



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VERITAS HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants: MNDCT, MNSD, FFT
For the landlord: MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order of \$20,099.31 for unpaid rent or utilities, for damages to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all of part of the tenants' security deposit, and to recover the cost of the filing fee. The tenants applied for a monetary order in the amount of \$32,551.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of their security deposit, and to recover the cost of the filing fee.

The hearing commenced on May 30, 2019. The hearing process was explained to the parties, the parties were affirmed and the parties were given the opportunity to present evidence and ask questions. After 56 minutes, the hearing was adjourned to allow for more time for the parties to present their evidence and provide testimony. An Interim Decision was issued dated May 31, 2019, which should be read in conjunction with this decision. On August 26, 2019, the hearing was reconvened and after 141 minutes was adjourned again. A second Interim Decision was issued dated August 26, 2019, which should be read in conjunction with this decision. On October 25, 2019, the hearing reconvened and after 63 additional minutes, the hearing concluded.

Both parties confirmed that they had the opportunity to present their evidence and have their testimony heard. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The parties confirmed having been served with documentary evidence from the other party and that they had the opportunity to review that documentary evidence prior to the hearing. Accordingly, I find the parties have been sufficiently served as required by the Act.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to the parties. In addition, any monetary order will be emailed to the appropriate party for service on the other party.

Background and Evidence

A copy of a fixed-term tenancy agreement was submitted in evidence. The tenancy began on October 1, 2017 and reverted to a month to month tenancy after September 30, 2018. The parties disputed the end of tenancy date. The tenant stated that they vacated the rental unit on January 19, 2019, while the agent testified that the tenants vacated on January 31, 2019. There is no dispute that the tenant paid a security deposit of \$1,237.50, which the landlord continues to hold. The landlord filed their application on February 11, 2019. The tenants filed their application on March 4, 2019. The monthly rent was \$2,475.00 per month during the tenancy and was due on the first day of each month.

Landlord's claim

The landlord has claimed \$20,099.31, which is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
Mould inspection & testing	\$719.25
Mould remediation	\$5,610.15
Flooring & baseboard replacement	\$3,540.14
Window sill replacement (5 window sills)	\$485.85
Painting costs	\$1,391.25
Paint	\$70.11
Cleaning costs	\$231.00
Unpaid rent, Feb. 2019 and loss of rent March 2019	\$4,950.00
Missing garage door opener	\$100.00

Fridge water filter cap	\$45.90
Junk removal 1	\$345.00
Missing window coverings	\$179.20
Missing window screens	\$73.50
Unpaid utilities	\$164.26
Re-attaching heaters, repairing cabinets, re-caulking, general handywork	\$200.00
Cabinet from replacement and staining	\$2,077.11
Borax	\$6.14
TOTAL	\$20,099.31

Regarding item 1, the landlord has claimed \$719.25 for the cost to arrange for a mould inspection and testing of mould in the rental unit. The agent presented an invoice dated January 29, 2019, and the address on the invoice matched the rental unit address. The agent stated that on January 15, 2019, the rental unit was inspected by two people from the landlord company and the cleaner and found the heaters were off in the rental unit, there was a large amount of condensation on the windows throughout the rental unit and severe mould in the rental unit. The agent referred to several photos submitted in evidence also. The tenant stated during the presentation of this evidence that he was out of the country and did not have the documentary evidence in front of him. The parties were advised that all parties were expected to be prepared for the hearing with all documentary evidence to refer to during the hearing.

The agent referred to a photo, which shows many clothes being dried in the rental unit on racks instead of the suite dryer provided. The photo also showed the clothes on a drying rack and the drying rack on top of unprotected laminate flooring. Other photographic evidence showed condensation on windows and water damage and mould on the window sills.

In terms of background regarding mould in the rental unit, the tenants reached out to the landlord on November 2, 2018 regarding mould in the rental unit and on the tenants' clothes. The tenants' photographic evidence was not very clear regarding mould clothes. The agent stated that the landlord was not permitted to view the tenants' mouldy clothing and instead, the tenants immediately had their clothes dry-cleaned instead. The agent stated that on November 2, 2018, the building manager attended the rental unit for an inspection and saw a small amount of mould in one of the master bedroom windows and no other visible mould and consider the tenants' concerns to be

minor. On November 6, 2018, the building manager cleaned inside the rental unit with bleach and an anti-microbial spray just to be safe and provided the tenants with a dehumidifier and advised the tenants to use the bathroom and kitchen fans in November 2018. The agent stated that the landlord did not hear anything back from the tenants until a January 9, 2019 by email and referred to the email submitted in evidence. In the January 9, 2019 email from the tenants, the tenants provided 12 days' notice before vacating the rental unit for what the tenants describe as severe mould in the rental unit. In the email string, the agent stated that the landlord was not aware that mould continued to be an issue for the tenant so was surprised to hear that the tenant was fed up.

On January 15, 2019, the agent stated the building manager attended the rental unit again and realized that the extent of mould had dramatically increased and that a mould inspection report would be required so had the mould inspection company (inspection company) complete the inspection for mould in the rental unit on January 18, 2019. The inspection company completed their Mould Inspection Scope of Work and Quote report dated January 23, 2019 (inspection report). Both parties referred to the inspection report throughout the hearing. The invoice of the inspection report was presented and matches the \$719.25 amount claimed for this item.

