

## **INTERIM DECISION AND REASONS**

### **Dispute Codes:**

MNSD, MNDC, FF

### **Introduction**

This hearing was reconvened in continuation of the hearing held on June 2, 2009. An interim decision was issued on June 3, 2009. The parties have been affirmed at the previous hearing and confirmed that they continue to be under oath.

During this hearing the landlord's son was absent and the landlord had a translator present to assist him. The translator did not provide testimony.

### **Preliminary Matter**

The application for dispute resolution indicates that the rental unit is #204 when in fact it is #663. The application is amended to reflect this correction.

During the hearing the landlord did not provide testimony in relation to the tenant's claim for return of the deposit paid. I find that in order to establish the amount owed to the tenants that written submissions from each party must be made. Therefore, I find that each party may submit a written summary and response, no longer than three pages each as to their testimony in relation to return of the deposit. These submissions shall be served to each party and the Residential Tenancy Branch by August 10, 2009. The parties will then have a further five business days to respond to the written submissions and serve those responses to each other and the Residential Tenancy Branch. All written submissions and responses must be received by the other party and the Residential Tenancy Branch by August 21, 2009. After that date a decision will be issued based upon the testimony and written submissions made.

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

Are the tenants entitled to a monetary Order of \$11,898.00 for damages caused by bed bugs?

Are the tenants entitled to return of the deposit paid to the landlord?

Are the tenants entitled to filing fee costs?

### **Background and Evidence**

This tenancy commenced on October 15, 2006 and ended in mid-March, 2009. The tenants are claiming compensation for the loss of belongings they were forced to dispose of due to a bed bug infestation. The tenants allege that despite repeated verbal requests to the landlord that something be done about the problem, the landlord failed to take their concerns seriously, which resulted in a severe infestation of bed bugs.

The tenants testified that within one month of moving into the rental unit they discovered an infestation of bed bugs. The tenants stated that they contacted the landlord agent who failed to take immediate action. The tenants stated that over the first five to six months of the tenancy, despite repeated verbal requests that the landlord provide treatments, the landlord failed to properly respond. The tenants testified that during the

entire period of their tenancy they were unable to have the landlord take the infestation seriously and that they were told that if they continued to complain they would be required to pay for the treatment themselves. The tenants stated that the rental unit was treated early in the tenancy and that bed bugs quickly reappeared. The tenants stated that the landlord accused them of bringing the bed bugs into the rental unit.

The landlord testified that in December 2006 the rental unit was not infested and that from July 2007 to December 2008 there was no contact made by the tenants in relation to any bug problem. The landlord submitted the following list of time-line of events:

- June 4 2007 unit inspection, recommend more vacuuming, sanitation
- June 13 2007 needed one more treatment
- June 20, 2007 treated unit
- December 3, 2008 landlord requested treatment
- December 4, 2008 treatment cancelled as unit not prepared by tenant
- December 10, 2008 letter to tenant notifying them of December 22 treatment
- December 22, 2008 unable to treat due to weather, reschedule for January 12, 2009
- December 25, 2008 tenant reported continued presence of bed bugs
- December 29, 2008 letter from tenant indicating bed bugs were present at move in
- January 7, 2009 letter to tenant with treatment preparation instructions
- January 7, 2009 landlord requested further treatment
- January 15, 2009 Notice to End Tenancy for Cause issued

The landlord's evidence and testimony indicates that the rental unit was treated on two occasions shortly after October 2006 and that the tenants were not following treatment preparation instructions. The landlord could not provide the dates upon which the tenants were provided with bed bug preparation sheets, which explained the process required in order to allow proper treatment, but stated that prior to each treatment the tenants would have been given the instruction sheet. The landlord stated that the tenants did not properly prepare the unit for treatment, rendering treatment useless or ineffective.

A January 15, 2009 letter written by the landlord employee NB indicates that at some point between late 2006 and the spring of 2007, after three treatments made to the unit, the tenants were told that due to their lack of proper preparation prior to treatments, they would be evicted or have to pay for their own treatments and that from this point on no further complaints were made by the tenants until the summer of 2007. The landlord testified that they take bed bugs reports very seriously and make all attempts to ensure treatment occurs.

The tenants and landlord agreed that during December 2008 attempts were made to treat for bed bugs and that on one occasion the treatment was cancelled due to poor weather. On January 15, 2009 the landlord issued a Notice to End Tenancy for Cause which was followed by a letter from the tenants dated January 21, 2009 which outlined the tenant's concerns related to the bed bug problem. In the letter the tenant states that a planned treatment on January 12, 2009 did not occur and that on January 17, 2009 the landlord issued a letter to the tenants blaming the tenants for the bed bug problems and directing the tenants to move out by February 28, 2009. The tenant's letter indicates that the tenant's belonging have been in bags on the balcony, awaiting treatment, for a two month period.

