



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, RR, 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;
- an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- 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, male landlord ("landlord") and "female 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 54 minutes.

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

At the outset of the hearing, I informed both parties that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*"). The two landlords and the two tenants all affirmed under oath that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with the hearing, they wanted me to make a decision, and they did not want to this application.

The tenant claimed that he did not receive the landlords' evidence package. The landlord said that the evidence was sent to the tenants on May 31, 2021, by way of registered mail to the rental unit address. The landlord provided a Canada post tracking number verbally during the hearing. He claimed that only one package, instead of two separate packages, were sent to the tenants.

The landlords were required to serve the tenants with two separate packages, one for each tenant, and the tenants did not receive the landlords' evidence. For the above reasons, I find that the tenants were not properly served with the landlords' evidence, as per section 88 of the *Act* and Rules 3.15 and 3.16 of the *RTB Rules*. I did not consider the landlords' evidence in this decision.

### 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 an order allowing them to reduce rent for repairs, services or facilities agreed upon but not provided?

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

### Background and Evidence

While I have turned my mind to the tenants' 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 September 1, 2020. Monthly rent in the amount of \$2,250.00 is payable on the first day of each month. A security deposit of \$1,125.00 and a pet damage deposit of \$1,125.00 were paid by the tenants and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit. The rental unit is one side of a duplex house, where the landlords live on the other side of the duplex house.

As per their online application, the tenants seek a monetary order of \$1,748.90, plus the \$100.00 application filing fee. The landlords dispute the tenants' entire application.

The tenant testified regarding the following facts. There was moisture and mold in the upstairs area of the rental unit. On December 22, 2020, the tenants found mold on the northeast corner of the master bedroom, the tenants pulled out the bed and saw the mold behind the wall, so the tenants moved to the other bedroom. On December 23, 2020, the tenants noticed mold and moisture on the northeast wall, the northwest closet and the ceiling in the centre of the master bedroom, and the southwest closet where the female tenant's clothes were damp. The tenants told the landlords about the issues on December 23, 2020 and they took photographs as evidence. The landlords came to inspect the rental unit right away. The landlords said there was a pre-existing ventilation issue where the flashing was repaired on the landlords' side of the duplex only, and the landlords claimed they had to keep their windows open to prevent moisture, even in winter. On December 23, 2020, the female landlord came over and washed the master bedroom walls with bleach, which bleached the tenants' bedsheets, and no compensation was paid by the landlords to the tenants. The landlords brought fans that the tenants used, the tenants closed the doors and opened the windows in the master bedroom. On December 23, 2020, the landlords had an inspector come to the rental unit, and he found warm air, water droplets on the nail heads, and condensation in the attic. The roof was covered in snow, so it could not be inspected at that time.

The tenant stated the following facts. The tenants complied with the landlords' requests to use the fans and open the windows at the rental unit. There was still moisture on the ceiling of the master bedroom and the bathroom ventilation did not work. It took the dryer multiple cycles to dry one medium laundry load. On January 29, 2021, the bed frame, dresser, closet and ceiling had mold. The tenants did laundry off-site. From December 23, 2020 to January 3, 2021 and from January 9 to 30, 2021, the tenants did not use the master bedroom due to the mold, the smell of bleach, and they kept the windows open. On January 25, 2021, the roof repairs were done by the landlords' contractors, and the bathroom fans and dryer began working properly. The tenants cleaned the master bedroom a lot, they had a high electricity bill, and the tenants kept the bathroom fans running for one hour after their showers. The problems started again on February 10, 2021. The landlords did a mold assessment in the secondary bedrooms, so the tenants did not use these rooms from February 12 to 22, 2021. The tenants were told not to clean the mold as per the contractor. The tenant moved his office downstairs. The tenant had to pay his ex-wife child support, as he shares custody of his daughter, who could not stay with him at the rental unit because of the mold. The tenants provided an e-transfer receipt for same.

