



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      MNDCT, MNSD, FFT

### **Introduction**

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant May 31, 2022 (the “Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- For return of the security deposit and/or pet damage deposit
- For reimbursement for the filing fee

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

### **Issues to be Decided**

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to return of the security deposit and/or pet damage deposit?
3. Is the Tenant entitled to reimbursement for the filing fee?

**Background and Evidence**

The Tenant sought the following:

Item	Description	Amount
1	Our cost of Hydro and Gas which we paid for June 1 - 11	\$32.90
2	Gas and Hydro - utilities - June 1 - 11	\$114.29
3	Bench Reupholstering costs	\$672.00
4	New tenant rent increase the landlord benefitted from	\$653.27
5	ERMI and HERTSMI-2 PCR testing (\$335 and \$160 respectively)	\$495.00
6	Sycorp Environmental - Hydroxyl Generator Purchase for Mold Cleaning	\$1,064.00
7	Kerrisdale Equipment Ozone Machine Rental	\$796.25
8	Ammonia/Cleaners	\$286.14
9	Microbalance Health Products	\$287.29
10	Purebiotics Cleaning Solution	\$193.51
11	Filing fee	\$100.00
	<b>TOTAL</b>	<b>\$4,694.65</b>

A written tenancy agreement was submitted. The agreement is between the Landlord and a tenant with the initials J.J.S. The parties agreed J.J.S. and the Tenant were co-tenants under the agreement. The tenancy started April 15, 2019, and was for a fixed term ending July 31, 2020. Rent was \$4,100.00 per month due on the first day of each month. The Tenants paid a \$2,050.00 security deposit and \$2,050.00 pet damage deposit.

The parties agreed the tenancy ended May 31, 2020.

***Security and pet damage deposits***

J.J.S. and the Landlord were involved in a prior RTB dispute in file ending 8512. The Landlord had sought compensation as follows:

\$2,321.82	Unpaid/Loss of Rent, \$1,503.33
	Unpaid Utilities, \$704.20
	Unpaid Utilities, \$114.29
\$672.00	Damaged Kitchen Booth, Cat Scratched

\$698.25	Mold Inspection Fee
\$100.00	Filing Fee
\$3,792.07	Total

The Arbitrator found as follows:

I accept the undisputed evidence of the landlord and find that a claim for \$3,692.07. The landlord submitted a completed condition inspection report completed by both parties for both the move-in and the move-out. The Report shows a notation that there was no damage to the kitchen bench seat and that a bench seat was noted as damaged. The landlord also submitted 2 photographs showing the damage. The landlord provided invoices for the noted periods for unpaid utilities, the paid mould inspection fee, the email estimate for reupholstering the bench seat and the pro-rated amount for ending the tenancy pre-maturely before the end of the fixed term.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain \$3,792.07 from the currently held \$2,050.00 security and the \$2,050.00 pet damage deposits in satisfaction of this claim. The tenant is granted a monetary order for the difference.

J.J.S. sought review of the decision; however, their application was dismissed.

***#1 Our cost of Hydro and Gas which we paid for June 1 - 11 \$32.90***

The Tenant sought this compensation for amounts paid for utilities after the tenancy ended.

The Landlord testified that this amount was already addressed in file ending 8512 and was part of the larger amounts awarded in that file.

***#2 Gas and Hydro - utilities - June 1 – 11 \$114.29***

This compensation was dealt with in file ending 8512.

**#3 Bench Reupholstering costs \$672.00**

This compensation was dealt with in file ending 8512.

**#4 New tenant rent increase the landlord benefitted from \$653.27**

The Tenant sought this compensation because the new tenant that moved into the rental unit after the tenants moved out paid a higher rent amount to the Landlord. The Tenant submitted that they should receive the difference between what they paid in rent and what the new tenant paid in rent until the end of the fixed term tenancy. The Tenant acknowledged they ended the tenancy due to the mold issue.

The Landlord submitted that the Tenant cannot claim for this amount pursuant to RTB Policy Guidelines.

**#5 ERMI and HERTSMI-2 PCR testing (\$335 and \$160 respectively) \$495.00**

The Tenant testified that there was mold in the rental unit and they had two mold tests done, one for the whole house and one for the upstairs of the house. The Tenant testified that there was a mold problem and pointed to their two tests showing mold levels were higher than normal. The Tenant also relied on a photo of mold around a windowsill. The Tenant submitted that mold is not necessarily visible. The Tenant testified that their son was tested for the presence of mold in their system and the same type of mold found in the rental unit was noted in the tests.