The parties each submit that the other failed to adequately mitigate; the landlord stated that the tenants did not make any complaints from July 2007 to December 2008 and failed to properly prepare the unit for the treatments; while the tenants alleged that they made constant verbal requests for assistance and did not receive an adequate

response from the landlord. The tenants stated that, as recommended by the pest control company, their belongings had to be disposed of as they were so severely infested with bed bugs.

Legal counsel for the tenants stated that the tenants do have a language barrier and that they did not understand the requirement that they should provide the landlord with written complaints.

The tenants testified that they have not received the deposit of \$420.00 paid to the landlord. The tenants testified that they made repeated verbal requests for return of the deposit and gave a previous landlord employee their address.

### Analysis

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### Test For Damage and Loss: Monetary 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 tenants, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the tenants did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that it is reasonable to expect the tenants to have disposed of their household items, as the pest control company evidence indicates that everything in the rental unit was completely infested with bed bugs. I have considered whether the loss was due to the actions or neglect of the landlord.

I have considered the landlord testimony that bed bugs did not exist at the start of the tenancy in comparison to the written evidence of a previous landlord employee who confirmed that within one month of the start of this tenancy there were bed bug complaints made by the tenants and that three attempts to treat the unit were made. The written evidence submitted by the landlord contradicts the testimony provided by the landlord during the hearing. Whether the tenants brought the bed bugs into the unit or not, the problem required attention by the landlord.

I find the testimony that the tenants were told they would have to pay for treatments troubling. If the tenants were not properly preparing the rental unit for treatment the landlord should have made further efforts in late 2006 and the summer of 2007 to intervene in order to protect the interests of these tenants and other tenants in the building. This did not occur.

I find that that the tenants did make sufficient complaints that should have alerted the landlord to an on-going problem. Either the tenants were afraid to make further complaints, or they did continue to make verbal complaints, to no avail. I find that the landlord had the responsibility of ensuring that the presence of bed bugs was properly addressed at the time they were aware of the problem in 2006 and 2007. The landlord did not taken definitive action until December 2008, by which time the rental unit was so infested that the pest control company recommended destruction of all items in the rental unit.

The tenants have submitted a list of belongings that they disposed of as a result of a serious bed bug infestation. This list includes household effects and appliances totaling \$11,898.00 in value. The tenants have not supplied any receipts verifying the value of these items.

Section 7 of the Act requires that a tenant and a landlord do whatever is reasonable to minimize any damage or loss. I find that while the landlord had a duty to investigate and treat the bed bug problem in 2006 and 2007 that the tenants also had a responsibility to use all remedies at their disposal in order to ensure action by the landlord.

The tenants have made a claim against the landlord for loss; however, they failed to use remedies available to them before the presence of the bed bugs escalated to an infestation that was beyond remediation. However, I have determined that the landlord had a duty to properly investigate a bed bug problem that was repeatedly and unsuccessfully treated very early in the tenancy. This is supported by the landlord's employee letter dated January 15, 2009 in which the employee indicates the suite was treated at least on two occasions shortly after October 2006.

The landlord failed to enter the rental unit after the 2006/2007 treatments for the purpose of an inspection to ensure the unit was free of the bugs and during this time told the tenants they would be evicted or have to pay for treatments themselves. The landlord testified that the tenants failed to properly prepare the unit for treatment, but I find that any failure of the tenants to properly prepare the rental unit for treatment should have been dealt with early in the tenancy and not have been allowed to go unchecked. I find that the landlord had a responsibility to ensure the rental unit was properly treated and that the escalation in the bed bug infestation occurred due to the lack of action by the landlord.

I have accepted that a loss did occur and that this loss could have been prevented by definitive action taken by the landlord to treat for bed bugs and to ensure that treatment was successfully completed. I find that the tenant's are entitled to compensation for the loss of personal goods in the sum of \$5,000.00, however; I also find that the tenants had a responsibility to mitigate this loss, therefore I find that the tenants are entitled to compensation in the sum of \$2,000.00.

As the tenant's application has merit I find that the tenants are entitled to filing fee costs.

### Conclusion

I find that the tenants have established a total monetary claim of \$2,050.00 comprised of \$2,000.00 compensation and the \$50.00 fee paid for this application.

The parties are to make written submissions in relation to the tenant's request for return of the deposit according to the instructions provided in the preliminary matters section of this decision. A decision and monetary Order will be issued after August 21, 2009.

Dated July 29, 2009.

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Dispute Resolution Officer