



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, MNR, FF, RP

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation in the form of a retro-active rent abatement for the landlord's failure to provide the rental premises in a clean, safe condition. The tenant is claiming compensation for time spent in cleaning and supplies, compensation for the loss of a service or amenity to be provided under the tenancy agreement, and aggravated damages for "*pain and suffering*". In addition, the tenant seeks an order to force the landlord to complete repairs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Is the tenant entitled to monetary compensation under section 67 of the Act for a loss of value to the tenancy?

Should the landlord be ordered to complete repairs to the rental unit?

Is the tenant entitled to aggravated damages for "*pain and suffering*"?

### **Background and Evidence**

The tenancy began June 1, 2013 but the tenant did not move in until the last week of June 2013. The rent is \$2,395.00. A security deposit of \$1,200.00 was paid.

The tenant testified that when they moved in they found that the rental unit was not sufficiently clean, despite the fact that it had been vacant for 3 weeks during June 2013

before the tenant arrived from out-of-province. The tenant testified that, as a result, the tenants were forced to spend 10 hours of labour valued at \$50.00 per hour and \$76.52 in supplies to clean the unit. The tenant is claiming \$576.52 for the cleaning.

The landlord testified that the rental unit was considered to be sufficiently clean when the tenant took occupancy. The landlord pointed out that, if the tenant had requested additional cleaning, the landlord would have provided it at their own cost charged out to professional cleaners at \$20.00 per hour.

The tenant testified that they discovered the washing machine was tainted with what they concluded was mould and notified the landlord on July 4, 2013. The tenant testified that the existence of this mould had caused adverse medical symptoms to one of the cotenants and also destroyed their clothing placed in the machine. When asked how the tenant had confirmed that this was genuinely confirmed as toxic mould, the tenant acknowledged that they did not consult a mould expert, but pointed that both cotenants are medical doctors and they are certain that the symptoms one of them were suffering had been caused by mould inside the washer.

The tenant provided close-up photos showing what appears to be dirty water, lint, hair and other particles under the seal of the washer tub or door.

The tenant testified that on July 4, 2013, after they contacted the landlord, they received permission from the landlord to arrange for their own washing machine technician to investigate the problem at the landlord's expense. On July 6, 2013, the tenant's technician apparently cleaned out the washing machine. No written report was submitted into evidence confirming the condition of the washer. However, the tenant stated that they were verbally informed by their technician that the washer was one of the dirtiest that he ever encountered.

The tenant testified that they expressed concerns to the landlord about the quality of the service provided by their technician and requested that the landlord to also send in the landlord's repair technician to take further action. The tenant testified that, in response to this request, the landlord told them to deal with this issue themselves by contacting their own technician with their continued concerns. The tenant provided a copy of an email from the landlord stating:

*"It makes sense to call them back to finish it to your satisfaction instead of stating a new contract."*

The tenant is claiming a 10% rent abatement as compensation for the loss of laundry facilities for a two-week period the tenant feels is valued at \$119.75.

In addition to the above, the tenant is requesting a 100% rent abatement for the month of July 2014 in the amount of \$2,395.00 and a 100% rent abatement for the following week in the amount of \$598.75.

The landlord argued that the tenant's concerns about the washing machine were never brought forth until Jul 4, 2013 and the matter was addressed immediately without inordinate delay. The landlord does not believe that the tenant is entitled to a rent abatement.

In regard to the alleged loss of the use of the washing machine, the landlord stated that the tenants were never actually deprived of the use of the appliance.

The landlord pointed out that, while the tenant is asking for a refund of the rent paid for the entire month of June 2013, the tenant was not even occupying the unit for the first 3 weeks of the month and the landlord questions how the tenant could have suffered any loss during that 3-week period.

In regard to the final week of June 2013 and the first week of July 2013, The landlord testified that the tenant was residing in the rental unit apparently without concern, until July 4, 2013, at which time the tenant reported their concerns about a relatively minor issue, that being an odour and alleged "mould" in the washing machine. The landlord pointed out that they did not hesitate to respond and successfully addressed the tenants concern within 2 days of the complaint.