The tenant referred to a document submitted in evidence where the tenants take the position that they are not liable for any of the amounts claimed as the tenants allege that the cause was the failure of the landlord to provide and maintain the residential property in compliance with 32(1) of the Act. The tenants allege that the landlord failed to mitigate their losses in connection with the mould issue by not appropriately inspecting the mould issue first reported by the tenant on November 2, 2018. The tenants write that the landlord failed to account for both the character and location of the rental unit, which happens to be a ground floor apartment and the 2 bedrooms severely affected by mould are along the gable end side of the apartment, which attract dampness.

The tenants also write in their document that the landlord dismissed the majority of claims described by the tenants during a walkthrough performed in the rental unit on November 6, 2018 with the tenant. The tenant allege that the landlord failed to engage suitably qualified personnel at that point and by November 8, 2018, the landlord had only bleach cleaned the observed and alleged areas, including the washroom, bedroom closet and windows, and put two layers of mould guard on them. In addition, the tenant writes that the landlord used an air sled for the washer/dryer unit and inspected the walls and pipes, and that everything seemed to be in good order with no moisture, so

the inside of the dryer was vacuumed to remove lint. The tenant also writes that the washroom fan was opened and cleaned out, the heating issue was fixed as it was off at the electrical panel, and a dehumidifier was used while work was performed, open the windows to let moisture out and fresh air in.

The tenants write that despite persistent requests, there was never any follow up from the landlord after November 8, 2018 to query if the mould situation had been fully remedied. The tenants also write that on January 9, 2019, the tenant re-informed the landlord that the mould issue was still ongoing and did not take steps to inspect the property until the mould inspector attended the property on January 18, 2019.

The tenant also expresses extreme concerns over the independence of the information, which was used in the inspection report. The tenant stated they dismiss certain statements used throughout the report by the mould inspector (inspector) taking the landlord's position at face value including what the tenant alleges was false and contradictory allegations made against the tenant such as tenant informing the inspector that he turns off the electric baseboard heaters in the apartment whenever he leaves, the clothes he had in his closet were covered in green mould and had to be thrown away, that the same drying rack was shown with wet clothes and many large bath towels hanging on the drying rack directly above unprotected laminate flooring, a blue bucket was shown with water in it, which is underneath some of the clothes to catch dripping water.

In addition, the tenant writes that the agent wanted the information shared openly with the tenant and that the landlord was most concerned with the potential health effect the situation might have on the tenant, that no other unit in the complex had the mould issue, and that photos taken by the landlord in the presence of neither the landlord nor the tenant were used by the mould inspector to rely on in the inspection report. The tenant vehemently denies that they are the cause of the mould in the rental unit and reiterated their position throughout the hearing. As a result, the tenant stated that they do not agree with the landlord's claim.

Regarding item 2, the landlord has claimed \$5,610.15 for mould remediation, which the landlord alleges the inspection report supports that the cause of the mould was the tenant's "lifestyle choices". The agent referred to a portion of the inspection report, which indicated extremely high mould air spores in the rental unit based on lab testing and that the inspector found that it was due to the tenant's "lifestyle choices" that

resulted in there being no elevated numbers in the drywall or ingress but was moisture inside the rental unit.

The agent stated several times during the hearing, that the landlord did not hear from the tenant between November 2, 2018 and January 9, 2019, which was a period of approximately 2 months. The tenant confirmed through their testimony that they did not communicate with the agent/landlord between November 2, 2018 and January 9, 2019.

The agent referred to an invoice for the mould remediation in the amount \$5,343.00 before taxes, which totals \$5,610.15 and was submitted in evidence. The agent also stated that the landlord was able to reduce the amount paid to remediate the mould from the original quote of \$8,538.00 plus GST to \$5,610.15 including taxes by doing some of the work themselves or contracting to their own sub-contractor who could do some of the work for less money. The agent also reinforced that the original work quoted was done, just for less money. The tenant's response for this item was the same as item 1.

Regarding item 3, the landlord has claimed \$3,450.59 for the cost to replace damaged flooring and baseboards. The agent stated that the flooring and baseboards were 7 years old as of October 1, 2017, which was the start date of the tenancy. The tenant did not dispute the age of the flooring or baseboards claimed by the agent during the hearing.

Regarding the amount claimed of \$3,450.59, the agent testified that there were two invoices that total that amount, the first invoice being \$1,968.29 and the second invoice being \$1,482.30. Both invoices were presented during the hearing for my consideration. The agent clarified that all excess materials were returned to reduce the overall cost, which is reflected on the invoice. The tenant's response to this item was the same as the first two items.

Regarding item 4, the landlord has claimed \$485.85 for window sill replacement. The agent referred to an invoice in the same amount submitted in evidence. The agent testified that five of the seven window sills requirement replacement due to mould; however, two window sills were not replaced. The agent testified that there was moisture in the sills, interior condensation, and the sills warped, bubbled, and there was mould on each of the sills that were replaced. The agent clarified that the invoice included parts and labour. The tenant's response to this item was the same as the first two items.

Regarding item 5, the landlord has claimed \$1,391.25 for the cost of repainting the rental unit and submitted an invoice that matches the amount claimed. The agent stated that the landlord painted the door trims to reduce the overall painting costs. The agent stated that the age of the interior paint was 7 years old in October 2017, when the tenancy began. The agent later stated that the age may have been less; however, the agent was unsure which walls were repainted approximately two to three years before the tenancy began.

