



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, RP, RR, FFT

### Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order for regular repairs, pursuant to section 32;
- an Order 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 from the landlord, pursuant to section 72.

The tenant, the landlord and the landlord's agent/interpreter attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this Decision.

### Preliminary Issue- Service

The tenant testified that he served the landlord with his application for dispute resolution via email on March 31, 2022. The landlord testified that she received same on March 31, 2022. I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act* because receipt was confirmed.

The tenant testified that he served the landlord with his evidence on June 26, 2022, the day before this hearing. The landlord testified that the above evidence was received but that she has not had time to fully review it.

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Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the “*Rules*”) state that evidence should be served on the respondent at least 14 days before the hearing.

Section 3.15 of the *Rules* states that the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find that neither party complied with the service timelines set out in the *Rules*. As neither party had time to fully review the other’s evidence and the evidence was not served in accordance with the *Act*, I find that both the landlord and the tenant’s evidence is excluded from consideration.

#### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the landlord’s claims for repairs and monetary damages are not sufficiently related to the tenant’s claims for a rent reduction to warrant that they be heard together. I note that the tenant’s claim for repairs and monetary damages stem from the same event, a flood, and the tenant’s claim for a rent reduction pertains to an unrelated balcony. I also note that there was not enough time to hear all three claims in the hearing.

I exercise my discretion to dismiss the tenant’s claim for a rent reduction for repairs with leave to reapply.

### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to an Order for regular repairs, pursuant to section 32 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on September 1, 2018. The tenant moved out sometime in 2020 and currently subleases the subject rental property to several subtenants. Monthly rent in the amount of \$5,900.00 is payable on the first day of each month. A security deposit of \$2,600.00 was paid by the tenant to the landlord.

Both parties agree that on September 8, 2021 the tenant contacted the landlord and informed her that the basement flooded. Both parties agree that the basement patio drain became clogged and this caused the basement flooding. The tenant testified that one of his subtenants rents a room in the basement and that this room was flooded. Both parties agree that the agent immediately sent repair personnel and fixed the drain.

The tenant testified that after the flooding was remedied, mold started to grow on the walls and carpets of the basement bedroom. The tenant testified that he contacted the agent numerous times to remediate the mold, but nothing was done until November 2021. The agent testified that she first heard of the mold in an email from the tenant dated September 13, 2021.

The tenant testified that sometime between November 10-13, 2021, the landlord sent a worker to treat the mold on the drywall and paint the walls with mold resistant paint. The

landlord and agent did not dispute the dates the tenant testified the treating and painting occurred on.

The tenant testified that the landlord did not provide dryers after the flood to prevent mold and once mold was noticed, the landlord took more than 50 days to remedy the mold on the drywall, but did nothing about the carpet, other than telling the tenant to turn the heat on to dry the carpets out. The tenant testified that he is not sure if there is mold under the carpet but is requesting an order for the landlord to inspect for mold under the carpet and to remedy the mold if it is found.

The tenant testified that his sub-tenant refused to stay in the subject rental property until after the landlord treated and painted the walls for mold. The tenant testified that his sub-tenant withheld October 2021's rent in the amount of \$810.00 from the tenant because the bedroom was uninhabitable. The tenant testified that he is seeking the landlord to re-imburse him for this loss because it was caused by her failure to dry the flooded area after the flood and her failure to expediently clean the mold once the landlord and her agent was informed of its presence.

The agent testified that the landlord took the flood seriously and immediately contacted professionals to fix the basement patio drain which was the cause of the flood.

The landlord testified that the tenant is responsible for all the damage caused by the flood because the patio drain would not have become clogged if the tenant had maintained the yard as required under the tenancy agreement.

The landlord testified that the worker who attended to repair the drain told her that the basement subtenant needed to keep the heat on at 22 degrees Celsius to dry out the drywall and the carpets, but the basement subtenant did not do so and that is why mold grew.

The tenant testified that the subtenant left the heat on to dry out the bedroom, but mold still grew.

The landlord testified that she hired people to wash and re-paint the bedroom with mold resistant paint, but that it could not be fixed overnight.

The tenant denied failing to maintain the yard and testified that the drain was not clogged due to failure to maintain the yard. The tenant testified that the basement patio

is not littered with debris and that the nearest tree is 20 feet away and that the only growing thing near the drain is some moss on the cement. The landlord testified that the moss has nothing to do with the clogged drain.

