



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDC, FF

### Introduction

The tenant applies for a compliance order and for a monetary award as a result of consequences she suffered due to a claimed water and humidity problem in her rental unit. The tenant had vacated the rental unit prior to the start of this hearing and so she no longer requires a compliance order.

The hearing of this matter occurred over three days. All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Have the landlords breached the obligation imposed by s. 32 of the *Residential Tenancy Act* (the “Act”) to provide and maintain this rental unit “in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. If so, has the tenant suffered damage or loss as a result and, if so, what is appropriate compensation?

### Background and Evidence

The rental unit is a bachelor suite connected to a house containing five other rental units. There is a written tenancy agreement. The tenancy started in September 2012. The tenant vacated on July 1, 2019. The monthly rent was \$615.00. The landlords took a \$300.00 security deposit and have returned it to the tenant in cheque form. As of the

last hearing the tenant had not cashed that cheque. It was suggested to her that she do so.

The rental unit is in a building separate from the house on the property. The tenant indicates it might have been a garage or carport at one time. The landlords, who purchased the property not long before this tenant, dispute that claim. The rental unit has a deck above it servicing another rental unit in the house. It also has a storage room along one end of it and the storage room door appears to be a garage door. The rental unit is on a concrete "slab" say the landlords.

It is apparent that since the start of the tenancy the humidity level in the rental unit has been high. In the spring of 2013 the tenant informed the landlords that she was discovering "mould" on her belongings in the suite. The landlords provided the tenant with a dehumidifier.

In November 2013 the landlords provided her with a new dehumidifier and installed it with a permanent drain pipe running outside so that the tenant would not have to constantly drain the normal catch tray. The tenant reports that the machine ran five to twelve hours a day and was loud. The landlords also painted over some mouldy spots according to the tenant. She said the water problem didn't improve and that she was seeing mould.

In May 2014 the tenant emailed the landlords stating:

I just want you to know that the water damage problem (bubbling/cracking paint where a drainpipe is in the internal wall) is getting worse. The dehumidifier is still on daily as you programmed it and the internal humidity is standard, but there are now signs of damage to corners of the carpet and laminate near the wall and a large bubble full of water which protrudes from the wall up to 1cm and is about 10cm across! Bubbles are spreading and the door frame and adjacent baseboard are cracking and swollen.

In response the landlord Mr. J. wrote back stating that the drains from the deck above run into the wall where the paint was peeling he would have to repair it by removing some of the drywall in her suite over the summer. There is no evidence that work, or any work was done over the next summer.

Also in May 2014 the landlords wired a fan into the bathroom light so that the fan was constantly on.

In the fall and winter of 2018 the parties had a dispute about the covering up of the electrical panel and about the tenant placing objects over or in front of a baseboard heater she did not use. Out of a sense of caution the landlord disconnected the baseboard heater so that it could not be turned on. This aggravated the tenant.

The tenant testifies that by June 1, 2019 there were many bubbles in the paint of the rental unit and a hole had appeared in the wet drywall above the bedroom door. Black ants were coming out of the hole. She says that on the next day the landlord Mr. J. conducted a scheduled "fire inspection" of the fire alarm in the rental unit which, she says, is right next to the hole above the door. She states that he must have seen the water damage in the ceiling. Apparently the damage was not discussed and the tenant did not write another email like the one sent in May 2014.

On the morning of June 17, 2019, the tenant heard a crackling sound in the wall at the location of double switch housing. Dark water was running down the wall from the behind the switch plate. She turned her power off and called the landlord Mr. J.

Mr. J. attended and turned the power back on. He told her to simply let the switch box dry out. He pulled down some wet drywall and the tenant observed dark mould and mildew underneath as well as "rotten wood, chewed insulation, old paint, ants ...." She says she was immediately overpowered by the smell and had an asthmatic reaction.

According to the tenant, Mr. J. returned later that day, determined that electrical box was dry and turned the power back on. The snapping sound started again about five minutes later. She called Mr. J. who stated there was not fire hazard. She called her parents. Her father attended, viewed the situation, spoke to Mr. J. and called the fire department.

The fire department attended and issued an emergency compliance order to the landlord. Neither side filed a copy of the compliance order. The tenant indicates that the order had something to do with possible health concerns about mould in the rental unit. I consider it most likely that the compliance order was regarding fire safety and, as suggested by the landlord Mr. J., was an order that he not turn the power back on until the switch in question had been inspected and approved by a qualified electrician.

Following the June 17 attendance of the fire department, it appears the landlord had an electrician attend and approve things. The power was restored.

Over the next few weeks the landlord began to repair the water damage. He pulled away drywall to expose wetness, mould and mildew in the structure behind. It was his view that the water that had wetted the ceiling in the rental unit and that had run down from the electrical switch was water, not from rain, but from a power washing he had given the deck above six weeks earlier. He indicated that there had been drains in the deck above, some of them had been removed or covered up and that was the cause of the leaking.