The agent referred to several pictures of the damage to the walls. In one photo regarding the tv wall mount, the agent stated that the photo represents damage beyond reasonable wear and tear. In another photo, which the agent described as scuff marks on the wall, the tenant claims they are not responsible for scuff marks as that would be wear and tear. In another photo, the wall had scuff marks on the majority of the lower wall in the photograph, which the agent stated was evidence that the tenant was very hard on the rental unit. In addition, the tenant's response to this item was the same as the first two items, with the added comments described above regarding wear and tear.

Regarding item 6, the landlord has claimed \$70.11 to supply the white paint required by the painting in item 5, which is consistent with the invoice submitted for item 5. The invoice for this item, matches the amount claimed of \$70.11. The tenant's response to this item was the same as the first two items.

Regarding item 7, the landlord has claimed \$231.00 for cleaning costs. An invoice was submitted in evidence, which supports the amount claimed. The agent stated that the tenants failed to clean the rental unit before vacating and supplied a video in evidence doing a walkthrough of the rental unit. In the video, at the 34 second mark, the tenant is overheard saying that they don't need to clean the rental unit. The agent stated that the amount charged by the cleaner was for the full clean of the rental unit. The agent also referred to the incoming condition inspection report (CIR) and the outgoing CIR. In the incoming CIR there are some scratches noted and a crisper shelf crack in the fridge.

The tenant responded to item 7 by stating that they were recorded without permission, and that the tenants feel that they complied with the Act and that the tenants' response was the same as the first two items. It was at this time in the hearing that the tenants' video evidence was excluded at the undersigned arbitrator could not open the tenants' video evidence. I have also considered that the agent confirmed that the landlord could not open the tenants' video evidence either.

Regarding item 8, the landlord has claimed \$4,950.00 for unpaid rent of \$2,475.00 for February 2019, and loss of rent for the month of March 2019 in the amount of \$2,475.00. The agent stated that they rental unit was re-rented as of April 1, 2019; however, could not be rented sooner due to the amount of remediation required due to the mould caused by the tenants' lifestyle. The agent stated that while they attempted to re-rent as of the middle of February, the landlord also realized that the mould had to be remediated before a new tenancy could begin.

The tenant's response to this item included a quote from the inspection report as follows:

"it is highly recommended that the apartment not be occupied by anyone until it can be professionally remediated. This is a potentially serious health and safety issue. The [inspector] informed the tenant of this on the day of the inspection."

The tenant writes that "following on from the above recommendation, the tenants provided 13 days advance notice to the landlord, which they deemed to be as reasonable as possible given the untenable living circumstances involved." The tenants write that although they are not claiming they gave one-month notice, they gave "short notice" and cite section 45(3) of the Act. The tenants write that section 45(3) "essentially allows a tenant to get out of a tenancy agreement with less than one month's notice when the landlord has failed to comply with a material term of the tenancy." The tenants argue that the landlord breached a material term by renting a suite that had character, location and infrastructure defects such as poor ventilation, lack of ventilation, leaking taps, leaking washer and dampness coming in from the outside concerns, which were all communicated to the landlord on November 2, 2018.

Regarding item 9, the parties reached a mutual agreement regarding this item pursuant to section 63 of the Act. The parties agreed during the hearing that the tenants would compensate the landlord in the amount of \$100.00 for the missing garage controller fob. As a result, this item will not be discussed further, until accounted for later in this decision.

Regarding item 10, the landlord has claimed \$45.90 for the fridge water filter cap on the fridge that the agent stated was found to be missing after the tenant vacated the rental unit. The agent referred to the outgoing walkthrough video at the 2 minute and 33 second mark of the video, where the agent states that cap is shown missing at the bottom of the fridge. The agent presented a receipt in the amount of \$45.90 in support

of this portion of their claim. The tenant stated that the cap was not there at the start of the tenancy, was not removed by the tenants and is not their responsibility.

Regarding item 11, the landlord has claimed \$345.00 for junk removal costs.

The agent referred to the invoice submitted in evidence, which one load at \$300.00, plus 3 mattresses at \$15.00 per mattress. The agent also referred to a list of abandoned items left behind by the tenants dated February 1, 2019, which include:

1. Ironing board
2. Cooler bag
3. Floor mat
4. Shoe rack
5. Towels
6. Toilet brush
7. Tools
8. Hair dryer
9. Shag carpet
10. Pair of shoes
11. 3 bicycle pedals
12. Coat hangers
13. Canvas print
14. Broom and dust pan
15. Kitchen items including food, drinks, cleaning supplies and garbage
16. Desk
17. 2 mattresses, 1 box spring, and 2 bed frames
18. Pillows and bedsheets
19. Towels
20. Garbage bin
21. Scissors
22. Vaseline
23. Laundry basket
24. Books
25. Garment bag
26. Garbage can
27. Mat

The tenant's response to this item was the same as the first two items, and added that the tenants lost all of their belongings because of mould. The tenant stated that they do not believe the landlord is entitled to this cost.

Regarding item 12, the landlord has claimed \$179.20 to replace missing window coverings. The tenant admitted to throwing out the blinds being claimed. The agent referred to emails from the blind company with the estimated cost to replace with a similar blind. The tenant stated that the landlord did not follow up after November 8, 2019, to see how the mould was in the rental unit.

Regarding item 13, the landlord has claimed \$73.50 for a missing window screen. The agent testified that the entire rental unit had window screens at the start of the tenancy, and at the end of the tenancy, two of the window screens had been removed and were missing. On the incoming CIR, there were no issues noted with the window screens and on the outgoing CIR, there are 2 screens listed as missing. The agent also stated that the landlord is not charging for pickup or install of the screens, only the material cost. The tenant's response was that they did not believe the number of screens was accurately reflected on the incoming CIR and that they were never there at the start of the tenancy. The tenant denied removing the two window screens.

