



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for a monetary compensation or other money owed and to recover the cost of the filing fee.

This hearing commenced on September 25, 2020. The interim decision should be read in conjunction with this decision.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to monetary compensation?

### Background and Evidence

The parties agreed that the tenancy began on July 15, 2014. Rent in the amount of \$1,795.00 was payable on the first of each month. The tenant paid a security deposit of and a pet damage equaling the amount of \$1,795.000. The tenancy ended on August 1, 2018.

The tenant claims as follows:

a.	Return of utilities	\$ 426.54
b.	Loss of quiet enjoyment	\$ 2,134.40
c.	Compensation pursuant to section 51 of the Act	\$21,540.00
d.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$24,200.94</b>

#### Return of utilities

KV testified that the rental premise consists of two units. KV stated that they lived in the upper rental unit. KV stated that they was only one hydro meter for the property, and they had the hydro account in their name. KV stated that they was an agreement that they would pay 2/3 and the lower unit would pay 1/3; however, this was unfair as the lower renter would have just as many people living in the premise and the cost should have been shared equally. The tenant seeks to recover 50% of the cost from March 1, 2018 to July 31, 2018.

The landlord's testified that the hydro percentage was agreed upon. The landlord stated that the tenant received their 1/3 of the hydro from the other renter. The landlord stated that they were unable to get a witness statement from the other renter because the renter is currently out of province and under quarantine. The landlord stated this would not have been an issue if the tenant made their claim within a reasonable time and not wait nearly two years to make their application.

#### Loss of quiet enjoyment

KV testified for the tenant that there was an aggressive amount of mould in two of the bedrooms and in the kitchen. KV stated that that the windows are old and the mould started to transfer to the walls.

KV testified that they notified the landlord of the problem by text message on March 7, 2018, and as they had not heard from the landlord, they sent another text on March 22, 2018.

KV testified that the landlord did have an air quality test completed on a mould assessment; however, they did not get a copy of that report and were unable to use the two rooms and a portion of the kitchen.

Filed in evidence of the tenants are photographs and text messages.

The landlord testified that the mould issue was created by the tenant as they were not keeping the rental unit adequately heated and this led to mould growth. The landlord stated that after the mould assessment was done they informed the tenant that it was not black toxic mould and could be cleaned.

Filed in evidence for the landlord is an email from DB, from the mould company, which reads in part,

“... when we first arrived at the residence and met ..., I asked if the heat was on since the house was cold and damp. They[tenants] stated that they were heating the house but had been airing out the place by keeping the front and back doors open and had just closed both of them. I commented that it was important to heat the home to control condensation since that could cause mould growth. I observed a large quantity of furniture was place throught this main floor and along the perimetre walls and condensation was observed on the windows above the furniture.”

[Reproduced as written.]

Filed in evidence is a witness statement of CD, which reads in part,

“I went to the property at ... They had concerns regarding mould and problematic window frames. It was apparent immediately that the heat was turned off and there were several windows on the main floor showing condensation. On closer inspection I notice that the window frames had developed mould. The main floor also showed a low level of cleanliness overall. ... The ... next step, as recommended, was to get mould testing done, and if required hazmat remediation.

Test came back showing that there was no hazmat issues. I was made aware once the ... received results from the lab that the air quality tests did not reveal a compliance concern....”

[Reproduced as written.]

Compensation pursuant to section 51 of the Act

KV testified that the tenant is seeking compensation pursuant to section 51 of the Act, that is equivalent to 12 months rent. KV stated that they received the Two Month Notice to End Tenancy for Landlord's Use of Property, which the reason stated in the notice was that the rental unit will be occupied by the landlord or the landlord's close family member.

KV testified that they went to the rental unit several months after they had vacated to pick up some mail. KV stated that the rental unit was being painted, refinished, and new appliance and the bathroom was being fixed up. KV stated that this was a renovation eviction.

