



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with the tenants' 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 five tenants did not attend this hearing, which lasted approximately 57 minutes. The landlord, landlord agent JAT ("landlord's agent"), "landlord LT," and the tenants' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his two agents had permission to speak on his behalf. The tenants' agent confirmed that she had permission to speak on the tenants' behalf. The tenants provided a written authorization letter to this effect. The tenants' agent is the mother of the lead tenant SB ("tenant").

The landlord's agent confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants' agent confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's evidence package.

### Issues to be Decided

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

Are the tenants entitled to recover the filing fee for their application?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on April 15, 2019 and was for a fixed term ending on April 30, 2020. The tenancy ended on September 19, 2019. Monthly rent in the amount of \$3,995.00 was payable on the first day of each month. A security deposit of \$1,750.00 and a utilities deposit of \$250.00 were paid by the tenants and the landlord returned the security deposit in full as well as a portion of the utilities deposit. A written tenancy agreement was signed by both parties. The rental unit is a house, which was occupied by the five tenants, who are all university students. Two of the tenants were residing in the basement and three of the tenants were living on the upper floor of the house. The landlord had a property manager ("landlord's property manager") assist with this tenancy, since the landlord does not live locally.

The tenants seek a monetary order of \$6,710.00, which is a return of their prorated rent from August 11 to September 30, 2019, plus the \$100.00 application filing fee. The landlord disputes the tenants' entire application.

The tenants' agent testified regarding the following facts. On August 11, 2019, the tenants noticed that the large crawl space in the basement, where there are two bedrooms, was full of dark brown-coloured water, with a bad odour. One of the tenants told the landlord's property manager about the water. The water was from the sewer under the landing. The water caused extensive mold, sewer flies, and a bad odour, prompting the tenants to vacate the rental unit because they became sick from the odour and mold. The tenants did not visit the doctor or obtain treatment or medication because as soon as they went outside of the rental unit in the fresh air, they felt better. The tenants' agent, who is a designer contractor by profession, offered the landlord's property manager help, but was rejected. Nothing was done by the landlord to fix the water issue and it is still not fixed. The tenants had difficulty studying in university, due to these issues. The landlord told the tenants that the upper part of the house, which is

a split-level house, was still habitable, despite the water issue. The tenants provided photographs and approximately 50 emails asking the landlord for help.

The landlord's agent testified regarding the following facts. On August 11, 2019, the landlord's property manager received an email from one of the tenants, informing him of a crawl space water leak and asking him to inspect on August 14, 2019. On August 14, 2019, the landlord's property manager inspected the water at the rental unit and arranged for a plumber to inspect on August 16 and 17, 2019. On August 18, 2019, a plumbing and heating inspection was done. On August 19, 2019, a camera diagnosis inspection was done. The tenants failed to vacate the basement in order for the landlord's contractors to dry the basement and complete their work. On August 21, 2019, the landlord's contractors drained and stopped the water, providing an invoice for same for this hearing. On August 21, 2019, the landlord's property manager asked the tenants to vacate the basement in order to dry it and complete remediation work. On August 22, 2019, the tenants' agent told the landlord in an email that the house was in better condition and the smell had improved, after she spoke to the tenants. The tenants should not be claiming compensation back to August 11, 2019, if they felt that the issue was better as of August 22, 2019.

The landlord's agent testified regarding the following facts. On September 6, 2019, the tenants provided an email to the landlord's property manager that they had moved from the basement bedrooms. On September 7, 2019, the landlord's property manager told the tenant that restoration work would be done in the basement on September 9, 2019. The landlord provided a copy of the estimate for the remedial work, which was based on the tenants' agent's recommendation. On September 8, 2019, the tenant told the landlord's property manager to hold off on the basement remediation and to perform an asbestos test first. The landlord's property manager told the tenants that the basement was renovated in 2009 and that no asbestos test was required.

The landlord's agent testified regarding the following facts. On September 8, 2019, both parties made a verbal contract where they mutually agreed to end the tenancy before October 1, 2019. On September 15, 2019, the landlord agreed to return the tenants' prorated rent from after they moved out, as well as not pursue the tenants for a loss of rent for breach of the fixed term tenancy agreement. On September 19, 2019, the tenants vacated the rental unit and provided the landlord with a letter, dated September 18, 2019, claiming a frustrated tenancy and asking for their rent back from August 11, 2019. A water leak is not a frustrated tenancy in accordance with Residential Tenancy Policy Guideline 34. The tenants sublet the rental unit to other tenants, so they

received rent from those tenants, and they are getting double recovery of compensation from those tenants and the landlord.

