>2</sup>. For ‘Major Problems’, the possibility of extensive hidden contamination has been explored, and has been found to be a factor in determining the level of contamination.....

Much of the visible staining within home is confirmed to be mould. Some of which are considered toxigenic, and therefore pose a health risk to the home’s occupant(s).... As a result, of the extent and type of mould contamination, professional fungal remediation is highly recommended for all rooms in the suite. However, prior to the commencement of work, a hazardous materials safety check must be completed to detail any other necessary safety protocols and scopes of work.

The landlord testified that after he received the mould assessment report he spoke with the author of that report who told him that it was highly likely, given the age and construction of the rental building, that all of the rental units contained unhealthy quantities of mould.

The landlord testified that he believed he owed his tenants a duty of care and did not want to put their health at risk by having them live with unhealthy mould levels in their

unit. To this end, the landlord had all tenants at the subject rental building served with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversation of Rental Unit (the "Four Month Notice") on July 31, 2018. The Four Month Notice had an effective day of November 30, 2018.

The landlord entered into evidence his application for permits for the required work dated July 31, 2018.

The tenant testified that she received the Fourth Month Notice, which was taped to her door, on July 31, 2018. Both parties agree that the tenant moved out of the subject rental property on September 2, 2018.

The landlord testified that the last tenant moved out of the subject rental building by December 1, 2018. The landlord testified that on January 7, 2019 he received a quote for the remediation work, this quote was entered into evidence. The landlord testified that the company who provided the quote confirmed that the mould problem was substantial and was in all four of the rental suites.

The landlord testified that after receiving the quote for the remediation work he sought financing through a number of different financial institutions. The landlord testified that in an effort to show the financial institutions the amount of rent he could potentially receive from the rental property, the landlord listed the subject rental property for rent in January of 2019; however, all of the financial institutions the landlord approached turned him down. The landlord testified that he never had any intention of actually renting the subject rental property out. The landlord testified that the subject rental building has been vacant since the last tenant moved out in December of 2018.

Witness J.B. testified that he was looking for a new apartment in January of 2019 and came across the advertisement for the tenant's suite. Witness J.B. testified that the landlord's agent requested he fill out a rental application. Witness J.B. testified that he believed the landlord would have rented him the subject rental property if he had given the landlord a security deposit. The tenant testified that she has recently driven by the subject rental property and that it does not look lived in.

The tenant testified that the landlord has not completed the repairs stated in the Four Month Notice and so she is entitled to receive 12 months rent pursuant to section 51 of the *Act* in the amount of \$11,400.00.

The landlord testified that pursuant to section 51(3) of the *Act*, extenuating circumstances prevented him from renovating the subject rental property and he should therefore not be required to pay the tenant 12 months' rent.

The tenant testified that her new accommodation costs 17% more per year than the subject rental property and is seeking \$3,600.00 which, she testified is the difference between what she used to pay and what she pays now for a period of six months. The tenant entered into evidence a letter from the tenant's new roommate. The letter states that the rent at the tenant's new address is \$1,600.00 per month and that the tenant pays \$800.00 per month.

The tenant testified that she paid a total of \$107.80 on a rental truck and gas for the rental truck when she moved out of the subject rental property. Receipts for same were entered into evidence. The tenant is seeking the landlord to pay for the cost of her move.

The tenant testified that it cost her \$56.96 to have her mail forwarded by Canada Post and is seeking the landlord to reimburse her that amount. No receipt was entered into evidence.

The tenant testified that she spent \$15.56 on registered mail to serve the landlord with documents for today's hearing and is seeking the landlord reimburse her that amount. A receipt for same was entered into evidence.

The tenant testified that she purchased ink and a usb stick totaling \$45.56 in preparation for this hearing and is seeking the landlord reimburse her that amount. A receipt for same was entered into evidence.

The landlord testified that he acted in good faith and in the best interests of the health of the tenants and does not believe he is responsible for the tenant's expenses listed above.

### Analysis

Section 51(2) of the *Act* states that subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant,

in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Section 51(3) of the *Act* states that the director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Policy Guideline #50 states that an arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation.

Based on the testimony and evidence of the landlord, I find that the subject rental building had a substantial mould problem that may have posed a significant risk to the health of all the tenants in the subject rental building.

I find that it would be unreasonable and unjust for the landlord to pay the tenant 12 months rent compensation when he acted reasonably and quickly to deal with the unhealthy levels of mould in the subject rental property and was subsequently unable to find financing to complete the necessary remediation. I find that the specific date the landlord was granted the building permit is not relevant to this proceeding as the tenant is not disputing the Four Month Notice. The timing of the receipt of the building permit would only have been relevant under section 49(6) of the *Act* for an application to cancel the Four Month Notice, not an application for damages under section 51 of the *Act*.

I find that while the landlord did not accomplish, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, in accordance with section 51(2)(a) of the *Act*, extenuating circumstances, prevented the landlord from complying with section 51(2)(a) of the *Act*.

I find that while the rental unit was not used for the stated purpose for at least 6 months' duration, in accordance with section 51(2)(b) of the *Act*, extenuating circumstances, prevented the landlord from complying with section 51(2)(b) of the *Act*.

I note that the landlord has not received any benefit from the tenant's eviction such as increased rent and that the landlord has suffered a loss as he is not earning any rental income on the subject rental property. I find that, pursuant to section 51(3) of the *Act*, the landlord is excused from paying 12 months rent compensation to the tenant.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

Section 51 of the *Act* sets out the damages the tenant is entitled to collect if the landlord does not do what he says he will do on the Four Month Notice. I find that the tenant is not entitled to claim losses arising out of the end of this tenancy in addition to her claim for 12 months rent. The 12 months rent payable under section 51 of the *Act* is meant to compensate the tenant for damages arising out of the end of the tenancy. I therefore dismiss the tenant's monetary claim for the cost of the moving truck and gas, the cost of mail forwarding, and the difference between her old and current rental rate, as these damages flowed from the end of the tenancy.

In addition to the above, I note that the tenant testified that her rent has increased since she moved out of the subject rental property by 17%; however, the tenant entered into evidence a letter from her new room mate stating that the tenant pays \$800.00 per month for her share of the rent. The tenant paid \$950.00 per month at the subject rental

property. Therefore, the tenant is currently paying less rent per month than at the subject rental property. I find that the tenant has failed to prove that she suffered a loss. I therefore dismiss the tenant's claim for \$3,600.00 on this ground as well as the ground stated above.

I note that the tenant did not submit a receipt for the cost of her mail forwarding. I therefore also dismiss the tenant's claim for the cost of her mail forwarding on the basis that she failed to prove the quantification of her loss.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the *Act*. With the exception of compensation for filing the application, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore also dismiss on this ground, the tenants claim for the cost of Canada Post charges, ink and USB sticks she incurred when preparing for, or participating in, this proceeding.

### Conclusion

The tenant's 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: June 25, 2019

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Residential Tenancy Branch