



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

For the landlords: MNRL-S MNDCL-S FFL  
For the tenants: MNDCT MNSD FFT

### **Introduction**

This dispute relates to an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlords applied for the following:

1. \$5,050 for unpaid rent, loss of rent or other compensation,
2. To retain the security deposit and pet damage deposit (combined deposits),
3. Filing fee.

The tenant applied for the following:

1. \$8,450 for the rental unit not being as advertised comprised of rent paid and the combined deposits,
2. Filing fee.

The parties attended the teleconference hearing, which began on November 22, 2022. After 64 minutes, the hearing was adjourned and reconvened on March 31, 2023. After an additional 67 minutes, the hearing concluded. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

Neither party raised any concerns regarding the service of the application or documentary evidence, or the ability to review that evidence prior to the hearing.



I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Is either party entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the combined deposits under the Act?
- Is either party entitled to the filing fee?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 15, 2022, and is scheduled to convert to a month-to-month tenancy after February 28, 2023. Monthly rent is listed as \$3,300 per month and was due on the first day of each month. The tenant paid a security deposit of \$1,650 and a pet damage deposit of \$1,650 (\$3,300 in combined deposits) at the start of the tenancy, which the landlords continue to hold.

#### *Tenants' application*

The tenant never occupied the rental unit and is claiming that the tenancy was “not as advertised” and that the landlord misrepresented the condition of the rental unit.

#### *Tenant's evidence*

The tenant stated that they had every intention on being a tenant and moving in but on March 12, 2022, when they inspected the rental unit, it smelled like mould and there were areas of water and mould. The tenant stated that they could not move into the rental unit as it would impact their health and it was not as advertised on the listing and that the landlord failed to disclose the extent of the water damage and mould.

The tenant is seeking \$8,450 as follows:

1. Feb 15-28, 2022 rent of \$1,650
2. March 2022 rent of \$3,300
3. Security deposit of \$1,650



4. Pet and remote deposit of \$1,750
5. Filing fee of \$100

The tenant provided emails and photos in evidence to support that the landlord was aware of water ingress and mould in the rental unit. The tenant testified that they were assured on March 7, 2022 that all repairs would be completed before the tenant moved into the rental unit on March 12, 2022. In addition, the tenant stated that a Zoom view of the rental unit conducted on January 26, 2022 by a landlord agent panned around and did not show any areas of damage in the rental unit at all and was very quick, which the landlord did not deny.

In one email dated March 9, 2022, the tenant writes to the landlord as follows:

I am writing with a follow up to my earlier email and text that I sent to Hans on Monday, March 7 where he notified me that the 'mold' in the suite will not be fixed prior to my move-in/official possession of the suite on March 12.

When I viewed the apartment back in January, I was **assured that the mold issue in the master suite would be fixed long before I moved in.**

Given that the suite has been empty since Feb. 15 - and I have been paying rent since that time - you can appreciate my frustration that I am now learning (six days prior to my taking tenancy) that the mold issue is not fixed with no further details provided as to when it will be rectified.

I am not comfortable living in an apartment with mold, which I made very clear prior to signing the tenancy agreement.

I currently have movers booked for March 18, with a deposit paid and so I am feeling rather rattled by all of this, in particular at the lack of communication as I prepare for the move.

As I have received zero follow up communication on the matter, I am writing to request a detailed timeline as to when the issue will be fixed, coupled with how invasive the process will be - ie; are there going to be workers in the apartment for a specific duration of time or will there be tarps outside the window for a duration of time - again, none of this has been explained to me nor has there been any details provided surrounding this process.

Upon receiving such details, I would like to discuss next steps and some type of compensation.

I will be meeting Will on Saturday March 12 for a walkthrough of the apartment and to acquire the keys. That said, I would like to hear back from you before the end of day Thursday, please.

Lastly, I had also requested curtains on the living room window and I was also assured that these curtains would be in place for my move-in. I appreciate confirmation here as well.

Thank you for your assistance,

The landlord responded by email on March 9, 2022 as follows:



I know you are frustrated and we fully understand. But it is out of our control and it is strata job to fix it. Meanwhile, it is only little surface mold. But we want to make you happy, so we will push the strata to fix it asap. Now they have not given us a exact schedule when it will be done.

We would like to give you compensation \$ 200 as a courtesy to make you happy.

By the way, for the curtain, that is your responsible to install and recover to the original status after you move out.

Thank you

On March 10, 2022, the landlord conveys the following message from the Strata Manager to the tenant as follows:

Thank you for your email.

The vendor is moving as quickly as possible to determine the source of the water ingress and propose a repair solution. The Strata Corporation has already approved the repairs to be done, so there will be no delays on that side.

Unfortunately we only learned of this issue late January and it takes some time to investigate, plus with staff getting sick with covid the project has not moved as quickly as expected.

The strata is not obligated to provide compensation, the obligation is to get the repair the envelope leak and any damaged walls inside the strata lot in a reasonable amount of time. Especially when the prior owner failed to report the issue to the Strata Corporation.

My expectation is by the end of March the repairs will well under way, weather will play a factor.

The tenant's response to the landlord on March 11, 2022 is as follows:

Thank you for the update, Hans.

The mold issue appears to be far greater than "surface mold" - with "envelope leak and damaged walls inside the strata lot" which was certainly never expressed as a possible concern back in January prior to signing my tenancy agreement.

If the repairs include tarps and workmen in my apartment for an extended length of time, none of which I ever expected nor was informed of when signing, we will need to have a larger conversation about some type of compensation greater than \$200 when I am paying \$3300 per month.

