



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

**MNDC, MNSD, RR**

### **Introduction**

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for loss or damage, a request for return of the deposit paid, an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and aggravated damages.

Both parties were present at the hearing and provided affirmed testimony. At the start of the hearing I introduced myself and the Application for Dispute Resolution was reviewed. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence and to make submissions during the hearing.

### **Preliminary Matter**

The hearing commenced at the scheduled time, in the absence of the landlord. At approximately four minutes into the hearing the landlord's agent entered the hearing. At this point the landlord was provided with introductions to the dispute resolution officer and the agent for the tenant. The landlord's agent was also provided with a summary of the discussion that had occurred prior to his entry to the conference call hearing, which consisted of a review of required document service by the tenant to the landlord.

The landlord's agent stated that he did not receive any of the tenant's documents submitted for this hearing. The agent for the tenant testified that the amended Application for Dispute Resolution and evidence were sent to the landlord by registered mail, on August 18, 2009 and that the Canada Post web site indicated the documents were received by the landlord on August 19, 2009. The tenant's agent stated that the Canada Post web site provided the name of the individual who accepted the registered mail; one of the officers of the company named as a respondent.

These documents are deemed to have been served in accordance with section 90(a) of the *Act*.

After the landlord's agent entered the conference call hearing both parties were asked if they would have witnesses available to testify. The landlord stated that he could locate people to testify. Toward the end of the hearing the landlord brought forward a witness who testified and was cross-examined. Upon questioning I determined that this witness had been present with the landlord throughout the hearing, therefore, this testimony will provide limited value and be accorded little weight.

## Issues to be Decided

Is the tenant entitled to a monetary Order for a reduction in past rent paid as a result of a loss of quiet enjoyment?

Is the tenant entitled to return of the security deposit paid to the landlord?

Is the tenant entitled to replacement costs for loss of personal belongings?

Is the tenant entitled to aggravated damages?

## Background and Evidence

The tenant submitted a written summary of his claim, accompanied by his sworn affidavit dated August 14, 2009.

The tenant has made the following claim for compensation:

Return of portion of past rent paid	187.50
Loss of belongings	400.00
Aggravated damages	1,712.00
	3,499.50

The tenant provided proof of payment of a \$187.50 security deposit paid to the landlord on September 1, 2005 and proof of past rent payments.

The landlord's agent testified that the tenant owes the landlord money and confirmed the landlord has not returned the deposit paid.

This tenancy in a single-occupancy room in a 120 room building, commenced some time in 2001 or 2002. The evidence provided by the tenant indicates that the rent was \$375.00 per month. The tenant's affidavit includes the following submission:

- that over an eight year period, ending in August 2008, he worked for the landlord completing repairs to the building for a \$10.00 hourly wage;
- that he would live in rooms he was repairing and accepted that they would be in substandard condition;
- that he repaired approximately 50 rooms in the hotel;
- upon being fired by the landlord he was moved into room 412;
- that the lock to room 412 did not function, that the key did fit the lock and that, despite a request to the property manager that the lock be repaired it was never fixed;
- the room to his door was cracked in half;

Residential Tenancy Branch  
Ministry of Housing and Social Development

- that shortly after moving into room 412 the property manager removed the tenant's bed and that the manager told him it was being given to an occupant who they did not want to lose and that a replacement bed was not provided;
- that due to work being completed in a neighbouring room the bedbugs and mice migrated into room 412, resulting in the mice defecating on his floor and in his belongings;
- that for approximately 1.5 months at the start of his tenancy in room 412 and one month at the end of his tenancy in room 412, he was without hot water;
- that his request to the property manager that he be moved to a different room to allow the manager access to exterminate the pests was ignored, that a month went by and he was not offered another room;
- that he was experiencing severe bed bug bites, that he had 50 or 60 bites;
- that on April 23, 2009 he abandoned the room and left his belongings behind as they were infested with bed bugs, roaches and damaged by mice; and,
- that since leaving the rental unit he has been staying in homeless shelters.

The tenant's affidavit indicates that he has suffered a loss of the following items:

- a television;
- two computers;
- a laptop;
- DVD player;
- a number of CD's and DVD's;
- a stereo;
- all of his clothing.

