



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Maskeen Group  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes: MNDCT, RP, RR, FFT

### Introduction

In this dispute, the tenant seeks various relief under sections 32, 62, 65, 67, and 72 of the *Residential Tenancy Act* (the “Act”).

The tenant filed an application for dispute resolution on August 14, 2020 and a dispute resolution hearing was held on October 1, 2020. The tenant, his advocate, and an agent for the landlord attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

At the outset, the tenant’s advocate explained that the issues related to the application for an order under sections 32 and 62 (“regular repairs”) were “pretty much dealt with” and that this aspect of their application could be withdrawn.

1. Is the tenant entitled to an order reducing rent for repairs agreed to by the landlord  
Issues but not provided?

2. Is the tenant entitled to compensation for costs of repairs?

3. Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

By way of background, the tenancy started on February 1, 2018, and monthly rent is \$3,000.00. The tenant paid a security deposit of \$1,500.00. While there is no copy of a written tenancy agreement submitted into evidence, the landlord's agent did not dispute these basic facts about the tenancy.

The rental unit is a home with 7 bedrooms, a loft, 4 bathrooms, and 2 kitchens. The issues with respect to mold affected the two-bedroom basement suites (or, two bedrooms in the basement suite; it was rather unclear from the testimony.)

On March 6, 2020, the tenant observed some heavy equipment out in the front of the property. The workmen were digging around, looking for a water leak. They had been sent there by the landlord. Unfortunately, as a result of some rather negligent work, the diggers and workmen failed to properly handle and put back some weeping tiles. As a result, water leaked into the basement of the rental unit, and there was at one point six inches of water sitting on the floor for several hours.

As a result of this water sitting there, mold started to develop. Several photographs were submitted into evidence showing the mold. While the mold has, as the advocate pointed out, largely been fixed, the entire ordeal lasted a few months, much to the consternation of the tenant and his family. There was also approximately \$15,300.00 in damage to property. The landlord wrote the tenant a cheque for \$7,000.00. In this dispute, the tenant sought compensation for the difference in the amount of \$7,820.50. (The landlord, in his testimony, explained that he thought the \$7,000.00 was payment to settle the entire amount. He said the tenant's claim for the difference was a "slap in the face.") The tenant did not submit any inventory list or receipts in regard to this claim.

In addition, the tenant seeks \$7,770.00 (excluding \$530.00 that was paid to a repairperson Steve) for labour costs for four people to move things around and in and out of the rental unit. Neither the tenant nor his advocate provided any detail, however, as to what was moved or what the labour was exactly for. The "receipts" submitted into evidence consisted of two photographs of a spreadsheet with various names, dates, and hours, in reference to the labour hours.

Finally, the tenant seeks an order reducing the \$3,000.00 rent to \$2,000.00. This is being sought to compensate the tenant for his having to deal with the mold and associated issues. I asked how the amount of \$1,000.00 was calculated, and the tenant or his advocate explained that one of the tenants (who had immunodeficiency health

issues) was forced to vacate the property. That tenant was paying \$800.00 in rent. No further explanation for how \$1,000.00 was calculated, however, was provided.

The landlord's agent said that he empathizes with what the tenant has gone through, and "I really feel for him." However, he also said that he has been very supportive and as always responded to the tenant's requests, day or night.

Regarding the request for an order reducing rent, the landlord remarked that the tenant has already paid less than the required rent since April 2020, when he started paying \$2,000.00. And, that the tenant has not paid any rent in August or September 2020. He said that, essentially, the tenant has already given himself a rent reduction, but, the landlord has not pursued the unpaid rent because the landlord advised their tenants to simply pay whatever they could afford. That having been said, monthly rent is \$3,000.00 as per the tenancy agreement.

### Analysis

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.

### **Claim for Compensation**

The tenant seeks compensation of \$7,820.50 for damage or loss to personal property and compensation of \$7,770.00 for labour costs.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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.

...

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.

I turn first to the third criteria listed above, namely, whether the applicant proven the amount or value of their damage or loss. It must be recognized that a party seeking compensation should present compelling evidence of the value of the damage or loss in question.

In this dispute, as to the first portion of the tenant's claim for \$7,820.50 (which is the difference between the original amount of \$15,300.00 and the cheque paid by the landlord), the tenant has provided no documentary evidence which might establish or prove how this specific dollar amount was calculated. There is no property inventory submitted, no photographs of what property was destroyed or damaged, no insurance claim documentation, and no receipts for any of the property. In other words, I do not find that the tenant has presented any evidence, compelling or otherwise, of the value of the damage or loss in respect of this aspect of their claim.

Regarding the second portion of the tenant's claim for \$7,770.00 in labour costs, the only "receipts" submitted into evidence are photographs of what appears to be an Excel-like spreadsheet with names, dates, hours, and a labour rate of \$16.00 per hour for three of the people and \$25.00 per hour for the tenant. In total, 113 hours of labour are claimed for. What is missing from the "receipts" is any sort of description of what the labour involved or what it was for. Nor is there any supporting evidence to show what happened after the labour was completed. Finally, the description provided in the tenant's application states the following in respect of this claim:

**Description:**

There was a flood in the house due to the landlord digging on the property. The landlord wouldn't hire people certified to deal with mold to fix the damage. Instead, he bought materials and asked the tenant to fix the damage. He would not allow the tenant to replace the wood floor despite being warned mold would be an issue. The tenant was a red seal carpenter, although he is not certified for mold. They agreed on \$25 hourly for him and his helpers. No one has been paid for their labour.

Unfortunately, neither does the description provide any explanation as to what four people who spent 113 hours of their time actually did. In summary, I do not find that the tenant has provided compelling evidence of the value of the damage or loss in respect of this aspect of their claim. A list of names, date, and hours do not, I find, make for compelling evidence.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving their claim for either portion of the compensation sought. As such, this aspect of their application is dismissed without leave to reapply.

**Application for Order Reducing Rent**

Section 65(1)(f) of the Act states that, if a landlord has not complied with the Act or the tenancy agreement, an arbitrator may order

that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement

In this dispute, the tenant has not paid more than \$2,000.00 in rent since April 2020. In other words, he has already given himself a rent reduction for the amount sought and the landlord has not pursued the underpayment of rent. The tenant gave himself a further rent reduction (by not paying any rent) down to \$0.00 for August and September 2020.

Therefore, given that the landlord has not pursued the unpaid rent, at least in respect of the rent for April, May, June and July 2020 (the period of time both before and after the flooding occurred), I do not find that the tenant is in any manner under the Act entitled to any such rent reduction for past rent.

As for the reduction of future rent, the tenant's advocate and the tenant have withdrawn the request for an order for regular repairs. Thus, as the mold issue has "pretty much been dealt with," there is I find nothing left on which to find a reason why the tenant is entitled to a further rent reduction.

In addition, the tenant did not provide a compelling or persuasive argument as to how the dollar amount of \$1,000.00 was calculated. While there was a reference to a tenant having moved out shortly after the incident, that tenant was paying \$800.00 in monthly rent, and amount which may or may not be linked to the \$1,000.00 being claimed. Moreover, there is no evidence before me, such as the former tenant's testimony or medical evidence to prove that the tenant moved out because of the landlord's negligence or lack thereof.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving their claim for an order reducing the rent. This aspect of the tenant's claim is dismissed without leave to reapply.

The tenant's application for recovery of the filing fee is similarly dismissed.

### Conclusion

I dismiss the tenant's application without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: October 1, 2020

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Residential Tenancy Branch