### Analysis

Residential Tenancy Branch Policy Guideline 19 (PG #19) sets out the rights and responsibilities of tenants and subtenants. The relevant portions of PG #19 state:

....the original tenant/landlord also does not have all the responsibilities that a landlord has under the Act. For example, while all landlords have a duty to provide and maintain the rental premises, only the original landlord has the right to make repairs. The original tenant does not have the right to make repairs as the landlord to a subtenant. A subtenant may ask the original tenant to make repairs and may apply for a rent reduction if the repairs are not completed within a reasonable time frame. However, the original tenant would be required to request the repairs to be completed by the original landlord and remains responsible to the original landlord for payment of rent as set out in their tenancy agreement....

Pursuant to the above, I find that the tenant is permitted to make this application against the landlord as there is no contractual relationship between the subtenants and the landlord.

Section 32(1) of the *Act* states:

**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.

Section 8(1) of the Residential Tenancy Act Regulation Schedule states:

**8** (1) Landlord's obligations:

(a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

In this matter, I find the above legislation effectively states a landlord is responsible to make repairs when a request for repairs is to ensure reasonable aesthetics, reasonable functioning or lawful compliance with health, safety and housing standards. I find the above legislation also largely addresses that they must keep the building and its properties in a condition that makes it reasonably comfortable to live in.

Based on the testimony of both parties, I find that the landlord addressed the initial flood in a timely manner; however, I find that the landlord did not take reasonable steps in a timely manner to address the mold first reported on September 13, 2021. I find that waiting approximately two months to repair the mold damaged drywall was not reasonable and that failing to provide dryers after a flood and the report of mold was an obvious error on the part of the landlord. I find that the landlord breached section 32 of the *Act* in failing to make reasonable repairs to the subject rental property in a timely manner and in failing to take precautions to prevent mold after a flood, such as renting commercial dryers. I find that a reasonable person would know that simply turning up the heat once mold was reported was likely not enough to resolve the mold problem.

I find that the landlord has not proved that the subtenant failed to turn up the heat or that heat alone would have prevented the mold. I find that the landlord knew or should have known that mold after a flood is likely if the property is not properly dried.

The tenant testified that the yard was maintained, the landlord asserted the opposite. No documentary evidence to support the landlord's position was accepted for consideration. I find that the landlord has not proved on a balance of probabilities that the flood occurred due to the failure of the tenant and or subtenants to maintain the yard.

Given that both parties agree there was mold on the drywall, I find that there is a reasonable likelihood that the carpet may also be contaminated with mold. Pursuant to section 32 of the *Act*, I Order the landlord to hire a professional to inspect underneath the carpet in the basement bedroom to check for mold and to commission an inspection report, by July 31, 2022. I Order that if the above inspection and report are not

completed within the prescribed time, the tenant may arrange an inspection and report of the carpet in the basement bedroom and may deduct the total cost of the inspection and report from future rent. I Order the landlord to serve the tenant with a copy of the inspection report.

If the professional inspector recommends in the report that the carpets be replaced or treated, I Order the landlord to follow the recommendations by August 31, 2022. I Order that if the recommendations are not followed within the prescribed time, the tenant may arrange for the recommendations to be followed and may deduct the total cost of fulfilling the recommendation from future rent.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Both parties agreed that the basement bedroom was contaminated by mold following a flood. I accept the tenant's testimony that the basement bedroom was uninhabitable due to the flood and subsequent mold and that the tenant lost \$810.00 because the landlord failed to properly repair the property after the flood, contrary to section 32 of the *Act*. I find that the tenant acted reasonably to minimize the loss by contacting the landlord and requesting repairs and advising of the mold. Pursuant to section 67 of the *Act*, I find that the tenant is entitled to \$810.00 in lost rental income.

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$910.00, on one occasion, from rent due to the landlord.

Conclusion

I Order the landlord to hire a professional to inspect underneath the carpet in the basement bedroom to check for mold and to commission an inspection report, by July 31, 2022. I Order that if the above inspection and report are not completed within the prescribed time, the tenant may arrange an inspection and report of the carpet in the basement bedroom and may deduct the total cost of the inspection and report from future rent. I Order the landlord to serve the tenant with a copy of the inspection report.

If the professional inspector recommends in the report that the carpets be replaced or treated, I Order the landlord to follow the recommendations by August 31, 2022. I Order that if the recommendations are not followed within the prescribed time, the tenant may arrange for the recommendations to be followed and may deduct the total cost of fulfilling the recommendation from future rent.

Pursuant to section 72 of the *Act*, the tenant is entitled to deduct \$910.00 on one occasion, from rent due to the landlord.

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 28, 2022

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Residential Tenancy Branch