



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal Lepage Advance  
Realty and [tenant name suppressed to protect  
privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement pursuant to section 67 of the Act; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant and the landlord attended. The landlord was represented by property managers SG and JA (the landlord). Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of the notice of hearing and evidence (the materials) presented by the parties was confirmed. In accordance with sections 88 and 89 of the Act, I find the parties were duly served with the materials.

### Issues to be Decided

1. Is the tenant entitled to a monetary order for compensation for loss under the Act, the Regulation or tenancy agreement?
2. Is the tenant entitled to an order requiring the landlord to reimburse the filing fee?

### Background and Evidence

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

rule 7.4 to the parties; it is their obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on August 29, 2017 and ended on October 25, 2019. Monthly rent, due on the first day of the month, was \$988.00 until August 2019. In September 2019 it increased to \$1,012.00. At the outset of the tenancy a security deposit of \$475.00 and a pet damage deposit of \$475.00 were collected by the landlord. Both deposits have been returned to the tenant. The tenancy agreement was submitted as evidence.

The tenant was refunded \$1,012.00 for October's rent and \$268.82 for two hotel nights the tenant paid in August 2019. A ledger was submitted into evidence by the landlord.

The landlord affirmed water leaking was reported by the tenant in January 2018. In June 2018 the tenant informed the landlord "the roof was done but the ceiling was gross and moldy and pieces were dropping off onto her table" (document named 'timeline for property').

On August 10, 2018 the parties signed a new tenancy agreement for a one-year fixed term tenancy. This tenancy agreement continued as a monthly tenancy.

Both parties agreed on January 27, 2019 the tenant informed the landlord there was a water leak in the ceiling of her living and dining rooms and bedroom.

An inspection form dated March 20, 2019, submitted into evidence, states: "roof still needs repair or replace flat roof!". Attached to this inspection form there is a tenant request form, signed by the tenant, indicating there is mold in the bedroom by the dresser. On May 28, 2019 the landlord followed up on the tenant's request for roof repairs by emailing the maintenance service provider.

A new inspection was conducted on July 09, 2019. The conclusion is: "Flat roof leaking. Floor in bedroom soft. Need to be repaired. Mould and leak at door entrance." The tenant addressed the landlord in the report and informed the mold is getting worse and needs repair. On the same date the same maintenance service provider was contacted by the landlord and informed the landlord: "I'll have the roof fixed in the next week. Then address any Mould". (SIC)

By mid-July 2019 the tenant could no longer sleep in her bedroom because of the mold and started sleeping in her couch in the living room, where the mold was less severe. The landlord agreed that by July 2019 the mold situation was serious.

The tenant affirmed on August 02, 2019 the landlord started a treatment against mold in her rental unit. Since this date the mold continued to grow and she was not able to sleep in her rental unit. The tenant was forced to sleep in friends' apartments and hotels until the end of the tenancy. The tenant eventually entered her rental unit to get clothing and personal belongings.

On August 03, 2019 the tenant e-mailed the landlord and informed him: "I am house sitting for a friend for 2 weeks starting August 11. I feel like that would be a good time to do some renos in the bedroom." On August 23, 2019 the tenant informed the landlord she is out of town.

The landlord informed the tenant on August 26, 2019 she could end the tenancy immediately and be reimbursed for the monthly rent payment *pro rata*. The tenant affirmed she received an e-mail on September 19, 2019 with the offer to end tenancy, but she does not remember if there was a verbal offer on August 26, 2019.

On August 27, 2019, both the tenant and the landlord had a hearing at the Residential Tenancy Branch and settled the tenant's application to obtain an emergency repair order. The settlement stated the landlord would arrange for a roofing company to repair the roof water ingress no later than September 30, 2019. The roof repair happened by the deadline.

On August 29, 2019 the tenant informed the landlord she is leaving town and will not be back until September 24. The tenant stated: "Even though I am away I do want to be updated on the inspection and repairs. Seeing as I am away for a while, I will have someone periodically check on my place, as I do for all my long trips."

Both parties agreed the electricity was turned off on September 25, 2020.

Both parties also agreed on October 01, 2019 to end the tenancy on October 18, 2019. A mutual agreement to end tenancy was submitted into evidence. The landlord voluntarily returned to the tenant the amount paid for October's rent.

Photographs showing large amounts of mold throughout the rental unit were provided as evidence. The tenant affirmed these photographs were taken between July and October 2019.

The tenant provided a monetary order worksheet indicating a total monetary claim for \$4,622.00. The tenant is claiming for:

- Rent reimbursement for 3 months at \$988.00 and 1 month at \$1,1012.00, totalling \$3,976.00.
- Reimbursement for 3 months of internet (totalling \$168.00) and 4 months of electricity (totalling \$48.00)
- Reimbursement for two dressers, one futon and a mattress that were damaged due to the mold, totalling \$400.00.

The tenant submitted into evidence one electricity bill (\$48.08 due on September 17, 2019 for service between June 22, 2019 and August 22, 2019), two internet bills (\$56.00 due on August 07, 2019, for service between August 07, 2019 and September 06, 2019 and \$56.00 due on September 07, 2019, for service between September 07, 2019 and October 06, 2019), and estimates for new furniture (two dressers, one futon and a mattress).

The tenant affirmed she liked her rental unit and wishes she could have stayed there.

The landlord does not understand how the tenant's furniture could have been damaged by the mold.

### Analysis

Sections 7 and 67 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1)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.

(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.

Director's orders: compensation for damage or loss

67 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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

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.

The landlord must provide and maintain the rental unit in a state that complies with health and safety. Section 32 of the Act states:

32 (1)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.

(2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Based on the testimony, inspection reports and photographs, I find the landlord failed to maintain the rental unit in a state that complies with health and safety.

I find the landlord's testimony credible and I believe that on August 26, 2019 he gave the tenant the option of ending the tenancy and he would reimburse her for August rent on a *pro rated* basis.

Residential Tenancy Branch Policy Guideline 05 explains the duty of the party claiming compensation to mitigate their loss:

#### B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

#### Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

I find the tenant, by applying for dispute resolution to obtain an order for emergency repairs and constantly communicating with the landlord about the ongoing mold issue, took action to mitigate her loss due to the landlord's failure to maintain the rental unit to meet health and safety standards.

I find the tenant knew there is a recurring mold issue and did not take actions to move out of the rental unit, although she was allowed by the landlord to immediately end the tenancy on August 26, 2019.

The tenant did not provide a valid reason to continue with the tenancy after August 26, 2019 (other than affirming she likes the rental unit). The water leaking was reported by the tenant in January 2018 and there were numerous reports about mold and roofing issues. Thus, I find the tenant only partially mitigated her loss by remaining in the rental unit when she knew there was a severe mold problem.

As the tenant only partially mitigated her loss, I find she is not entitled for the compensation claimed (four months of rent, three months of utilities and damaged furniture).

Residential Tenancy Branch Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

As the landlord breached section 32 of the Act, I award the tenant nominal damages in the amount of \$600.00.

The tenant is partially successful in her application. Thus, I award the tenant the return of the filing fee.

In summary, the tenant is awarded \$600.00 for nominal damages and \$100.00 for the return of the filing fee, totaling \$700.00.

### Conclusion

I grant the tenant a monetary order pursuant to sections 67 and 72 of the Act, in the amount of \$700.00.

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: May 29, 2020

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Residential Tenancy Branch