



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, OLC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord and both tenants attended the hearing and one of the tenants advised that the other named tenant is a child, who did not participate in the hearing.

The tenant and the landlord each gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

Neither party agrees that evidence had been received from the other party. The landlord advised that all of the landlord's evidence was sent to the tenant by registered mail on November 6, 2020 and has provided a copy of a Canada Post cash register receipt bearing that date as well as a tracking number. The landlord also advised that the registered mail containing the evidentiary material was sent to the tenant at the address for the tenant as stated on the tenant's Application for Dispute Resolution. I am satisfied that the landlord has complied with the *Residential Tenancy Act* and Rules of Procedure, and all evidence provided by the landlord is considered in this Decision.

The tenant advised that another dispute has been filed wherein the tenant seeks an order cancelling a notice to end the tenancy as well as the applications before me today. The tenant was confused with what to file and sought assistance from Service BC, but the staff was not very helpful. Each party must provide the other with any evidence that the party wishes me to consider, even if the party already has the evidence from some previous events. I am not satisfied that the tenant has provided the evidentiary material to the landlord, and I decline to consider the tenant's evidence.

Also, during the course of the hearing, the tenant advised that he has vacated the rental unit, and therefore, since the tenancy has ended, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

### Issues to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of use of the rental unit or the landlord's failure to deal with mold issues in the rental unit?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on June 15, 2020 and was to expire on December 15, 2020, thereafter reverting to a month-to-month tenancy, which ultimately ended on approximately October 20, 2020. Rent in the amount of \$850.00 was payable on the 15<sup>th</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a small one-bedroom house, and a copy of the tenancy agreement has been provided by the landlord as evidence for this hearing.

The tenant has not provided a forwarding address in writing to the landlord except for a return address on paperwork which was sent to the landlord by registered mail. The tenant is not sure when, but filed this dispute on the 16<sup>th</sup> of October, 2020 and then received a notice to end the tenancy for unpaid rent, so the tenant filed another dispute. The hearing for that dispute is scheduled for January, 2021. That application seeks the same monetary compensation as applied for in this hearing.

The tenant further testified that he reminded the landlord numerous times to have the mold and rotting sink issue dealt with. When the landlord did address it, the tenant and his son had to live in the yard and move their belongings out of the kitchen and living room. The landlord said that no one could live there during construction. The job started on September 15, 2020, shortly after the tenant and his son removed belongings, and was finished around September 22. Then the landlord did some painting which lasted until after the tenant went away for work on September 25, 2020. Then the landlord said there was still another job to do starting October 7, 2020, so the tenant was still not able to move back in. The tenants' belongings were packed up and stored in a shed out back, and the tenants had no access to the kitchen and went out for meals. The tenant and his son

stayed in their camper trailer. The tenant was not required to pay rent for the period of September 15, 2020 to October 14, 2020, but feels that one month of free rent while living in the yard is not compensation, especially considering the mold issue that the tenant had asked the landlord to remove.

The tenant testified that mold was in the walls, under the floor and between the subfloor, and not something that could be wiped away by the tenant. A contractor was hired by the landlord who said it was negligence by the landlord to let it go for that long. The tenant called the Residential Tenancy Branch who advised that the tenant should contact the landlord to see if it could be resolved. On October 15, 2020 the landlord sent a text message to the tenant reminding him that rent was due, and the tenant replied saying that the tenant was looking for compensation. The landlord's response was, "Absolutely not," and the landlord's boyfriend sent a text message threatening to have the tenant's kids removed.

The tenant received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy has been provided for this hearing by the landlord. It is dated October 19, 2020 and contains an effective date of vacancy of October 29, 2020 for unpaid rent in the amount of \$850.00 that was due on October 15, 2020. Considering the threat, the tenant vacated on or about October 20, 2020 without notifying the landlord, not wanting any communication after the threat.

**The landlord** testified that she did not know until this hearing that the tenant had vacated the rental unit.

The landlord gave the tenant an entire month of rent for free for construction that lasted 2 weeks. The tenant had told the landlord that he would be residing in his 30 foot trailer outside. No receipts have been provided for any costs incurred by the tenant and no rent has been paid for the last 3 months. The landlord would be happy to pay compensation for any costs that came up while the tenant was displaced, but nothing has been reported or submitted to the landlord.

No issues concerning mold were reported whatsoever to the landlord, who does not reside in the same community. In August, 2020 the tenant wrote to the landlord saying that work was required ASAP, and immediately the landlord called a carpenter. The tenant has not provided photographs or any evidence that the rental unit was not inhabitable. There was no talk about any mold, but there were plans of doing renovations the following year including the roof and renovating the garage. That was brought up as well as other things that needed attention, and if there was any sort of rot, it would be in the landlord's benefit to address it to prevent further damage. Previously other issues were raised, such as the

hot water tank, and the landlord purchased a new one. The landlord also reduced rent for \$50.00 for the tenant installing the tank, for his inconvenience.

The landlord further testified that the entire time that the tenant lived in the rental unit, the landlord received reports that the house was very busy, with a number of occupants, and only this tenant was on the lease. There were definitely other people living there for months, which the landlord was not notified of by the tenant. Smoking and late rent were also issues, as well as maintaining reasonable cleanliness, which was neglected by the tenant during the tenancy. A new woodstove that was installed is full of cigarette butts, and photographs have been provided for this hearing.

### Analysis

Where a party seeks monetary compensation from another party for damage or loss, the onus is on the claiming party (the tenant, in this case), to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenant made to mitigate, or reduce the damage or loss suffered.

Where a tenant is not able to use a rental unit for living accommodation, the landlord is required to compensate the tenant. The parties agree that the tenant did not pay any rent for the period of September 15 to October 14, 2020, and the tenant did not dispute the landlord's testimony that no receipts for expenses incurred during that period have been provided to the landlord. Therefore, I find that the tenant has been provided with compensation in the amount of \$850.00.

The tenant also seeks compensation in the amount of \$1,000.00 for the landlord's failure to deal with mold issues. There is no evidence that the tenant suffered any loss. Further, there is no evidence or testimony that the tenant never mentioned any mold issues to the landlord. The landlord does not reside in the same community as the rental unit, and I accept that the landlord was not aware such issues. Therefore, I find that the tenant has failed to prove mitigation, and has failed to prove that the tenant or his son suffered any loss, thereby failing to satisfy elements 1 and 4 of the test for damages. I dismiss the tenant's application for monetary compensation, without leave to reapply.

The tenant's application which is scheduled for January, 2021 is not before me, and I cannot require the tenant to cancel the hearing or withdraw the application. The time for providing evidence for that hearing by either the tenant or the landlord has not yet expired,

and I declined to join the application to be heard with this application. However, if the hearing proceeds, **I direct the tenant to provide a copy of this Decision to the Arbitrator at that hearing by uploading it into the Residential Tenancy Branch automated system as evidence. The tenant must also provide to the landlord a copy of all evidence uploaded into the system.**

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

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: November 19, 2020

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Residential Tenancy Branch