



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants, male tenant ("tenant") and "female tenant" and the two landlords, female landlord ("landlord") and "male landlord," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 50 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and the tenants were duly served with the landlords' evidence.

Both parties confirmed that they were ready to proceed with the hearing and they did not have any objections.

### Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for their application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2019 and ended on May 2, 2020. Monthly rent in the amount of \$3,500.00 was payable on the first day of each month. A security deposit of \$1,750.00 was paid by the tenants and the landlords returned the full deposit to the tenants. A written tenancy agreement was signed by both parties.

The tenants seek a monetary order of \$35,000.00, plus the \$100.00 application filing fee. The landlords dispute the tenants' entire application.

The tenant testified regarding the following facts. There was a problem with the furnace at the rental unit and the tenants paid more than a reasonable amount for heat and electricity. There was mold in the house, which resulted in damages and costs for the tenants. The tenants had to remediate their personal effects and move out of the rental unit quickly during the height of the covid-19 pandemic. The landlords refused responsibility; the tenants had to absorb all the costs. The tenants filed this application to recover the costs. The tenants moved out 12 days after they reported the mold issue to the landlords, they were told by their doctor to move out, they have young children that are 3 years old and 6 years old, and they were sick for 6 weeks. The landlords denied responsibility and told them that it was the tenants' fault, 36 hours after the issue was reported. The tenants provided a doctor's note and an updated note in response to the landlords' submissions, indicating that the tenants' health issues were consistent with mold symptoms. The tenants decided to remove their items, clean them, and then find and fix the mold issues after.

The landlord testified regarding the following facts. The tenants controlled the cost and the outcome. They prevented access to the rental unit and would not allow the landlords' companion inspector. Their response to remediation was disproportionate. There was mold from condensation at the windows and doors. The tenants provided no proof that the mold caused them health problems. The tenants gave the landlords 24 hours to respond, the tenants moved out quickly, and the landlords had no opportunity to do anything. The landlords had a mold specialist inspect the rental unit to determine if it was clean and safe and to find out if the root cause was invasive. The tenants said

that the mold grew in 6 weeks. It was normal condensation mold, not pervasive, from dirt and dust, higher than normal humidity in the area, and little to no ventilation. The landlords do not know why the tenants were using so much electricity. There are Health Canada guidelines regarding wiping up moisture. The landlords have incurred costs to ensure the tenants' peaceful end of tenancy, and returned the tenants' full security deposit to them, gave the tenants one month free rent in lieu of notice, left the house vacant for two months, had to live separately because they could not leave the house empty, and did not charge the tenants for professional carpet cleaning, wall or ceiling repair or paint costs, or legal or inspection fees related to mold.

### Analysis

Section 32 of the *Act* states the following:

*Landlord and tenant obligations to repair and maintain*

*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.*

*(4) A tenant is not required to make repairs for reasonable wear and tear.*

*(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;

- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application of \$35,000.00 without leave to reapply.

The tenants provided a voluminous number of documents with their application. However, the tenants did not go through this evidence during the hearing, despite having ample time to do so. The majority of the tenant's submissions were made in response to the landlord's submissions, after the tenant heard the landlord speak.

I repeatedly asked the tenant if he had any further submissions, if he wanted to go through any of his documents, or if he had any other response to the landlords' claims. I provided the tenant with a full and fair opportunity to present the tenants' claim; yet, he made brief submissions, while the landlord rebutted the tenants' claim with more detail and information.

The tenant referred to providing various documents such as expert reports and medical notes but did not have any experts testify at this hearing in order to explain any expert opinions. Contrary to the landlord, the tenant did not point to any specific provisions, pages, or information in the tenants' documents, during the hearing.

The tenants provided a monetary order worksheet but did not go through any of the numbers or claims during the hearing. The tenant did not confirm what items were being sought, how much was being sought for each item, or how the landlords were responsible for each item.

As noted above, it is the tenants' burden of proof, as the applicants, on a balance of probabilities, to prove their monetary claim.

I also note that the tenants vacated the rental unit in 12 days, after notifying the landlords about mold issues, rather than allowing the landlords a reasonable period of time to properly investigate or rectify the mold issues. The tenant agreed that the tenants left the rental unit quickly for health reasons and for their young children. He stated that the tenants wanted to leave, clean their items, and then determine what the mold issue was after.

I find that this short period of time was neither reasonable, nor appropriate, for the landlords to adequately investigate or deal with the mold issues. While the landlords have a responsibility under section 32 of the *Act*, to ensure the cleanliness, health and safety of the rental unit, including any repairs, so do the tenants to notify the landlords and provide a reasonable period of time for investigation and repairs. Yet, I find that the tenants moved out early, quickly, and voluntarily. I find that the landlords did not have enough time to determine the cause of the mold, whether it was the responsibility of the landlords to repair, or whether it was the tenants' negligence or wilful actions that caused the mold, resulting in the tenants being responsible for the repair.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords. This claim is dismissed without leave to reapply.

### Conclusion

The tenants' entire application is dismissed 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 27, 2020

---

Residential Tenancy Branch