The landlord's agent testified regarding the following facts. The tenants paid rent until September 30, 2019. The landlord returned the tenants' entire security deposit of \$1,750.00, a portion of the utilities deposit, and a rent rebate to all tenants. The landlord refunded \$708.35 to one tenant and \$579.25 to another tenant, for a total of \$1,287.50 to the two tenants living in the basement. This covered a period of 25 days from September 6, when the tenants vacated the basement, to September 30, 2019. The landlord refunded \$275.00 to the tenant, \$283.30 to another tenant, and \$256.70 to another tenant, for a total of \$815.00, for the three tenants living upstairs. This covered a period of 10 days from September 20 to 30, 2019, after those tenants vacated the entire rental unit. The landlord provided a table of the above payments.

The tenants' agent testified regarding the following facts. The tenants received the above payments from the landlord but did not cash the rent rebate cheques because they did not feel it was adequate compensation. The tenants refunded the rent of their sublet tenants from August 15, 2019 forward, so they did not engage in double recovery. The water issue was not a "small leak" as characterized by the landlord, but rather there was a "horrific smell" and the whole house was "unsafe" to inhabit. The asbestos test requested by the tenant was only a short three-hour test, and the tenant did not stop the landlord from completing repair work, he merely made a suggestion to have the test done.

The tenants' agent testified regarding the following facts. The basement tenants moved their furniture upstairs and slept in the living room as of September 6, 2019. Some of the tenants slept on couches in other people's units, while the tenant slept at his parents' place because they lived nearby. When the tenants first noticed the water on August 11, 2019, it was "not horrifically dangerous" at that time so they offered August 14, 2019 as an inspection date to the landlord's [property manager. On August 20, 2019, the tenants noticed that the smell was really bad and on August 28, 2019, there were sewer flies in the basement, for which the tenants submitted photographs. There was no housing for the tenants near the university, during the school year in September 2019. The tenants agree that they should receive their rent back from when they were not living at the rental unit as of September 20, 2019 but feel that they are also entitled to compensation dating back to August 11, 2019.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application of \$6,710.00 without leave to reapply.

The tenants provided a number of photographs, emails and other documents, with their application. However, the tenants' agent did not go through these documents during the hearing. The tenants' agent did not provide detailed information or evidence about the tenants' application during the hearing. Instead, she focussed on repeating the same information regarding the tenants becoming sick and having to move out during the school year. I find that she did not adequately dispute the landlord's agent's testimony and evidence presented during the hearing, regarding the landlord's efforts to rectify the water issue.

I find that the tenants voluntarily vacated the rental unit. The tenants did not prove that they were forced to move. The fact that the tenants chose to leave when they did, was up to them. I find that the tenants elected to end their tenancy first and then allege a frustrated contract after they moved out. Yet, the tenants' agent did not make this submission during the hearing, nor did she explain it. This issue was raised by the landlord's agent during the hearing, in order to respond to the tenants' written evidence.

I find that the landlord provided compensation to the tenants for the mold and water issues, which the tenants chose not to accept. The basement tenants received a rent rebate from when they had to move from the basement. The upstairs tenants received a rent rebate from when they vacated the rental unit. The tenants also received a full return of their security deposit of \$1,750.00 plus a partial return of their utilities deposit.

The landlord agreed to not pursue the tenants for a rent loss based on a breach of the fixed term tenancy agreement ending on April 30, 2020.

I find that the landlord adequately dealt with the tenants' complaints in a reasonable time period, by having professional contractors inspect the unit and temporarily fixing the problem. The landlord provided a specific timeline of the dates they received complaints from the tenants, to the dates they sent contractors to conduct inspections and arranged for the work to be done. A full remediation of the water issue was not done before the tenants decided to move out. I find that the tenants delayed the remediation work by failing to move out of the basement as per the landlord's request on August 21, 2019, but rather waited 16 days to leave on September 6, 2019. I also find that the tenants' request for an asbestos test, when the landlord informed them that the basement had been redone and provided proof of same for this hearing, also delayed the remediation process.

I find that the tenants did not view the water issue to be serious when they first reported it to the landlord's property manager, proposing an inspection on August 14, 2019, three days after they first discovered the water on August 11, 2019. I find that the tenants moved out before the issue could be remediated, which was their choice to do so. I also find that the professional contractors as well as their repair timelines are outside of the landlord's control, and that the landlord made best efforts to fix the issue.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenants' entire 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 18, 2019

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Residential Tenancy Branch