



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL  
and [tenant name suppressed to protect privacy]

## **FINAL DECISION**

Dispute Codes            MNDCT, FFT

### Introduction

This hearing dealt with the tenant's 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;
- authorization to recover the filing fee for this application, pursuant to section 72.

The "first hearing" on June 21, 2018 lasted approximately 53 minutes and the "second hearing" on December 3, 2018 lasted approximately 39 minutes.

The landlord's agent ("landlord") and the tenant attended both hearings. At both hearings, both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. At both hearings, the landlord confirmed that she was the property manager for the landlord company named in this application and that she had permission to speak on its behalf as an agent.

At both hearings, the landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

### Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on June 21, 2018 was adjourned after the parties engaged in settlement discussions for 53 minutes. By way of my interim decision, dated June 21, 2018, I adjourned

the tenant's application to the second hearing date of December 3, 2018. At the first hearing, I notified both parties that they were not permitted to serve any further evidence after the first hearing and before the second hearing because the purpose of adjourning the hearing was to continue the hearing process, not to adduce additional documents.

### Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on June 1, 2014. Monthly rent in the amount of \$1,363.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The tenant seeks a monetary order of \$2,300.00 plus the \$100.00 application filing fee. The tenant stated that she was unable to provide a full breakdown of the above amount, stating that she did not have her paperwork in front of her during the second hearing because she was at work. The tenant provided a number of photographs of her rental unit during the repair period as well as emails and notices between the parties regarding the repairs.

The tenant stated that there was mold in her closet, she told the landlord, she went away on vacation for a month and the landlord did not get rid of the mold during that time. She said that when she returned from vacation, her closet was sealed, she had to move out for another week as per the landlord's request, and she had to pay cash of \$500.00 to live in her friend's uncle's basement but she did not get a receipt. She said that the landlord only provided her with a \$300.00 rent reduction to move out for a week and that did not cover all her costs. She said that when she returned after the week away, the work still was not done, it took two more weeks, she could not use her kitchen and she had to stay in her living room. She said that she spent \$800.00 to \$1,000.00 for food to eat out while she could not use her kitchen. She stated that she took three days off work in order to clean for two days and move in and out for one day.

The landlord disputes the tenant's claims. However, she testified that she would be willing to pay the tenant another \$300.00 in compensation, in addition to the \$296.00 already paid to the

tenant. She said that the tenant failed to provide a breakdown or receipt for her monetary claim. She claimed that the landlord already reimbursed the tenant \$296.00 for the one week that the tenant was required to live outside the rental unit by dividing the tenant's monthly rent by the one week in that month.

The landlord explained that on January 22, 2018, the tenant complained about mold in her closet and the landlord called a plumbing company who came on January 26 to find that there was water from a kitchen pipe leak from the floor above the tenant's unit. She said that on January 29, a restoration company became involved and found that the leak affected six different units. She maintained that on January 31, the landlord contacted the insurance company because of the large extent of the damage, they opened a claim, and the landlord was to wait for an adjuster. The landlord explained that the restoration company then sealed the tenant's closet in order to protect the mold from the rest of the unit, and on February 6, the pipe was repaired.

The landlord stated that the tenant is required to have tenant's insurance as per section 5(e) of the parties' written tenancy agreement. She said that the tenant signed this agreement and there are posters around the rental building reminding tenants of this obligation. She claimed that the tenant chose not to obtain tenant's insurance; the tenant confirmed this during the hearing. The landlord confirmed that the tenant's insurance would have covered her costs for food and being out of the rental unit during the repairs.

The landlord testified that repairs to the tenant's rental unit, including the kitchen and closet, were conducted from March 6 to 21, 2018. She agreed that the repairs took some time between the plumbing, restoration and insurance companies but this was outside the landlord's control. She claimed that the tenant was in constant contact with the building manager, telling him to "hurry up" with the repairs. The landlord maintained that the damage to the tenant's rental unit was more extensive than the closet, as it extended to the kitchen and the kitchen wall. She said that it took longer because the tenant insisted on coming back early to live in her rental unit, after the landlord told her to stay outside, so the repair personnel could work without interruption.

### Analysis

I award the tenant \$300.00 in compensation, as the landlord agreed to pay this amount during the hearing.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the tenant's application for \$2,000.00 without leave to reapply. The landlord disputed the remainder of the tenant's claims. I find that the landlord dealt with the tenant's complaint regarding mold in a reasonable manner, the timing of which was outside the landlord's control, particularly given the large extent of the damage.

I find that the tenant failed to provide sufficient documentary evidence that she suffered the losses that she claimed. The tenant did not provide a full breakdown for her claim of \$2,300.00. She provided receipts for dispute-related costs for copying and mailing her application, which are not recoverable under section 72 of the *Act*, as only filing fees can be claimed. She stated that she paid \$500.00 to stay somewhere for a week but she did not provide a receipt or bank records to show this payment. She said that she spent \$800.00 to \$1,000.00 for food but she did not provide receipts for all of these expenses. She said that she missed three days from work but she failed to provide work paystubs or other employment documentation to show her pay or the time missed from work.

As the tenant was only partially successful in this application, I find that she is not entitled to recover the \$100.00 application filing fee from the landlord.

### Conclusion

I order the tenant to deduct \$300.00 from her future rent payable to the landlord for this tenancy, in full satisfaction of the monetary award.

The remainder of the tenant's 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: December 06, 2018

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Residential Tenancy Branch