The Tenant acknowledged the Landlord submitted a mold test showing mold was not a problem in the rental unit. The Tenant submitted that the Landlord's mold test is not accurate because it was done by air sampling which collects mold spores floating in the air; however, with mold caused by water damage, the spores and toxins are found in dust which is too heavy to stay in the air. The Tenant also testified that the Landlord's mold test was done after the tenants moved out and the Landlord had left windows and doors open prior to the test which affected the results. The Tenant submitted that their mold report is more accurate than the Landlord's because it was done on dust samples versus air samples and dust samples are more reliable.

The Tenant testified that they brought the mold issue to the Landlord's attention around April 17, 2020, when they received the results of their first mold test. The Tenant

submitted that the Landlord's breach of the *Residential Tenancy Act* (the "Act") or tenancy agreement was that there was mold in the rental unit.

The Tenant testified that this claim is for the cost of their two mold tests done in the rental unit. The Tenant submitted that they had to pay for the Landlord's mold test in the decision ending 8152, so the Landlord should pay for the Tenant's mold tests. The Tenant testified that, after receiving their mold test, they could not stay in the rental unit any longer and wait for the Landlord to address the mold issue.

The Landlord testified that they received an email April 31, 2020, from J.J.S. stating the tenants were moving the next day because of mold in the rental unit. The Landlord testified that they were not aware of mold in the rental unit. The Landlord said they replied to the tenants' email immediately and contacted mold companies to attend the rental unit in the following three days; however, the tenants would not let anybody in the house and said one of them had COVID. The Landlord testified that the tenants agreed to the Landlord doing an inspection of the rental unit May 15, 2020. The Landlord testified that they attended the rental unit May 15, 2020, did not find any mold and followed up with an email to the tenants about this. The Landlord said they still wanted a mold company to attend; however, J.J.S. did not want a company to attend because they were still not feeling better. The Landlord testified that a mold company did attend, inspected the rental unit and there was no mold problem as shown in the report submitted. The Landlord testified that the tenants gave the Landlord their second mold report on the day they moved and the Landlord provided both of the tenants' reports to the person who did the Landlord's mold test. The Landlord advised that the company they hired provided feedback on the tenants' reports in the Landlord's report.

The Landlord questioned the Tenant's statements about mold caused by water damage and testified that there was no water damage in the rental unit, the tenants never told the Landlord there was water damage in the unit and the mold company they hired did not find water damage in the unit. The Landlord testified that the tenants never asked the Landlord to clean mold in the rental unit.

**#6 Sycorp Environmental - Hydroxyl Generator Purchase for Mold Cleaning  
\$1,064.00**

The Tenant sought this compensation for having to rent a machine that removes mold from the air in a room. The Tenant explained that the machine is put in a room and works to remove mold.

**#7 Kerrisdale Equipment Ozone Machine Rental \$796.25**

The Tenant sought this compensation for having to rent a machine to get rid of mold in their belongings due to the mold in the rental unit.

**#8 Ammonia/Cleaners \$286.14**

The Tenant sought this compensation for having to buy cleaning products to wipe down belongings to remove mold and to clean items such as blankets and sheets of mold.

**#9 Microbalance Health Products \$287.29**

The Tenant sought this compensation for having to buy cleaning products to clean items and belongings to remove mold.

**#10 Purebiotics Cleaning Solution \$193.51**

The Tenant sought this compensation for having to buy cleaning products to clean items and belongings to remove mold.

I have reviewed the documentary evidence of both parties and will refer to it below as necessary.

**Analysis**

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When 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.

### ***Security and pet damage deposits***

The decision on file ending 8512 dealt with the security and pet damage deposits. The Tenant cannot now seek a different decision than that made on file ending 8512. The issue of what should happen with the deposits has been heard and decided by the Arbitrator in file ending 8512 and I cannot reconsider this issue or change this decision. The request for return of the security deposit and/or pet damage deposit is dismissed without leave to re-apply.

### ***#1 Our cost of Hydro and Gas which we paid for June 1 - 11 \$32.90***

I agree with the Landlord that this amount was part of the compensation awarded to the Landlord in the file ending 8512 because that file shows the Landlord sought the same compensation for utilities from June 01 to 11, 2020, and was awarded this. I cannot reconsider the decision on file ending 8512. This claim is dismissed without leave to re-apply.