Regarding item 14, the landlord has claimed \$164.26 in unpaid utilities for the time period of February 1, 2019 to March 31, 2019. An invoice was submitted, which matches the time period and the amount claimed. The agent also referred to the tenancy agreement, which indicates that utilities were not included in the monthly rent. The tenant's position from their memo indicates that they take the position that they are not liable for any of the BC Hydro amounts claimed due to the tenants already having paid extensive electricity costs with a spike in November to December hydro costs in connection with operating the dehumidifier during the November period. The tenant writes that at no point did the landlord accept any responsibility for the mould and went on the defensive from the day the mould was first reported on November 2, 2018 my making unfounded accusation based on a mere assumption as opposed to actually rectifying and identifying the cause of the mould issues by engaging suitable professionals as requests by the tenant from the outset. The tenant testified that they do not feel they are responsible for any utility costs after January 31, 2019.

Regarding item 15, the landlord has claimed \$200.00 to re-attach heaters, repair cabinets, re-caulking and general handywork. The agent stated that while there is no invoice for the amount claimed, the landlord paid their contractor 5 hours at \$40.00 per hour to complete post-remediation work to ensure the rental unit was in a rentable condition. Many photos were referred to such as baseboard heaters that had to be reattached to the walls, dishwasher rust, which required recoating to fix, and a bathroom tub that required re-caulking. The tenant's response was that the landlord did not

provide an invoice, that there is no time sheet, and that the landlord is responsible for wear and tear in the dishwasher.

Regarding item 16, the landlord has claimed \$2,077.11 to replace the cabinet front and to stain the cabinets. The agent confirmed that the work has not yet been done for the new tenants. The quote was an email and indicated that colour matching the cabinets will be difficult. Many colour photos were referred to in the hearing, including inside cabinet photos, white marks, scratches and other damage that the agent stated are not reasonable wear and tear. In addition, there were photos which show worn areas on the bottom of cabinets under the sink and white marks indicating scuffs and damage on various areas of the cabinets. The agent also referred to a photo showing some bubbling due to high moisture in the rental unit, which could not be repaired.

The tenant's response to this item was that during previous walkthroughs, the cabinets were not brought up as an issue by the landlord. The tenant also claims that the marks on the cabinets were there at the start of the tenancy and were painted over time. The tenant also claims the marks represent wear and tear and that there is no invoice to support the amount claimed. The tenant denies any responsibility for this item and disagrees that they are responsible.

Regarding item 17, the landlord has claimed \$6.14 for Borax to clean the window coverings, which was recommended by the inspection company, according to the agent. The receipt for \$6.14 was submitted in evidence. The tenant's response to this item was the same as the first two items.

Tenants' claim

The tenants have claimed \$32,551.00, which is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid leave from work – 1 week	\$1,682.69
2. Alternative accommodation Feb 1, 2019 to May 31, 2019	\$7,900.00
3. Filing fee	\$100.00
4. 50% rent abatement for Nov 1, 2018 to January 19, 2019	\$20,275.00
5. Moving costs	\$54.99
6. Dry cleaning	\$291.30
7. Mac laptop	\$1,749.68
8. Study table and desk	\$97.42

9. TV	\$400.00
10. Couch	\$250.00
TOTAL	\$32,551.00

Regarding item 1, the tenants have claimed \$1,682.69 for missing one week of work. During the hearing, the tenant first was unable to provide the specific dates being claimed but indicated it was related to stress due to the mould. The tenant referred to a printout which indicates 5 days; however, those specific 5 days are not described in the printout or were presented during the hearing. Regarding how the tenant arrived at the amount being claimed for this item, the tenant presented a net pay stub of \$2,673.16 and stated that the amount of \$2,673.16 was for every two weeks that the tenant multiplied that amount by two for a total of \$5,200.00. The tenant then explained that there is an average of 20 working days per month.

The agent responded to this portion of the tenant's claim by stating that November 19, 2018 is listed on the leave document and as a result, the landlord is questioning that if the tenant's health was impacted so much that they needed time off of work as sick time, why would the landlord not be contacted until January 9, 2019? In addition, the agent testified that it is the responsibility of the tenant to advise the landlord of any relevant issues or need for repair inside the rental unit.

Regarding item 2, the tenants have claimed \$7,900.00 for alternative accommodation for the time period of February 1, 2019 to May 31, 2019. The tenant referred to the inspection report that indicated that the rental unit should be vacated right away and that the landlord refused to provide the tenants with alternative accommodation. The tenant stated that they arrived at the amount of \$1,550.00 for four months of rent at \$1,550.00 per month, plus the \$1,550.00 security deposit at their new rental unit. The remaining \$150.00 portion that would add up to \$7,900.00 the tenant explained was related to a move-in fee at their new rental unit. The tenants failed to provide an addendum, to support a move-in fee was required at their new rental unit.

The agent responded to this item by stating that the landlord did not agree to provide alternative accommodation as the inspection report indicated the cause as the tenants' lifestyle and as a result, the landlord addressed the remediation quickly. The agent also testified that there were no mould issues in the rental unit before the tenants occupied the rental unit and that the agent was not aware of any other mould concerns in other rental units in the rental building. The agent also stated that the tenant was not willing to pay towards the inspection report and made the decision not to arrange for their own

inspection report. The agent also stated that a second opinion for the mould remediation was obtained from UEL (other mould abatement company), and that the quotes were very similar.