The landlord testified regarding the following facts. The roof is only five years old and no leaks were found. Since the tenants moved in on September 1, 2020, there is only surface mold in the rental unit from dust, the tenants not cleaning condensation at the windows, and the tenants taking long steamy showers and not using the bathroom fans. The landlords got a call from the tenants on December 23, 2020 and went over right away to the rental unit. The tenant claimed to be an expert because he works in the insurance industry. The female landlord cleaned the walls with bleach. The landlords hired contractors to inspect the attic and condensation was found on the nail heads in the attic which came from below. The landlords spent \$5,000.00 needlessly for upgrades to the roof, which was not leaking. The landlords think the tenants were using the second floor during the mold issues. Mold and mildew were found in the master bedroom at the windows and there is no way it could have accumulated in one week if the tenants cleaned it on December 22, 2020.

The landlord stated the following facts. The landlords have done everything they can to appease the tenants, and there is nothing more they can do. The master bedroom was in worse condition after the tenants cleaned it and the landlords cleaned the walls. The landlords sent text messages to the previous tenants who lived at the rental unit, and they never had a mold problem while they were living there. The tenants do not understand the mold issue, it will come back again in a year, and they should move out, because they do not clean the rental unit. The dust is bad for the tenant's daughter because it can cause allergies. The landlords do not have a copy of the tenant's custody agreement. The tenants have a spare bedroom and bathroom to use. The tenants were drying their clothes in the spare bedroom, which caused problems in February 2021.

### Analysis

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* are applicable and state the following, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim.*

*The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

At the outset of the hearing, I informed the tenants that as the applicants, they had the burden of proof to present their claims. I find that the tenants did not properly present their claims and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

This hearing lasted 54 minutes so the tenants had ample opportunity to present their application and respond to the landlords' claims. However, the tenants failed to properly go through their numerous documents that were submitted for this hearing.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants 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.

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.*

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application of \$1,748.90 without leave to reapply. This includes \$948.90 for various costs and \$800.00 for a rent reduction. The above numbers are taken from the tenants' online application details, as the tenants did not reference these amounts 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 tenants 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, during this hearing. The tenants did not explain how they arrived at the \$800.00 number for a rent reduction, during this hearing.

The tenants failed to provide sufficient documentary evidence, in the form of invoices, estimates, receipts, or other such documents to prove their monetary claims for the bedsheets claim of \$130.00 and the hair dye claim of \$56.00, as noted in their monetary order worksheet. The tenants provided a hydro bill for \$275.60 but did not review this bill during the hearing, and they did not indicate how they came up with 25% of the cost of \$68.90, for which they felt the landlords were responsible, as per their monetary order worksheet. I find that the tenants failed part 3 of the above test.

The only monetary reference that the tenant testified about during the hearing was for an e-transfer for child support he said he had to pay to his ex-wife because his daughter could not live with him during the mold issues. The landlord questioned this, claiming that the landlords did not have a copy of the tenant's custody agreement to confirm the tenant's submission, but the tenant did not respond to this during the hearing. The tenants did not provide a copy of a custody agreement or documentary evidence to show what additional childcare expenses were paid or that the tenant's daughter could not reside at the rental unit due to mold. The tenants provided a screenshot of a

computer, which has been pasted to a Word document, showing a deposit of \$594.00. It is not an official bank document on letterhead, it does not indicate what account the payment came from, who is the holder of the account, or other such relevant information. I find that the tenants failed part 3 of the above test.

I find that the landlords adequately dealt with the tenants' complaints about water and mold in a reasonable time period, in accordance with their obligations under section 32 of the *Act*. The landlords immediately inspected and cleaned the rental unit and provided drying fans to the tenants. The landlords hired professional contractors to inspect, perform assessments and repair the roof at the rental unit. The landlords acted immediately and with due diligence, upon notification of water and mold issues from the tenants. I find that the tenants failed part 2 of the above test.

The tenants did not prove that the landlords wilfully or negligently caused the water and mold issues or that the landlords delayed in repairing or responding to these issues in the rental unit. The tenant actually testified at length about all the efforts and actions that the landlords and their contractors took to resolve the water and mold issues, immediately after complaints by the tenants. The tenants agreed that the bathroom fans and the dryer were working properly, that the landlords repaired the roof, and that the inspections and assessments were completed by professionals hired by the landlords. I find that the tenants failed part 2 of the above test.

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.

### 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: June 14, 2021

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Residential Tenancy Branch