The landlord also pointed out that the tenant did not submit any valid proof that there was the presence of toxic mould anywhere in the unit, nor that the environment within the rental suite was unhealthy.

The tenants claim that they are entitled be granted additional compensation for the stress, anxiety and suffering they endured due to the problems with the rental unit and in dealing with the landlord and others. The tenant's set this amount at \$600.00.

The landlord testified that they do not agree with the claim for aggravated damages and they feel this claim should also be dismissed on its merits.

## Analysis

Section 7 of the Act states that if a party fails to comply with the Act, or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

The evidence must satisfy each component of the test below:

### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act or agreement and a corresponding loss.

I find that section 32 of the Act imposes responsibilities on the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

I accept the tenant's testimony that the rental unit was not as clean as they would have expected. I also accept the tenant's evidence that there was debris left under the rubber flange in the front-load washing machine.

I find that the landlord agreed that, had they been informed of the tenant's concerns, they would likely have paid \$200.00 to have additional general cleaning done in the unit by a professional cleaner. Accordingly, I grant the tenant a rent abatement in the amount of \$200.00 in recognition of this fact.

With respect to the cleaning supplies purchased, I find that there is insufficient proof that all of the household products purchased were dedicated solely to the cleaning tasks as claimed and find that the tenant is not entitled to be reimbursed for these costs.

In regard to the tainted washer, I find that the tenant has proven that the washer was not adequately cleaned out under the seal. However, I find that the tenant has not submitted sufficient evidentiary proof to establish that the washer was contaminated

with toxic mould, nor that the state of the washer had an adverse effect on the health of any occupant of the rental unit .

I find that the landlord actually did pay to have the washer cleaned out as soon as the tenant let them know about their concerns, and I accept the landlord's position that this was a satisfactory resolution to the problem, accomplished within 2 days of the report.

In regard to the tenant's claim for alleged loss of use of the washer for two weeks, I find that this claim does not satisfy the test for damages as the tenant has not proven that they were not able to use the machine for this period of time.

With respect to the tenant's claim for a total rent abatement of one month and one week, I find no basis to grant this claim as it also fails all elements of the test for damages.

The tenant's claim for damages for "*pain and suffering*" in the amount of \$600.00 are considered to be aggravated damages. I find that an arbitrator may grant aggravated damages in compensation for physical inconvenience and discomfort, pain, grief, humiliation, loss of self-confidence, mental distress and other intangible losses, which are considered to be "non-pecuniary" in nature. Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful, reckless or indifferent behaviour.

I find that the conditions giving rise to this kind of award must be sufficiently significant in depth, or duration, or both, representing a profound influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

In the case before me, I find that there are not sufficient grounds to award aggravated damages in this instance. I find that non-traumatizing inconvenience, temporary annoyances or stress suffered by this party would not give rise to aggravated damages.

In this situation, I do not find that the respondent's conduct was intentionally aimed at wilfully causing any discomfort, grief, humiliation or mental distress on the tenant. Although the tenancy had some problems, I find that the transgressions were not sufficiently significant in depth, nor duration to warrant aggravated damages.

Accordingly the applicant's claim for \$600.00 in aggravated damages must be dismissed.

With respect to the portion of the tenant's application seeking an order to force the landlord to complete repairs, I find that there was insufficient evidence presented to support such an order.

Based on the testimony and evidence discussed above, I hereby grant monetary compensation to the tenant for \$225.00 comprised of \$200.00 for cost of cleaning and half the cost of the \$50.00 application fee. The tenant's next rent payment will be reduced by this amount, as a one-time abatement, thereby satisfying the claim in full.

**Conclusion**

The tenant is partially successful in his monetary claim and was granted monetary compensation to be deducted from the next rent payment owed 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: March 10, 2014

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Residential Tenancy Branch