Regarding item 3, the tenants are seeking the return of their \$100.00 filing fee, which I will address later in this decision.

Regarding item 4, the tenants have claimed \$20,275.00 for 50% rent abatement from November 1, 2017 to January 31, 2019 plus double the return of the security deposit. The tenant testified that they arrived at the amount of \$20,275.00 by taking the monthly rent amount of \$2,475.00 and dividing that amount by two, then multiplying that amount by 15 months and adding \$2,475.00, which is double the amount of the security deposit.

The tenant testified that they believe the landlord was negligent due to serious mould issues prior to the tenants moving in. The agent responded by stating that they stand behind the inspection report that refers to the tenants' lifestyle choices as the cause. The agent also stated that in November 2018, there was barely any mould in the rental unit and escalated dramatically over two months by January 2019 so the mould could not have been there since the start of the tenancy or the mould would have been extreme in November 2018 when the unit was inspected by the building manager.

The tenant referred to section 5 of the inspection report and to points 5 and 6 specifically there the rental unit was not to be occupied by anyone. The agent responded by stating that the inspection company provided several optional items by suggesting ways to mitigate and the landlord committed to doing what they could.

The tenant stated that there was no fan, just in the bathroom and kitchen but that proper ventilation was lacking. The tenant stated that there are no vents on the tops of each door as recommended in the inspection report.

Regarding item 5, the tenants have claimed \$54.99 for moving costs and referred to a receipt for the same amount in evidence. The tenant testified that they removed what they could that was not destroyed by mould and left the remaining items. The agent responded by stating that the inspection revealed the tenants were the cause and the tenants were not obliged to move, they decided to without the agreement of the landlord.

Regarding item 6, the tenants have claimed \$291.30 for dry-cleaning costs. The tenants submitted a receipt for the same amount in evidence. The agent responded by stating that the landlord was denied inspection of the mouldy clothing as the tenants immediately took them to be dry-cleaned on November 2, 2018, the same date as the building inspector attended the rental unit to inspect for mould based on the tenant's complaint about mould. The agent testified that the tenant was present during the mould inspection and the inspector interview both the tenant and the agent. The agent denied attempting to influence the inspector.

Regarding item 7, the tenants have claimed \$1,749.68 for a Mac laptop, which was dismissed due to insufficient evidence, without leave to reapply during the hearing as the tenant confirmed that the tenants failed to arrange for tenant insurance during the tenancy. I will address section 7 of the Act later in this decision accordingly. Similarly, for items 8, 9 and 10, the study table and desk for \$97.42, the TV for \$400.00 and the couch for \$250.00, items 8, 9 and 10 were also dismissed without leave to reapply due to insufficient evidence for the same reason as item 7, which I will address later in this decision in relation to section 7 of the Act.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or

tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's claim

Item 1 - The landlord has claimed \$719.25 for the cost to arrange for a mould inspection and testing of mould in the rental unit. After careful consideration of the testimony of both parties, and the documentary evidence presented, I find that the tenants are the most likely cause of the mould in the rental unit based on many factors, which I will describe below. The first factor is the inspection report, which concluded that all the evidence gathered during the inspection indicates that the "lifestyle choices" of the tenant lead to the high elevation in moisture within the apartment and subsequent mould contamination problem within the rental unit. The second factor is the timeline, I disagree with the tenant's claim that mould would have been in the rental unit at the start of the tenancy as the start of the tenancy was October 1, 2017, and the tenant did not report the mould problem until November 2, 2018, over a year after moving into the rental unit.

A third factor is that the inspection report found no elevated moisture readings in the drywall where mould was colonizing, which I agree would support that it is an interior issue and not water penetrating from the outside to the inside. A fourth factor was that the tenant admitted to turning off the heat when not at home, which I find is supported by the building manager noting that the breaker for the heat was turned off at the breaker panel. A fifth factor was photographic evidence of the tenant hanging wet clothing inside the rental unit on drying racks instead of using the dryer supplied inside the rental unit, which I find would only worsen a mould issue.

A sixth factor is that I find the tenant waited too long between November 2018 and January 9, 2019 to advise the landlord that the mould problem was worsening inside the rental unit and I disagree with the tenant, that the landlord was negligent. In fact, I find the tenant's actions by not reporting a worsening mould problem to be negligent. And a seventh factor, which I find holds significant weight, is the finding #7 in the inspection report which indicates that the utility room, which is constantly kept warm by the heating

of the water in the hot water tank, is the only room in the unit where no mould was present.

Therefore, based on the above, I find the landlord has provided sufficient evidence to support that the tenant is responsible for the cause of the mould and therefore, I find the tenant liable for the cost of the inspection report. I award the landlord the full amount claimed for this item in the amount of **\$719.25** accordingly.

I also find that the actions of the building manager to be sufficient in terms of addressing the issues presented in November of 2018 based on the evidence before me. Supplying a dehumidifier, a sled fan and providing direction to the tenant to use all the available fans, such as the bathroom and kitchen fans, I find to be reasonable and disagree with the tenant who alleged that the actions of the landlord were negligent.