KV testified that they went back to the rental unit a month or so later and there were obviously people living there; however, no one was home. KV stated that they knocked on the neighbours door and they were informed that there was a couple of women living there. KV stated they were informed by another neighbour that was outside that there were women living there. KV stated none of the neighbour would provide a witness stated as they did not want to get involved. KV stated that the person that was with them in the vehicle provided a witness statement to confirmed what one of the neighbours told them.

Filed in evidence for the tenant is a witness statement of SH, which in part reads,

"the neighbor said there were a couple of young women living in the property of ... that they believe were not related to the ..."

[Reproduced as written.]

The landlord testified that they never renovated the rental unit. The landlord stated that they had to fix the mould issue the tenant's left behind and make some other repairs to the premise, such repair loose or broken cabinets, replace the flooring which had a large hole and repaint the premise. The landlord stated that these were basic repairs and were necessary to make it suitable for living, and these issues were all know at the end of the tenancy. The landlord stated that it took them a little longer to make the repairs than expected as they had other issues going on in their family, such as their mother was sick with cancer at that time.

The landlord testified that they had issued the notice to end tenancy because their son was in trouble at school, which was in another country and had to come home until it

was resolved. The landlord stated it was November that they finally had the rental unit suitable for living and their son shared the premise with his two female friends. The landlord stated that their sons' legal issues with the school were resolved and he was allowed to go back to school. The landlord stated that their younger son then moved into the premise and move out sometime during the middle of 2019.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### Return of utilities

I am satisfied based on the evidence that the agreement on the hydro payment was 2/3 for the tenant for the upper rental unit and 1/3 for the lower rental unit. Simply because occupancy changes from time to time, does not change the term of that agreement. Further, the uppers space is larger than the lower and would demand a higher rate. Therefore, I find the tenant has failed to prove they are entitled to 50% of the hydro.

Furthermore, the evidence of the landlord was that the lower renter had paid their 1/3 to the tenant. In this case, there is one text message dated May 2, 2018 from the tenant to the landlord which stated that the downstairs renter owed the amount of \$186.04 for March 2018. The text message further stated if the matter is not resolved they would be

filing an application for dispute resolution. This leads me to believe that this was resolved as it would be unreasonable to wait for over two years to make that application if it was not paid.

In addition, the tenants delay, put the landlord at an unfair disadvantage as the other renter was not available and out of province. Therefore, I dismiss this portion of the tenant's claim.

#### Loss of quiet enjoyment

In this case, I am not satisfied that the tenant has proven a violation of the Act, by the landlord. I accept the windows were an older single pane style and condensation would build causing mould. The photographs submitted by the tenant show a large amount of condensation on the windows. This is created by lack of proper ventilation, circulation or heat. It is also the tenant's responsibility to ensure they wipe the windows, which clearly that was not done on the windows that were photographed.

I am not satisfied that is was due to the actions of the landlords. There are two witness statements filed in evidence by the landlord. One is from the mould expert and the other a contractor for the landlord. Both indicated the rental unit was not adequately heated and saw condensation on the walls and windows. I find it more likely than not this was caused by in adequate heating and insufficient air circulations. Therefore, I dismiss this portion of the tenant's claim.

#### Compensation pursuant to section 51 of the Act

In this case, I am not satisfied that the tenant has met the burden of proof that the landlord did not use the premise for the stated purpose. While I accept the landlord made repairs to the premise; however, those were repairs that were clearly needed as shown in the photographs submitted by the landlord. This is just normal repairs and maintenance that can be expected to be done from time to time.

Further, simply because a neighbor in November of 2018, informed the tenant that there were two women were living in the premise that is only hearsay. The neighbour did not attend the hearing to provide sworn testimony, nor was there a witness statement. While I accept the tenants, friend overheard that conversation and filed their own statement; however, that does not change the fact that this is simply repeating something that was said. It does not mean that it is true.

In this case the landlord does not deny that these two women were living in the premise with their son as his roommates, which I find reasonable

In light of the above, I find I must dismiss this portion of the tenant's application due to insufficient evidence. As the tenant was not successful, I find the tenant is not entitled to recover the cost of the filing fee.

### Conclusion

The tenant's application is dismissed.

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: December 09, 2020

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Residential Tenancy Branch