



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Landlord states that it did not receive any evidence from the Tenant. The Tenant states that it sent its evidence package to the Landlord’s address as provided on the move-out report. The Tenant confirms that this address is not the same address as set out on the Landlord’s application. The Landlord argues that the Tenant was required to send its evidence to the Landlord’s address as set out in the application.

Rule 3.15 of the Residential Tenancy Rules of Procedure provides that evidence that the respondent intends to rely on at the hearing must be served on the applicant. The second page of the Notice of Dispute Resolution Proceeding (the “Notice”) that was given to the Tenant sets out the Landlord’s address for service of documents. As the Tenant did not serve its evidence to the Landlord at the address set out in the Notice, I

find that the Tenant did not serve the Landlord and may not now rely on this evidence at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to the costs claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on February 1, 2019 and ended on February 29, 2020. Rent of \$1,550.00 was payable on the first day of each month. At the outset the Landlord collected \$775.00 as a security deposit. The Parties mutually conducted both a move-in and move-out inspection with reports completed and copied to the Tenant. The Tenant did not agree with the move-out inspection report.

The Landlord states that in December 2019 the Tenant reported to the Landlord that a leak was coming into the unit. The Landlord states that upon inspecting the unit it found a window covered with a heavy plastic, other windows with blinds closed and heavy condensation was on the windows. The Landlord states that mold was found on the areas beside the windows and along the ceiling and walls. The Landlord states that a restoration company had attended the unit in relation to a leak from the upper unit and sent a letter indicating that on its inspection of the unit on December 7, 2019 mold was found. The Landlord provides a copy of an undated letter from the restoration company that sets out the suspicion that the additional damage found in the unit on December 7, 2019 was "caused by but not limited to window coverings and poor air circulation." The Landlord states that the Strata informed the Landlord that it was the TEantns that caused the mold in the unit from condensation. The Landlord states that the Strata has performed remediation to the external envelope in January 2017 and that the Strata informed the Landlord that there is no leak being caused from the exterior of the building. It is noted that the Landlord provided a copy of an email dated June 23, 2020

that sets out that the exterior of the building was inspected for leaks and completed in 2016. The Landlord states that it never communicated with the restoration company that had inspected the unit after the leak from above. The Landlord states that the Tenants left the unit with low temperatures during their vacation, did not use the shower vent and had mainly closed windows. The Landlord states that there was never any condensation or mold in the unit that the Landlord purchased in 2017. The Landlord states that prior to purchasing the unit a home inspection was done and no condensation or mold was reported. The Landlord states that after speaking with the strata's property management no further inspection of the unit was carried out.

The Landlord claims \$9,072.00 to repair the unit. The Landlord provides an estimate of costs for this claim and states that the repairs set out on this estimate have not been done but that a "few things" were done by the Landlord for a cost of around \$1,000.00. The Landlord states that without the repairs it cannot sell or rent the unit and that given the expensive repairs it will have to find "easy" tenants. The Landlord states that it will make the repairs after the outcome of this hearing. The Landlord states that while the unit needed major renovations due to the mold it was rented to another tenant who was "easy going" as of March 1, 2020 for a fixed term to end February 28, 2020 and for rent of \$1,600.00 per month. The Landlord states that the photos of the mold are sufficient for any person to understand that the Tenants caused the mold. The Landlord states that it owns many properties.

The Tenant states that at move-in the Tenants painted the entire unit as they wanted a fresh unit. The Tenant states that while painting, dark dry spots were found around the tops of the windows however they did not know this was mold. The Tenant states that they placed a black curtain over the one window as the Landlord did not provide any window covering with the unit. The Tenant states that the Landlord cannot say how the Tenants lived in the unit as it does not know. The Tenant states that the Landlord had been in the unit on multiple occasions prior to the leak while showing the unit to prospective buyers and never raised any issues with the windows or coverings or any

problem other than on one occasion a slight smell being in the unit. The Tenant states that while they were away on vacation, they left some of the windows open and that during the summer all the windows are open. The Tenant states that the Landlord cannot say that they did not leave open windows. The Tenant states that when they returned from vacation, they found a notice of the leak from the upper unit that had occurred while they were away. The Tenant states that they found their bed full of water with mold on the pillows. The Tenant states that a previous building manager informed the Tenants that other units in the building had mold issues. The Tenants state that they painted the entire unit again for move-out. The Tenant states that they received an email dated June 29, 2020 from the restoration company who informed that the inspection of the unit in December 2019 indicated that the mold stemmed from the windows and that it was therefore a building issue as there was ingress from the windows. The TEnatn states that the company told the Tenants that they would send an update to the Landlord with the suggestion for further investigation.

The Landlord states that it checked many times with the Strata about an exterior leak and that the Strata informed the Landlord that the unit had no history of any water leak. The Landlord states that it does not recall seeing any mold spots during the move-in inspection and that the Tenants should have reported this to the Landlord. The Landlord states that the Tenants did not paint the ceiling at move-out and that the Landlord then only did a temporary paint on the ceilings.

### Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. As the Landlord has only provided supporting evidence from the restoration company of a suspicion of causation from the Tenant's acts, I consider that the Landlord has only substantiated

that the Tenants may have acted to exacerbate humidity issues in the unit. However, the Landlord did not incur the costs claimed and only provided unsupported, vague evidence of having incurred some costs. Given the fixed term tenancy entered into with new tenants immediately after the end of the tenancy and the Landlord's evidence of looking for "easy" tenants, I consider that there is no evidence to support that the costs claimed will be incurred at any time in the future. I therefore find on a balance of probabilities that the Landlord has not substantiated that the costs claimed have been incurred or established and I dismiss the claim. As the Landlord's claim has not been successful, I dismiss the claim for retention of the security deposit and recovery of the filing fee. In effect the Landlord's application is dismissed in its entirety.

As the Landlord is not entitled to retain the security deposit, I order the Landlord to return the security deposit plus zero interest of **\$775.00** to the Tenants forthwith.

### Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$775.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: July 23, 2020