Item 2 - The landlord has claimed \$5,610.15 for mould remediation, which consistent with my findings for item 1 listed above, I find is the responsibility of the tenants, who I find were the cause of the mould in the rental unit. Therefore, consistent with my finding for item 1, I find the landlord has provided sufficient evidence to support that the tenants are liable for the costs of **\$5,610.15** and I award the landlord that amount as a result. I also note that I find the landlord complied with section 7(2) of the Act, which states the following, and which is similar to part four of the four-part test for damage or loss under the Act:

Liability for not complying with this Act or a tenancy agreement

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Emphasis added]

I find the landlord minimize the cost to the tenant for the mould remediation by seeking an additional quote and performing some of the work through their own contractors to reduce the overall cost from the initial quote of \$8,538.00 plus GST to \$5,610.15. I have not applied any depreciation to this amount as I find the tenants actions cause the mould and they are liable for the full amount for this specific item as a result.

Item 3 - The landlord has claimed \$3,450.59 for the cost to replace damaged flooring and baseboards. The agent stated that the flooring and baseboards were 7 years old as

of October 1, 2017, which was the start date of the tenancy. As the tenancy ended in January 2019, I find the flooring was 8 years and three months old by end of the tenancy, which is a total of 99 months. The tenant did not dispute the age of the flooring or baseboards claimed by the agent during the hearing. The flooring in the rental unit was laminate flooring according to the photographic evidence and the landlord's written submitted that indicated that bubbling was found in the laminate flooring underneath the area shown in the photos where the tenant was drying wet clothes on a drying rack. Even though the tenant denied that the wet clothes were put on the drying rack, I don't accept the tenant's version of events for two reasons, firstly, the purpose of a drying rack is to dry damp or wet clothes, and I accept the photographic evidence which supports that laminate flooring was bubbled under the drying rack area shown in other photographs submitted in evidence.

As a result of the above, I prefer the agent's version of events over that of the tenant's, as I find the tenant's version to be inconsistent with the photographic evidence and the inspection report. Furthermore, the tenant was at liberty to arrange for their own independent inspection and I find the tenants' decision not to arrange for their own inspection does not result in the inspector being biased towards the landlord. I find the tenant's claim that the inspector was biased to be speculative and without merit.

Residential Tenancy Branch (RTB) Policy Guideline (policy guideline) 40 – Useful Life of Building Elements does not list laminate flooring. As a result, I find that hardwood flooring is the closest comparable product, which is listed as having a useful life of 20 years, which is 240 months. I find that 99 months out of 240 months is 41.25% of the useful life and as a result, I find that the landlord's claim should be depreciated by 41.25% accordingly as the landlord had the benefit of 99 months of use of the laminate flooring in the rental unit, based on the evidence before me. Therefore, while I am satisfied that the tenant breached the Act by causing the mould in the rental unit which lead to the damaged flooring, I find the amount claimed of \$3,450.59 after 41.25% depreciated value of \$1,423.37 equals a balance owing by the tenants to the landlord in the amount of \$2,027.22. I award the landlord **\$2,027.22** for this item after depreciation as a result. I also find the landlord complied with section 7 of the Act by returning the excess flooring to reduce the amount of this portion of their claim.

Item 4 - The landlord has claimed \$485.85 for window sill replacement and consistent with my finding for item 3 listed above and for the same reasons, I find the tenant is liable for this portion of the landlord's claim. According to RTB policy guideline 40, the useful life of wood window framing is 15 years, or 180 months. I find the window sills are

more likely than not 99 months old, and therefore has depreciated by 55% or \$267.22. As a result, I find the landlord is entitled to **\$218.63** for item 4 and I award the landlord that amount accordingly.

Item 5 - The landlord has claimed \$1,391.25 for the cost of repainting the rental unit and submitted an invoice that matches the amount claimed. As RTB policy guideline 40 states that the useful life of interior paint is 4 years and based on the evidence presented by the agent that the interior paint could be 7 years old, I dismiss this portion of the landlord's claim in full, without leave to reapply as the interior paint has depreciated by 100%.

Item 6 – Consistent with my finding for item 5, I also dismiss this item as it relates to paint, which I find has depreciated 100% and is therefore, dismissed without leave to reapply, due to insufficient evidence.

Item 7 - The landlord has claimed \$231.00 for cleaning costs. Section 37(2)(a) of the Act applies and states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must

(a) **leave the rental unit reasonably clean**, and undamaged
except for reasonable wear and tear
[Emphasis added]

I have reviewed the testimony of the parties, the landlord's video evidence, and the photographic evidence from the parties, and find the landlord has met the burden of proof as I find the rental unit was not left reasonably clean at the end of the tenancy. I also disagree with the comment by the tenant on the video presented that the tenant is not required to clean the rental unit. In addition, given all of the items abandoned by the tenants, I find that evidence before me supports that the unit could not have been reasonably cleaned as there were mattresses, bed frames and many other items noted above in item 11, which I find the tenants were responsible for removing and not the landlord. Therefore, I grant the landlord **\$231.00** for this item in full.

Item 8 - The landlord has claimed \$4,950.00 for unpaid rent of \$2,475.00 for February 2019, and loss of rent for the month of March 2019 in the amount of \$2,475.00. The agent stated that they rental unit was re-rented as of April 1, 2019; however, could not

be rented soon due to the amount of remediation required due to the mould caused by the tenants' lifestyle. The agent stated that while they attempted to re-rent as of the middle of February, the landlord also realized that the mould had to be remediated before a new tenancy could begin.

