



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

This hearing dealt with the tenants' 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 tenants, the landlord and the landlord's wife and daughter attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenants personally served the landlord with their application for dispute resolution in December of 2019. I find that the landlord was served in accordance with section 89 of the *Act*.

### Preliminary Issue- Amendment

The tenant's application for dispute resolution lists the shortened version of the landlord's first name. The landlord testified to the correct spelling of his full legal name. I amend the tenants' application for dispute resolution, pursuant to section 64 of the *Act*, to state the landlord's full first name.

### Issue to be Decided

1. Are the tenants 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 tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in 2013 and has ended. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant to the landlord and returned to the tenant on September 27, 2019. The subject rental building is a house. The landlord and his family live in the main portion of the house and the tenants live in the basement suite.

The landlord testified to the following facts. He is a long-haul truck driver, and after returning home from a 12 hour drive on June 30, 2019 he learned that his wife was taken to hospital with signs of a stroke. He quickly washed his face and brushed his teeth before leaving to go to the hospital. In his rush he accidentally left the bathroom faucet running which caused a flood in the tenants' basement suite. The landlord's daughter found the tap running and cleaned it up the best she could.

The landlord testified that on July 1, 2019 the tenant notified him that the flood affected her unit and he immediately called a restoration company who attended the same day to dry the unit and deal with the immediate damage. The tenants agree with the above testimony but testified that the above events occurred on July 2, 2019.

Both parties agree that the restoration company was onsite for 3-4 days with dehumidifiers and fans and that a few days after the restoration company left, contractors began renovating the unit. The restoration company ripped out affected drywall and all flooring in the subject rental property. The repairs to the subject rental property were complete by the end of August 2019.

Both parties agree that the tenants paid July's rent in full. Both parties agreed that the tenants did not owe rent for July due to the flood and that the money paid for July 2019's rent would be applied to September 2019. Both parties agree that the tenants did not pay rent for August 2019.

Tenant T.S. testified that she has been concerned about mold in the subject rental property for some time and that she believed she was getting sick from the mold. The

tenants entered into evidence a photograph of some dark marks on the grout between two tiles. Tenant T.S. testified the mold is between the tiles in the bathroom. Tenant T.S. testified that when she went on a pre-planned vacation on July 3, 2019, her symptoms went away; however, within three days of returning on July 17, 2019, her symptoms returned.

Tenant T.S. testified that she told her son, tenant A.T. to stay with friends on July 12, 2019 because she feared the subject rental property was not safe due to mold. Tenant A.T. testified that he stayed with friends for a couple weeks and then moved into a tent in the back yard until the subject rental property was ready at the end of August. Tenant T.S. testified that she moved into a friend's recreation vehicle outside of town from July 21, 2019 until August 29, 2019. Tenant T.S. testified that she did not have rental insurance.

The tenants are seeking compensation for not being able to live in the subject rental property for July and August in the amount of \$2,400.00. The landlord testified that they were already compensated because they were not charged rent for those months and they could have used that money to stay somewhere other than a tent or recreational vehicle. Tenant T.S. testified that she is also seeking \$400.00 compensation, \$50.00 per week for eight weeks, for the extra gas required to drive herself to and from the recreational vehicle.

Tenant T.S. testified that she saw her doctor in July and August for her mold related symptoms. Tenant T.S. entered into evidence a doctor's note dated October 17, 2019 which states:

This is to document that [tenant T.S.] has attended my office on a number of occasions this past summer, one of which was related to pneumonia. SHE [sic] mentioned during those visits her issues with her landlord.

Tenant T.S. testified that she provided the landlord with two letters regarding her mold concerns. Only the second letter was entered into evidence, it is dated August 6, 2019 and requests an air quality test be completed.

The landlord testified that in response to the tenants concerns about mold he asked his contractor if there was any mold at the subject rental property and the contractor informed him that there was none. The landlord testified that he looked under the toilet and the dishwasher and found no evidence of mold. The landlord testified that he did not order an air quality test because there was no evidence of a mold problem.

Tenant T.S. testified that she ordered an air quality test on August 15, 2019 which cost \$420.00. The mold inspection and sampling agreement was entered into evidence but the actual report was not. Tenant T.S. testified that the results showed that the mold levels were safe for a healthy person. The tenants are seeking to recover the cost of the report from the landlord.

The landlord testified that after he received notice of this dispute he hired a mold inspection company to test the subject rental property and it found that there was no mold. The report showing same was entered into evidence.

Tenant T.S. testified that she is seeking to recover the cost of new box spring and mattress for herself and tenant A.S. The tenants entered into evidence two quotes, one in the amount of \$5,105.67 and the other in the amount of \$3,409.11. Tenant T.S. testified that the mattresses and box springs required replacement because they contained residual traces of the subject rental property which made them sick.

Tenant T.S. testified that her box spring and mattress was approximately five years old at the end of the tenancy and tenant A.S.'s box spring and mattress were approximately two years old. The tenants are seeking \$1,700.00 for tenant T.S.'s box spring and mattress and \$1,198.00 for tenant A.S.'s box spring and mattress. The figures take into account the age of the mattresses and box springs. Tenant T.S. testified that she did not buy a new mattress or box spring because a friend of hers bought a new box spring and mattress and gave her his old ones for free. Tenant T.S. testified that tenant A.S.'s box spring and mattress were never replaced.

Tenant T.S. testified that she was forced to quit her well paying job on August 21, 2019 due to exhaustion from living in an R.V. outside of town and because of her medical problems caused by the mold in the subject rental property. Tenant T.S. is seeking \$8,000.00 in lost wages which represents two months' pay. The tenants entered her record of employment and pay slip to evidence her above claim.

