



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **LL: MNDCL-S, FFL**  
                             **TT: MNSDS-DR, FFT, MNDCT**

### Introduction

This hearing dealt with applications from both the landlords and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlords applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- A return of the security deposit for this tenancy pursuant to section 38;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?  
Is either party entitled to the deposit for this tenancy?  
Is either party entitled to recover their filing fee from the other?

### Background and Evidence

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

The parties signed a written tenancy agreement on October 6, 2020 for a periodic tenancy to commence on November 1, 2020. The monthly rent was \$2,800.00 payable on the first of each month. The tenants paid a security deposit of \$1,400.00 which is still held by the landlord.

The tenants took possession of the rental unit on October 28, 2020. The tenants submit that the rental unit was not suitable for habitation due to the presence of “black mould and musty smell that caused illness”. The tenants testified that they took ill due to the presence of humidity and mould. They promptly left the rental unit to stay in a hotel for a number of days until finding alternate accommodations. The tenants submitted in their evidence photographs and videos of the suite, receipts for expenses incurred and correspondence with the landlords. The tenants now seek a return of their security deposit and a monetary award for expenses they say they incurred as a result of having to move out of the rental suite.

The landlords dispute that the rental unit had deficiencies to the extent the tenants describe or at all. The landlords submit that there was a valid tenancy agreement which the tenants chose to unilaterally breach. The landlords testified that they were subsequently able to find a new occupant for the rental unit but seek an award in the amount of the unpaid rent for November 2020 of \$2,800.00.

### Analysis

Section 32 (1) of the Act provides that a landlord must maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

I find insufficient evidence to support the tenants' position that the rental unit was so deficient that it was uninhabitable. I find the evidence of the tenants to simply show some minor areas of discoloration in the suite. I find the submission of the tenants that they took sick within a day of taking possession of the rental unit to not be supported in any of the documentary materials and be so hyperbolic as to have little air of reality. The tenants claim that exposure to the rental unit caused their family to fall ill but have not provided any medical documents to show they suffered any negative physical effects. I find the observations of a family member who assisted the tenants in moving out of the suite to be of little probative weight. If the rental unit was so contaminated as to cause illness within hours of exposure it would be reasonable to expect that others would be stricken or that there would be more consequences than merely noting the presence of mould.

I find that the tenants have failed to meet their evidentiary burden to establish on a balance of probabilities that the rental property was deficient such that it fell below what is reasonable. Consequently, I dismiss the entirety of the tenants' application without leave to reapply.

A tenant must pay rent when it is due, whether or not the landlord complies with the *Act*, regulations or tenancy agreement pursuant to section 26(1) of the *Act*. Section 45 of the *Act* explains that a tenant may end a periodic tenancy by giving the landlord notice on a date not earlier than one month after the date the landlord receives the notice.

I find that there was a valid and enforceable tenancy agreement between the parties wherein the tenants were obligated to pay monthly rent in the amount of \$2,800.00 on the first of each month.

As the tenants gave notice on October 28, 2020 the effective date of the notice was December 1, 2020 and the tenants remained obligated to pay rent in the amount of \$2,800.00 on November 1, 2020. Accordingly, I issue a monetary award in the landlords' favour for the rental arrear.

As the landlords were successful in their application they are also entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the landlords' favour in the amount of \$1,500.00, allowing for recovery of the unpaid rent and filing fee and to retain the security deposit. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: February 19, 2021

---

Residential Tenancy Branch