I afford very little weight to the tenant's evidence in response to this item as the tenant refers to the inspection report that states the apartment is not recommended to be occupied until it can be professionally remediated as I have found that the tenant was the cause of the mould damage. As a result, I find the tenant has provided insufficient evidence to support that they had any right under the Act not to pay rent as required by section 26 of the Act, which applies and states:

Rules about payment and non-payment of rent

26 (1) 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, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Emphasis added]

In addition, I find the tenant is unable to rely on section 45(3) of the Act as I find that there is insufficient evidence before me to support that the landlord breached the Act or a material term of the tenancy as claimed by the tenant. While the tenant may wish to blame the mould on other factors such as a lack of vents above each door or water coming into the rental unit from the outside, I find the evidence presented by the landlord overwhelming supports that the tenants' lifestyle choices caused the mould problems in the rental unit. In reaching this finding I have considered the photographic evidence of the tenants' many large bath towels on the drying rack directly above unprotected laminate flooring and that there was mould throughout the rental unit, except for in hot water tank area that is kept warm by the heat of the hot water tank. Given the above, I find the tenants owe the landlord the unpaid rent for February 2019 of \$2,475.00 and owe \$2,475.00 for the loss of rent for March 2019 as claimed for a total for this item in the amount of **\$4,950.00**.

Item 9 – As indicated above, the parties reached a mutual agreement regarding this item pursuant to section 63 of the Act. The parties agreed during the hearing that the tenants would compensate the landlord in the amount of **\$100.00** for the missing garage

controller fob. I order the parties to comply with their mutually settled agreement for this item, pursuant to section 63 of the Act.

Item 10 - The landlord has claimed \$45.90 for the fridge filter water filter cap on the fridge that the agent stated was found to be missing after the tenant vacated the rental unit. I have reviewed both the incoming and outgoing CIR's and find that the fridge filter water cap was not listed on either. In addition, I don't have any photographic or video evidence to support that the filter cap was on the fridge at the start of the tenancy, and as a result, I find the landlord has failed to meet the burden of proof for this item. Therefore, I dismiss this item without leave to reapply, due to insufficient evidence.

Item 11 - The landlord has claimed \$345.00 for junk removal costs. As described above and consistent with my finding that the tenants breached section 37(2) of the Act by leaving their many personal items behind after vacating the rental unit, I find the landlord has met the burden of proof for this item. Therefore, having considered the invoice submitted and the evidence before me, I grant the landlord **\$345.00** as claimed for garage removal.

Item 12 - The landlord has claimed \$179.20 to replace missing window coverings. As the tenant admitted to throwing out the blinds being claimed, I find the tenants are responsible for the cost to replace them in the full amount claimed. Therefore, I find the landlord has provided sufficient evidence to meet the burden of proof and I grant the landlord **\$179.20** for this item accordingly.

Item 13 - The landlord has claimed \$73.50 for a missing window screen. Although the tenants deny that they removed the window screens, I find the outgoing CIR and the agent's testimony are of greater weight than the denial of the tenant that the windows screen were either not there at the start of the tenancy or not removed. In fact, I find it would have been reasonable for the tenant to have described missing screens on the incoming CIR if they were missing, which was not done. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$73.50** for this item accordingly.

Item 14 - The landlord has claimed \$164.26 in unpaid utilities for the time period of February 1, 2019 to March 31, 2019. An invoice was submitted, which matches the time period and the amount claimed. The agent also referred to the tenancy agreement, which indicates that utilities were not included in the monthly rent. I do not accept the tenants' position that they are not liable for any of the BC Hydro amounts claimed due to the tenants already having paid extensive electricity costs with a spike in November to

December hydro costs in connection with operating the dehumidifier during the November period. The reason I do not accept the tenants' position is that I find the tenants were the cause of the mould problem. In addition, I find the tenancy agreement clearly indicates that utilities are not included in the monthly rent. Therefore, I find the landlord has met the burden of proof and I grant the landlord the full amount of **\$164.26** as claimed.

Item 15 - The landlord has claimed \$200.00 to re-attach heaters, repair cabinets, re-caulking and general handywork. While there is no invoice for the amount claimed, I am satisfied that the amount is a reasonable cost based on the landlord's own contractor doing the work which I find to be reasonable given the photographic evidence and the inspection report findings. I also find the interior dishwasher damage not to be reasonable wear and tear and that the damage was negligence on the part of the tenants. As I find the tenants were responsible for the mould problem and that this work was required as part of the mould remediation, I find the landlord has met the burden of proof and I grant the landlord **\$200.00** for this item as a result.

Item 16 - The landlord has claimed \$2,077.11 to replace the cabinet front and to stain the cabinets. While the agent confirmed the work has not been done, the work being completed is not required under the Act to make a claim. I have considered the incoming and outgoing CIR, and the video and photographic evidence and I am satisfied that the evidence supports damage that well exceeds reasonable wear and tear. I disagree with the tenant that the marks represent reasonable wear and tear and find that the tenants damaged the cabinets and that they require repair as a result.

I also afford very little weight to the tenant's comment that the landlord did not bring up the cabinet issue during previous walkthroughs as doing so when there is an obvious acrimonious relationship between the parties, could more likely result in further damage inside the rental unit during the tenancy and that the remedy for the landlord is to file a claim for damages after the rental unit is vacated. I also find that the tenant's claim that the cabinets were painted over previously is speculation that is not supported by presented documentary evidence to support the tenant's speculation. According to RTB policy guideline 40, the useful life of cabinets is 25 years, which is 300 months. Given my earlier finding regarding the age of items, I will apply 99 months as the age of the cabinets. Therefore, I find the cabinets have depreciated by 33%. The \$2,077.11 amount claimed less 33% (or \$685.45) is \$1,391.66. Therefore, I find the landlord has met the burden of proof and after depreciating the cabinets by 33% as per policy guideline 40, I grant the landlord **\$1,391.66** for this portion of the landlord's claim.

