



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on December 6, 2021 for compensation for a monetary loss or other money owed and to recover the cost of the filing fee.

The tenant attended the hearing; however, the landlord did not attend.

The tenant stated they served the landlord with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail. The tenant provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. A search of the Canada Post site shows the registered mail was delivered at 3:18 pm on December 13, 2021.

I accept the tenant's evidence and I find that the landlord was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the tenant's evidence, submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the tenant and relevant to the issues and findings in this matter are described in this

Decision, per Rule 3.6. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord and recovery of the cost of the filing fee?

### Background and Evidence

The start date of the tenancy listed on the written tenancy agreement shows a tenancy beginning February 1, 2020, and the tenant submitted that the tenancy ended on July 31, 2021. The monthly rent was \$2,800 and the tenant paid a security deposit of \$1,400.

The tenant's monetary claim is reproduced from their evidence as follows:

Document Number	Receipt / Estimate From	For	Amount
#1	rent return		\$ 2800.00
#2	a) BC Hydro Feb 21-28 b) BC Hydro Feb 1-20 c) Fortis Feb 1-21 d) Fortis Feb 21-28	Utilities " " "	18.66 24.26 \$ 158.73 48.00
#3	100 hrs. cleaning @ 25.00/hr.		\$ 2500.00
#4	Invoice from BC Mould Inspectors		\$ 472.50
#5	no heat - rent return		\$ 270.96
#6	rent return e) f) g) h) Utilities		2800.00 \$ 143.28
#7	no stove/oven 3 months		\$ 900.00
#8	1/2 garage not available e) Invoice garage door repair		\$ 419.35 94.50
#9	a) BC Mould Inspectors Invoice h) i) j) Utilities rent return		325.50 \$ 57.34 2800.00
#10	Cost of filing		\$ 100.00
Total monetary order claim			\$ 13933.08

The tenant testified that they have never met the landlord, and only ever dealt with the landlord/owner's son-in-law (DF), his father, SF, or the real estate agent, EF.

The tenant testified that although the tenancy was to start on February 1, 2020, they were not able move in until the beginning of March 2020, due to the filthy condition. The tenant submitted they had been promised that there would be a deep clean of the rental unit prior to the tenancy, but there was no cleaning at all between the last tenancy and their tenancy. The tenant submitted that they took possession of the rental unit approximately 10 days early and spent every day cleaning, at SF's approval, until they finally gave up. They begged DF to have the rental unit cleaned. EF came to do a move-in inspection and refused, saying the rental unit was too dirty. There was never a move-in inspection as EF never came back.

For these reasons, the tenant seeks the February rent, utilities and cost of cleaning. In communication with DF, the tenant submitted that they had already done over 40 hours of cleaning and in an email from one cleaning company, they refused to clean due to the condition of the rental unit. The tenant submitted a letter from SF that the dishwasher line was no good, the toilet upstairs was "discombobulated" and that they could finally use the sink in the kitchen on February 14, 2020.

The tenant seeks utility costs for the month of February 2020, as they could not use the rental unit. The tenant filed the utilities bills.

The tenant submitted that another cleaning company finished cleaning on March 5, 2020 and in the meantime, the tenant and their mother continued to clean.

The tenant submitted that the smell in the house did not improve with all the cleaning, and their concern caused them to hire a mould inspection company, who determined remediation was required. SF removed some mouldy cardboard from the basement and had 3 roofing companies come to the residential property and they all said the roof needed replacing. It was never replaced. DF sent someone to look at the area and said that he would just pull the insulation through the electrical outlet. The area of concern on the 2<sup>nd</sup> floor was never addressed and it continued to leak when it was wet. The tenant seeks recovery of the mould inspection and report.

The tenant seeks 3 days reimbursement from the monthly rent, or \$270.96, for being without heat for that time. SF had come to take the furnace apart and it was not fixed for 3 days.

The tenant submitted that on April 1, 2020, there was an intense sewer smell, causing headaches and the rental unit to be unlivable. The tenant submitted they could not stay with their mother as her condo building would not allow further overnight stays other than the ones already used in February 2020. The tenant had a plumber attend and found out the septic tank was broken, causing the smell to backdraft into the home. DF would not give approval for the plumber to fix the tank and instead, they hired someone to “smoke the lines”, etc. SF returned to put roofing shingles on the broken part of the septic tank, which didn’t work. The tenant seeks the April rent to be reimbursed. The tenant submitted that the smell never completely went away and they had to deal with it by keeping windows open year round. The tenant submitted emails to DF all during the month of April regarding the sewer issues. The tenant also seeks utility costs reimbursement for April 2020.