The landlord testified that that tenant T.S. told him that she quite because her employer's daughter kept screwing up her pay check and then she got a job as a flagger and quit that because another employee was on her case about wearing something around her neck on the job site.

Both parties agree that a Two Month Notice to End Tenancy for Landlord's Use of Property was personally served on the tenants on September 1, 2019 (the "Two Month

Notice"). The Two Month Notice has an effective date of November 1, 2019 and states the following reason for ending this tenancy:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Both parties agree that on September 5, 2019 the tenants personally served the landlord with a letter which states:

We will be out by September 8, 2015. The suite is still making us ill.

Both parties agree the tenants were not provided with one month's free rent pursuant to the Two Month Notice. The landlord testified that he was not aware the tenant was entitled to it. The tenants are seeking one month's rent in the amount of \$1,100.00.

Tenant T.S. testified that the suite was free of possessions and clean on September 8, 2019. The landlord testified that the suite was not free of all the tenants' belongings on September 8, 2019 and that the tenants left a desk, hutch, table and two boxes of recycling inside the subject rental property and a large leather chair outside of the subject rental property. The tenant testified that she forgot about those items but that they were not left inside the suite but outside the suite. The landlord testified that the items were left inside the suite and he contacted the tenants on September 26, 2019 to ask them what they were going to do with them and they instructed him that they did not want to keep them. The landlord testified that he then took the remaining items to the dump. Tenant T.S. confirmed that she did not want the items she left behind.

Tenant T.S. testified that since they did not live at the subject rental property after September 8, 2019, the landlord owes her \$825.00 for the days she did not reside at the property since the rent paid for July 2019 was credited to the month of September 2019.

The landlord testified that since the tenants left items at the subject rental property, the tenancy did not end until the end of September 2019 and he does not owe her anything.

The tenants are seeking \$1,600.00 each, for a total of \$3,200.00 for mental, physical, emotional and financial stress. Tenant T.S. testified that the entire experience was exhausting and took a toll on her health as she was diagnosed with a pneumonia on September 12, 2019.

Tenant A.S. testified that living in a tent for 1-1.5 months while working full time was very unsettling because she did not have a proper home. The subject rental property

was not livable because there was no flooring, staples protruded from the floor in the doorways, there was no light in his bedroom and at one point there was a tarp on his bed. Tenant A.S. testified that the disruptive living environment was not good for his mental state,

The landlord testified that he is sorry the flood occurred and that it negatively affected the tenants but that he did everything he could to repair the unit. The landlord testified that the subject rental property was livable even though some drywall and the floors were removed.

### Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

### Flood

Section 7 of the *Act* states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. 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.

Section 32 of the *Act* states that a landlord must provide and maintain residential property 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.

Based on the testimony of both parties I find that the landlord took reasonable steps to address the initial damage caused by the flood and commenced repair work as soon as possible, in accordance with section 32 of the *Act*.

As the landlord has not breached the *Act*, I find that the tenants are not entitled to damages arising from the flood, pursuant to section 7 of the *Act*. I therefore dismiss the tenants claims for compensation for living in a tent/ recreational vehicle, for gas and for mental physical, emotional and financial stress. I also note that the tenants were compensated for the loss of use of the subject rental property for the months of July and August 2019 as the landlord did not charge them rent for July and August 2019.

I note that the tenants did not carry their own insurance to provide them with alternative accomodation in the case of a flood. Therefore, the tenants failed to mitigate their damages.

I dismiss the tenants' application for monetary damages arising out of the flood due to failure to mitigate their damages and failure to prove that the landlord breached the *Act*, *Regulation* or Tenancy Agreement.

### Mold

Based on the evidence provided by both parties, I find that the tenants have not proved, on a balance of probabilities, that the subject rental property had a mold problem. Tenant T.S. testified that the air quality test she had completed found normal mold levels and the mold report commissioned by the landlord found the same. I find that the photograph entered into evidence does not prove that there was a mold problem at the subject rental property and appears to be surface mold that can be wiped away with a cleaning agent. Based on my above findings, I dismiss the tenants claims for replacing their mattresses and box springs.

I find that the landlord investigated the tenants' concerns surrounding mold by making enquiries with his contractor and inspecting the property for mold. I find that given the landlords findings, it was reasonable for him not to compete an air quality test. I therefore dismiss the tenants' claim for reimbursement of the air quality test they commissioned.

The doctors note entered into evidence is not causative, meaning it does not state that the tenant's health issues were the result of mold in the subject rental property. I therefore find that Tenant T.S. has not proved that the subject rental property made her sick. I therefore dismiss the tenant's claim for loss of income as she has not proved that the subject rental property made her unable to work, and because, as per my findings above, Tenant T.S. has not proved that the landlord breached the *Act*.

### Two Month Notice Compensation

Section 51(1) of the *Act* states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find that service of the Two Month Notice was effected on the tenants on September 1, 2019. Pursuant to section 50(1) of the *Act*, I find that the tenants are entitled to receive one month's rent from the landlord in the amount of \$1,100.00.

Based on the testimony of both parties, I find that this tenancy ended on September 8, 2019. While I accept the landlord's testimony that the tenants left items at or in the subject rental property, I find that given the notice to end tenancy provided by the tenants and their physical absence from the property, the tenancy ended on September 8, 2019.

Section 50(1) of the *Act* states:

**50** (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

I find that the tenants did not give the landlord 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice. The tenants' notice to end tenancy was delivered to the landlord three days before the tenants moved out of the subject rental property. Therefore, the tenants are not entitled to the return of rent paid for September 2019.

### Conclusion

I issue a Monetary Order to the tenants in the amount of \$1,100.00

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 27, 2020

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Residential Tenancy Branch