A friend of the tenant's, Mr. M.A. attended during this time. He describes himself as a person knowledgeable in carpentry, hardware installation and building management. He attended at the rental unit with the tenant in June and removed some of the fresh drywall Mr. J. had placed up along the ceiling area. He says Mr. J. had applied insecticide to the area above the ceiling but no mould inhibitor like "Kilz" and no insulation or plastic vapour barrier.

Mr. J. rebutted these allegations, saying that he had applied mould inhibitor and that he was waiting for the area about the ceiling to dry out before installing insulation and a vapour barrier.

The tenant began to stay elsewhere after the June 17 incident and moved out completely by July 1. Her security deposit was returned in a letter July 10.

### Analysis

#### The End of the Tenancy

It is apparent from the evidence that this rental unit had a long history of significant moisture issues. Mr. J.'s claim that the rental unit was humid because it was on a concrete slab is not a satisfactory explanation, nor is it an exculpatory one.

This rental unit was showing obvious signs of water intrusion from early days. The tenant's May 2014 email was a clear indicator of serious water problems. The landlords should have recognized it as such.

As a result, when the tenant discovered her light switch crackling and water running out of it and down the wall, she had very good reason to suspect that the rental unit was not reasonably fit for habitation.

In my view, the landlord's longstanding failure to attend to water problems in the rental unit and his protracted repairs of the wet areas after the June 17 were reasonable grounds for the tenant to assume the proper repairs would not be done. The landlord Mr. J.'s statement that he did not install insulation or a vapour barrier behind the drywall he'd installed (but not taped, mudded or painted) was because he was drying out the area behind the drywall does not make sense. Normally such an area would be thoroughly dried out before it is enclosed with drywall. Enclosing the area in drywall would significantly impede any effort to dry it out.

In result, after the incident of June 17 incident the tenant had good cause to consider the rental unit uninhabitable. She was entitled to end her tenancy. Her claim for recovery of two weeks' rent is a proper one and I award her \$307.50 as claimed.

#### Harassment and Inappropriate Behaviour

The tenant's application does not make mention of this claim but the material she filed in support presents it and it was the first thing she talked about in her testimony.

According to the tenant the landlord has been inappropriate with her on a number of occasions over the years. She thinks he has looked at her in a covetous manner a few times and has entered her suite on perhaps two occasions over the years without due consideration for her, possibly bumping past her once.

As well, when things broke down between the parties after June 17, the landlords issued "caution notices" to her for a yelling incident.

I dismiss this item of the tenant's claim. In the face of the landlord Mr. J.'s denial about the pre June 17 conduct it is not reasonably possible to make any finding without objective corroboration of any incident.

As well I consider the tenant's view of Mr. J. to be slanted by her own sense of injustice. I base this comment on the fact that with the security deposit the landlords' July 10 letter offered the tenant the \$307.50 she was claiming in her application as a complete resolution of the matter. To a reasonable person it would have been seen as an offer to settle by agreeing to the full claim the tenant appeared to be making at that time. The tenant testified that she viewed the offer as a bribe.

I view the “caution notice” matters as not being out of the ordinary for a landlord even if they were actually in the nature of self serving documents. I do not consider them a form of improper harassment.

In result the tenant’s claim for any monetary award for landlord harassment, intimidation and threats or inappropriate behaviour is dismissed.

#### Security Deposit, Costs Related to New Accommodation and Postal Costs

The tenant has filed the required Monetary Order Worksheet listing a number of other claims in addition to the two above. Her damage deposit claim should be resolved with her cashing the cheque in her possession. Her claim for recovery of postal costs must be denied as the *Act* restricts an arbitrator’s power to award fees and disbursements incurred in the dispute resolution process to awarding recovery of the filing fee.

The tenant seeks the cost of additional rent at her new accommodation as well as the filing fee. I deny those claims. Assumedly the tenant is getting the accommodation she is paying for. In this hearing she has not demonstrated otherwise.

#### Damage and Loss Related to Moving.

The tenant is entitled to be compensated for loss and extra costs incurred by her forced move from this rental unit in June 2019.

I have reviewed the receipts she provided. Some of the items of cost, like cab fare or car rental fees, were not explained by her. In my view, rather than award or dismiss this part of the tenant’s claim on an item by item basis, it would be fair to award her general damages for extra expenses and effort required of her in order to move to new accommodation. I award the tenant \$500.00 in this regard.

#### Conclusion

The tenant is entitled to an award of \$807.50 plus recovery of the \$100.00 filing fee. She will have a monetary order against the landlords in the amount of \$907.50.

Should the landlords’ \$300.00 security deposit cheque be dishonoured, I grant the tenant leave to re-apply.

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: September 20, 2019

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Residential Tenancy Branch