Another claim of the tenant is reproduced from their documentary evidence, as follows:

While Mom was cleaning the range hood when we first took possession of the house, she noticed a smell like gas coming from the stove. We called Fortis and they came out they found the stove was leaking gas and shut the gas off. We were told that until the stove was fixed, we should not use it at all. [redacted] left it up to me to arrange for this, the stove is a Blue Star and parts are only available from the manufacturer in the States. In addition, it took a lot of time on the phone even finding a company that was willing to work on the stove. The appliance repair company came, told me what parts were needed and I was able to order them but everything took longer than expected because of Covid and that the repairmen wouldn’t come when the house was full of sewer gas. I was also able to get the cracked bottom of the oven replaced for free. The stove was eventually repaired April 30. Asking for three months refund for stove not working on the property. I’m not sure how to price [this](#), online the only information I could find was \$50.00/day but I am instead estimating (lowball) the additional cost of what we paid per month for take-out and premade food that could be microwaved when we didn’t have time to use the crockpot. \$300.00/month total 900.00

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenant submitted that when they took possession of the rental unit, there was a large pile of concrete in front of one garage door. SF said they would jackhammer the concrete when weather permitted. By June, nothing had been done and they contacted DF, who told the tenant to get a quote, which they did. By the beginning of July, the tenant contacted DF again and eventually the work was done on August 20th. In addition, the garage door was broken, and although they thought they could fix the door, they were not able to. The tenant submitted they hired a company as they thought the landlord would continue to do nothing. The tenant submitted that garage parking in the area typically rented for \$125 per month, and they seek the cost of the repair bill along

with monetary compensation for loss of garage parking, which is \$125 for March, May, June, and August 13-24.

The tenant submitted that the smell continued to get worse and they could not find a reason why. They called the mould inspection company again and on July 7, they discovered that the crawlspace below the house was full of mould and water, the sump pump was not working and full of sand, causing the mould count to be very high and extremely dangerous. The tenant said they were advised to get out of the house and that only people wearing proper PPE and respirators should enter the house. The tenant submitted they contacted DF and forwarded the report when it arrived on July 10.

The tenant submitted they could not afford a place to stay and had no one to stay with, so they kept the windows open, spent as much time as they could at their mother's condo, and only used the rental unit for sleeping. When DF finally arranged for remediation, the tenant had to be there to let workers in and out of the house. For this, the tenant seeks the cost of inspection, one month rent back and utilities costs, as they were not really living there and the workers were using the power, etc.

On July 5, 2021, DF came to take pictures of the house to put it for rent, and they discussed with DF they wanted reimbursement for the months they were not able to live in the rental unit. DF said that his in-laws had already allowed three free months, but that never happened. DF said he wanted proof of the monthly rent payments, that his in-laws were in another country and it would be taken care of. That never happened. The tenant submitted they sent the proof of payment of the monthly rent for each month as requested, but there was never any compensation given to them.

The tenant submitted a significant amount of documentary evidence, which included text messages between the parties, receipts and invoices, other email and text message communications, and utility bills.

No evidence or submissions were provided by the landlord or agent, nor did they attend the hearing to provide responsive evidence.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Section 67 is expanded upon by *Residential Tenancy Policy Guideline #16* which says, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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, regulations or tenancy agreement and loss has resulted from this non-compliance."

Section 32 of the Act, a landlord must provide and maintain the 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

After hearing from the tenant, I found their testimony to be clear, detailed, and delivered in a consistent and forthright manner, and as a result, I find their evidence to be reliable and credible.

I find the tenant submitted sufficient evidence to show that the landlord did not comply with their obligations under the Act in providing or maintaining the rental unit as I find the rental unit failed to meet health, safety and housing standards and was not suitable for occupation by the tenant.

I find the evidence shows that the tenant and family members worked many hours in trying to clean the rental unit and to maintain the rental unit throughout the tenancy, due to the landlord's lack of response to their requests. I find the tenant submitted sufficient evidence that they continued to request the landlord's agent to make repairs, address other issues, such as the mould infestation, or to clean the rental unit during the tenancy. I find the evidence further shows that the landlord or agent either never made



the repairs or delayed in making the repairs and cleaning to the point the tenant was not able to use the rental unit either at all or in part for many months.

I find the tenant's evidence accurately depicts the state of the residential property during the tenancy to substantiate that they suffered a loss of use of the rental unit during parts of the tenancy and incurred expenses in bringing the rental unit up to safety and health standards.

I further find that the landlord should not be unjustly enriched due to the work and efforts of the tenant in providing deep cleaning, making repairs, returning the rental unit to a clean state, all while receiving the full monthly rent payments from the tenant through the tenancy.

I therefore award the tenant a monetary award of \$13,933.08, as described on the table contained on page 3 of this Decision, which included the cost of the filing fee of \$100. The tenant is granted a monetary order in that amount.

### Conclusion

The tenant's application for monetary compensation is granted and they have been issued a monetary order in the amount of \$13,933.08.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 05, 2022

---

Residential Tenancy Branch