Item 17 - The landlord has claimed \$6.14 for Borax to clean the window coverings, which was recommended by the inspection company, according to the agent. Given the receipt and my findings for the other items listed above, I am satisfied that the landlord has met the burden of proof and that Borax was required to assist in cleaning mould in the unit, which I find to be caused by the tenant. As a result, I grant the landlord **\$6.14** as claimed for this item.

Tenants' claim

Item 1 – The tenants have claimed \$1,682.69 for missing one week of work. Consistent with my finding that the tenants were the cause of the mould, I dismiss this item due to insufficient evidence, without leave to reapply.

Item 2 - The tenants have claimed \$7,900.00 for alternative accommodation for the time period of February 1, 2019 to May 31, 2019. Consistent with my finding that the tenants were the cause of the mould, I dismiss this item due to insufficient evidence, without leave to reapply.

Item 3 – This item relates to the tenants' filing fee, which I will address later below.

Item 4 – The tenants have claimed \$20,275.00 for 50% rent abatement from November 1, 2017 to January 31, 2019 plus double the return of the security deposit. Firstly, I find the tenancy ended on January 31, 2019, as that is the date listed by the tenants that they would be vacating the rental unit. Secondly, the landlord submitted their application claiming against the tenants' security deposit on February 11, 2019, which I find is within the 15-day timeline provided for under section 38 of the Act. Therefore, I dismiss the tenants' application for double the return of their security deposit, as I find the tenants have failed to meet parts one and two of the test for damages and loss listed above.

The remainder of this item I dismiss without leave to reapply, due to insufficient evidence. I have made this finding as I find the tenants are not entitled to any rent abatement given that I have found that the tenants were the cause of the mould in the rental unit.

Item 5 – Although the tenants have claimed \$54.99 for moving costs, I find the tenants are not entitled to moving costs under the Act as the tenants have failed to provide

sufficient evidence to support that they were not the cause of the mould in the rental unit. This item is dismissed without leave to reapply due to insufficient evidence as a result.

Item 6 - The tenants have claimed \$291.30 for dry-cleaning costs. This item is dismissed without leave to reapply due to insufficient evidence as I have found that the tenants were the cause of the mould in the rental unit.

Items 7, 8, 9 and 10 - Regarding items 7, 8, 9 and 10, the tenants have claimed \$1,749.68 for a Mac laptop, a study table and desk for \$97.42, a TV for \$400.00 and a couch for \$250.00, which all have been dismissed for two reasons. As the tenants were the cause of the mould in the rental unit and considering that the landlord is not the tenants' insurer, I find the tenants failed to minimize their loss as required by section 7 of the Act and part four of the test for damage and loss by failing to have tenant insurance. Therefore, I find items 7, 8, 9 and 10 are dismissed due to insufficient evidence, without leave to reapply.

As the tenants' application has failed in its entirety, I do not grant the tenants the recovery of the cost of the filing fee.

As the landlord's application had merit, I grant the landlord **\$100.00** pursuant to section 72 of the Act for the full recovery of the cost of the filing fee.

Based on the above, I find the landlord has established a total monetary claim as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Mould inspection & testing	\$719.25
2. Mould remediation	\$5,610.15
3. Flooring & baseboard replacement	\$2,027.22
4. Window sill replacement (5 window sills)	\$218.63
5. Painting costs	\$0.00 after depreciation
6. Paint	\$0.00 after depreciation
7. Cleaning costs	\$231.00
8. Unpaid rent, Feb. 2019 and loss of rent March 2019	\$4,950.00

9. Missing garage door opener	\$100.00 by mutual agreement
10. Fridge water filter cap	Dismissed
11. Junk removal 1	\$345.00
12. Missing window coverings	\$179.20
13. Missing window screens	\$73.50
14. Unpaid utilities	\$164.26
15. Re-attaching heaters, repairing cabinets, re-caulking, general handywork	\$200.00
16. Cabinet from replacement and staining	\$1,391.66
17. Borax	\$6.14
18. Filing fee	\$100.00
TOTAL	\$16,316.01

Regarding the tenants' security deposit of \$1,237.50, that the landlord continues to hold, I find the security deposit has accrued \$0.00 in interest since the start of the tenancy in 2017 under the Act. Pursuant to section 38(3) of the Act, I authorized the landlord to retain the tenants' full security deposit of \$1,237.50, including \$0.00 in interest, in partial satisfaction of landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the Act for the balance owing by the tenants to the landlord in the amount of **\$15,078.51**.

Conclusion

The landlord's application is mostly successful.

The tenants' application has no merit and fails in full.

The landlord has established a total monetary claim of \$16,316.01. The landlord has been authorized to retain the tenant's security deposit of \$1,237.50 and the tenants owe the landlord a balance of \$15,078.51 and the landlord has been granted a monetary order in that amount. Should the landlord require enforcement of the monetary order, the landlord must first serve the tenants with the monetary order. The order may then be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

This decision will be emailed to the parties as indicated above. The monetary order will be emailed to the landlord only for service on the tenants as necessary.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 25, 2019

Residential Tenancy Branch