**#2 Gas and Hydro - utilities - June 1 – 11 \$114.29**

This claim is dismissed without leave to re-apply. This is an amount awarded to the Landlord in the file ending 8512. The Tenant cannot claim this amount back because this is the equivalent of asking me to change the Arbitrator's decision on the file ending 8512. The Arbitrator on file ending 8512 found the Landlord was entitled to the \$114.29 sought and I cannot reconsider this matter or change the decision about this.

**#3 Bench Reupholstering costs \$672.00**

This claim is dismissed without leave to re-apply. This is an amount awarded to the Landlord in the file ending 8512. The Tenant cannot claim this amount back because this is the equivalent of asking me to change the Arbitrator's decision on the file ending 8512. The Arbitrator on file ending 8512 found the Landlord was entitled to the \$672.00 sought and I cannot reconsider this matter or change the decision about this.

**#4 New tenant rent increase the landlord benefitted from \$653.27**

The tenants ended the tenancy prior to the end of the fixed term. RTB Policy Guideline 3 states:

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent. **The tenant is not entitled to recover any remainder.** In a month-to-month tenancy the fact that the landlord may have been able to re-rent the premises at a higher rent for a subsequent tenancy does not reduce the liability of the previous tenant for unpaid rent until the date the tenancy agreement could lawfully have been ended.

The Tenant is not entitled to monies received by the Landlord for an increased rent amount for the remainder of the fixed term tenancy. This claim is dismissed without leave to re-apply.

**#5 ERMI and HERTSMI-2 PCR testing (\$335 and \$160 respectively) \$495.00**

**#6 Sycorp Environmental - Hydroxyl Generator Purchase for Mold Cleaning \$1,064.00**

**#7 Kerrisdale Equipment Ozone Machine Rental \$796.25**



**#8 Ammonia/Cleaners \$286.14**

**#9 Microbalance Health Products \$287.29**

**#10 Purebiotics Cleaning Solution \$193.51**

Section 32 of the *Act* sets out the obligations of the Landlord in relation to repairing and maintaining the rental unit.

Both parties submitted mold reports showing different results. Regardless of which mold report is accurate, I am not satisfied based on the evidence provided that the Landlord breached the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”) or tenancy agreement.

There is insufficient evidence before me showing the Landlord knew there was a possible mold problem in the rental unit until April 30, 2020, when the tenants sent the Landlord an email ending the tenancy and stating there is a mold issue in the rental unit. There is no documentary evidence before me showing the tenants told the Landlord about a mold problem before April 30, 2020.

I find based on the email evidence submitted by the Landlord, and the Landlord’s mold report, that the Landlord acted immediately and reasonably in relation to the possible mold issue after being advised of it by the tenants April 30, 2020. The emails show that on May 01, 2020, the Landlord booked a mold company to attend the rental unit and inspect for mold on May 04, 2020. The emails show the tenants emailed the Landlord May 03, 2020, stating they were exposed to COVID and were quarantining. On May 04, 2020, the Landlord emailed the tenants asking them to let the Landlord know when it was safe to have the mold company enter the rental unit. There is no evidence before me showing the tenants replied to the May 04, 2020 email.

The emails show the Landlord followed up May 14, 2020, stating they want to have the house inspected for mold. I accept that the parties inspected the house May 15, 2020, because the emails support this. The Landlord emailed the tenants May 19, 2020, to follow up about the May 15, 2020 inspection, and noting that there was no mold found in the unit by either party. Further, the Landlord’s mold report shows they had a mold company inspect the rental unit June 04, 2020, and that the mold report showed there was no mold problem in the rental unit.

Given the above, I find the Landlord acted immediately and reasonably once they were told of a possible mold problem in the rental unit. If there was mold in the rental unit,

the Landlord did not breach the *Act, Regulation* or tenancy agreement given this fact alone. To prove a breach, the Tenant would need to prove the Landlord knew there was mold in the rental unit and did not take steps to address the problem. Here, the Landlord did take steps to address the problem right up to the point of confirming through a mold company that there was no mold problem in the rental unit. In the circumstances, there is no breach and the tenants are not entitled to compensation resulting from the mold issue.

**#11 Filing fee \$100.00**

Given the Tenant was not successful in the Application, the Tenant is not entitled to reimbursement for the \$100.00 filing fee.

The Application is dismissed without leave to re-apply.

**Conclusion**

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 10, 2023

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Residential Tenancy Branch