



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an application by the tenant for a monetary order for compensation and for the return of the security and pet deposits. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

At the start of the hearing the tenant informed me that return of the deposits had already been dealt with in a prior hearing and therefore this portion of the tenant's application is moot and accordingly dismissed. Therefore, this hearing only dealt with the tenant's application for compensation and for the recovery of the filing fee.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issue**

Is the tenant entitled to compensation and to the recovery of the filing fee?

### **Background and Evidence**

The background facts are generally undisputed. The tenancy started in October 2017 and ended on April 15, 2020. The monthly rent was \$3,400.00 payable on the first day of each month.

The tenant stated that through out the tenancy the rental unit was poorly maintained. In early 2019 a mould problem was detected. The tenant hired a company to test the unit for the presence of mould. The landlord testified that the remedial work to rid the unit of mould, started on January 21, 2019. The tenant stated that holes were cut in the ceiling, walls and floors and on February 16, 2019 she decided to move out while the work was in progress. The landlord agreed to not collect rent while the tenant was not living in the rental unit.

The tenant stated that the initial estimated time to complete the work was 10 days, but it dragged on for two months. The landlord agreed to give the tenant two months of rent-free stay as compensation for the inconvenience. The tenant accepted the compensation but requested for additional compensation to cover the cost of boarding her dog, moving her belongings, additional costs to commute to work, and utilities while she was away.

The landlord refused to cover any additional expenses. The work was complete on April 15, 2019 and the tenant moved back in. The tenancy continued until it ended a year later, on April 15, 2020. On April 24, 2020 the tenant made this application for additional compensation in the amount of \$5,255.27. The tenant filed copies of receipts and utility bills. The tenant is also claiming \$100.00 for the recovery of the filing fee.

The landlord stated that he did not ask the tenant to move out and did not agree to any additional compensation apart from the two months of rent-free stay.

### **Analysis**

Based on the testimony of the tenant, I find that the issues that the tenant is requesting compensation for, took place from January to April 2019, which is one year before the end of tenancy. As explained to the tenant, she had the option of applying for dispute resolution during the tenancy to obtain an order directing the landlord to provide the tenant with the additional compensation that she was seeking.

Based on the testimony of the tenant I find that the tenant chose to continue to reside in the rental unit without addressing compensation, which is the subject of this hearing and then make application for compensation at the end of tenancy.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the tenant's failure to address the issue in a timely fashion, or shortly after she suffered the inconvenience, pursuant to the doctrine of laches, I find that this aspect of the tenant's application must hereby be dismissed.

However, I find that the tenant did suffer additional expense and inconvenience for the duration of the remedial work. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the amount of time that the tenant was inconvenienced which is two months, and the fact that she received compensation by way of two months of rent-free stay, I find it appropriate to award the tenant \$500.00 as a minimal award. Since the tenant is partially successful in her application, I award the tenant the filing fee of \$100.00.

Overall the tenant has established a claim of \$600.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the tenant a monetary order for \$600.00.

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: July 17, 2020

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Residential Tenancy Branch