I appreciate this gesture as a goodwill offering, but I hope you can appreciate that this is all rather overwhelming and disruptive.

Thank you for your understanding,

The photo evidence supports that there is standing water on the ledge of the window and black mould in the corner of the rental unit bedroom.

The landlord presented the following email from the tenant:



I am writing to terminate my tenancy at [REDACTED] Street.

As mentioned during my call with Hans yesterday, after viewing the significant extent of mold throughout the upper floor of the suite on Saturday, it is neither a safe or healthy living environment.

What makes this situation even more upsetting is that you knew about the mold issue prior to my signing the tenancy agreement. When I voiced my concern about the mold back on January 28, I received email confirmation from Hans that the "mold issue would be fixed before I was to move in." I confirmed I would be moving into the suite on March 12.

From here, on March 7 (six days before I was to officially take possession), I was notified that the mold damage to the suite was still not rectified. I was not provided with any sense of when the damages would be completed due to an "inefficient" strata.

I feel there has been a lack of responsibility and misrepresentation by the agent (Interlink) working on behalf of the landlord to conduct a thorough inspection of the property before listing. This includes identifying and rectifying any areas of concern with the landlord.

As you are aware, I have not, nor will I be taking possession of the suite. That said, I have paid my deposit, half month's rent on Feb. 15 and full month's rent on March 1 for a total of \$8,350. I was very happy to make all my tenancy payments as I understood the suite to be a safe and healthy living environment. I am extremely distressed about this situation for multiple reasons. I do hope we can rectify this matter in a courteous and professional manner.

For the purposes of returning my deposit, my forwarding address is below. Please respond within 15 days.

**Deposit:**

\$1650 - rent deposit  
\$1650 - pet deposit  
\$100 - remote deposit

**Forwarding Address:**

The tenant also presented evidence obtained from a building restoration company report dated February 19, 2022, which shows more than surface mould, water on the window ledge of the rental unit and black mould. The recommended repairs include the following:

1. Replace roof membrane above leak locations
2. Repair cold joint and cracks on building wall
3. Remove and apply sealant at \_ashing seams and \_ashing end dams
4. Seal concrete connections
5. Remove sealed units, create weep holes and seal miter corners

[reproduced as written]

The landlord's claim is claiming for April 2022 rent owing of \$3,300 plus \$1,650 for a "lease breachment" fee. The landlord testified that they were able to re-rent the rental unit effective May 1, 2022.

Analysis

Based on the documentary evidence, the testimony of the parties, and on the balance of probabilities, I find the following.



In this matter, I will address the tenant's application first as the tenant did not move into the rental unit, citing that the landlord failed to deliver a rental unit as described. I have carefully considered all of the evidence and in this matter, I find the tenant's evidence to be compelling. I find the landlord misrepresented the condition of the rental unit by not denying that the Zoom call was quick and did not show any areas of visible mould in the rental unit, which I find based on the photo evidence, would have more likely than not been present on January 26, 2022.

Furthermore, I find the landlord failed to deliver on their promise that the rental unit water damage and mould would be rectified before March 12, 2022. Given the above, I find the landlord may not rely on the contract signed as they delivered a rental unit that did not meet the requirements health and safety requirements of the Act. I find the rental unit had a significant water leak and that the \$200 compensation offered to the tenant was unreasonable. Therefore, I find the landlord breached the tenancy agreement before the tenant breached the Act and as a result, the tenant is not at fault for refusing to move into a rental unit that I find was **not as advertised**.

Given the landlord's breach, I find they must return all money received from the tenant with interest as follows:

1. Feb 15-28, 2022 rent of \$1,650
2. March 2022 rent of \$3,300
3. Security deposit of \$1,650
4. Pet and remote deposit of \$1,750
5. Filing fee of \$100

In addition, I find that the security deposit of \$1,650 and pet damage deposit and remote deposit of \$1,750, which total \$3,400, have accrued interest under the Act of \$20.92, which I find makes the total in combined deposits held by the landlord including interest of \$3,420.92. As the tenant's application is fully successful, I have included the \$100.00 filing fee under section 72 of the Act. I find that \$1,650, \$3,300, \$3,420.92 and \$100 total **\$8,470.92**. I award the tenant a monetary order in that amount, which the landlord must pay. I find this returns the tenant to their financial position had the landlord not misrepresented the rental unit, which I find the landlord did.

**I caution** the landlord never to misrepresent a rental unit in the future.

**Landlords' claim** – I dismiss the landlord's claim in its entirety as I find the landlord's first breach of the Act resulted in obtaining combined deposits and rent while



misrepresenting the rental unit. Therefore, I find the landlord has failed to prove any breach under the Act as I find the tenancy agreement is not enforceable due to the landlord's misrepresentation of the rental unit, which voids the contract and I find makes the contract unenforceable.

As the landlords' application did not have merit, **I do not grant** the landlord the recovery of their filing fee.

### Conclusion

The landlord's claim fails in its entirety.

The tenant's claim is fully successful.

The tenant is granted a monetary order pursuant to section 67 of the Act, in the amount of \$8,470.92. This order must be served on the landlord and may be filed in the British Columbia Provincial Court, Small Claims Division, should the landlords fail to comply with my Order.

The landlord has been cautioned as indicated above.

The landlord may be liable for all enforcement costs including court filing fee and court costs if the landlord fails to pay the amount listed on the monetary order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 25, 2023

---

Residential Tenancy Branch