The landlord provided no evidence in response to the tenant's claim. The landlord's agent denied that the tenant ever worked for the landlord and stated that the tenant hoarded items in his room.

The tenant's agent questioned the landlord's agent in relation to a July 21, 2009 telephone discussion that occurred between them, during which the agent claims the landlord confirmed the past employment of the tenant. The agent for the tenant testified that her notes of that conversation indicated that during this telephone conversation the landlord's agent had confirmed the past employment of the tenant with the landlord; the landlord's agent denied that he had confirmed the past employment of the tenant with the landlord.

The landlord's agent testified that the tenant has lied, that he has never worked for the landlord, that his bed was not removed from the room and that they routinely treat rooms for pests, completing ten treatments each Friday; which results in each unit having one treatment every three months. The landlord was unable to provide the tenant's agent with dates of any treatments made specifically to room 412.

The landlord's witness testified that he has lived at the same building for four years and that during his tenancy has had his unit treated on three or four occasions. The

witness testified that he did not believe the tenant had any bed bug problems and that whenever he tried to enter the tenant's room he was unable to open the door.

The tenant's agent submitted that there has been a substantial loss of quiet enjoyment to the tenant as the landlord was aware of the state of room 412 when the tenant was moved into that room. The tenant's agent submitted that the landlord's failure to take reasonable steps to maintain the unit as required by section 32 of the Act resulted in the destruction of the tenant's belongings by pests, the loss of hot water and a lack of security due to a malfunctioning lock. The tenant's submission declared that the failure of the landlord to respond to the deficiencies resulted in an effective room "down-grade" in quality and value.

The agent for the tenant stated that the tenant takes his claim very seriously and has been diligent in pursuing his application for dispute resolution. The tenant's agent stated that the claim for aggravated damages is based upon the landlord's failure to repair and maintain the rental unit and the landlords understanding that a rental unit left in such a poor state would eventually result in the tenant abandoning the unit. The tenant's agent submitted that the tenant has faced a significant impact as a result of the landlord's failure to repair and maintain the rental unit as required by the Act, leaving the tenant to reside in homeless shelters.

## Analysis

I find that the tenant is entitled to return of the deposit, plus interest, in the sum of \$194.13, as provided by section 38 of the Act. The landlord has not made a claim against the deposit paid and has not received an Order allowing retention of the deposit.

Throughout the hearing I found the landlord agent's testimony less credible than that of the tenant's agent, who attended the hearing to represent the tenant's interests. I base this assessment on the response the landlord's agent gave when questioned by the tenant's agent in relation to their July 21, 2009 telephone conversation. The tenant's agent testified that during this telephone call she recorded a note that the landlord's agent confirmed the tenant's past employment. During the hearing the landlord denied having made this comment to the tenant's agent and testified that the tenant had never worked for the landlord. I find the landlord agent's denial less reliable than the recorded note of the tenant's agent and this denial leads me to question the veracity of much of the landlord agent's testimony.

In relation to the landlord's witness testimony, I found that testimony to be unreliable as the witness acknowledged he had been present throughout the entire hearing. This witness testified toward the conclusion of the hearing and was present with the landlord, despite the landlord having indicated at the start of the hearing that he would need to contact his witnesses during the hearing.

I have also based this decision on a sworn affidavit of the tenant and the submission of the tenant's agent. I found the tenant's affidavit consistent and I relied upon the content which I determined was dependable and more probable than the landlord's agent. For

example, the tenant's submission that he worked for the landlord, which I accept was confirmed by the landlords agent on July 21, 2009.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In relation to the tenant's claim for return of a portion of the rent paid due to a reduction in the value of the rental unit, I find that the tenant has sufficiently demonstrated that his rental unit was not maintained to a reasonable standard of health. Section 32 of the *Act* provides:

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I base this decision on the tenant's sworn affidavit and the failure of the landlord to provide any evidence of adequate pest treatment to the tenant's room. I have also considered the landlord's witness testimony which contradicted that of the landlord in relation to the frequency of pest control treatments. The landlord did not supply any evidence that pest treatments had occurred to room 412 and, in the absence of a schedule of planned treatments, dates treatments occurred in the tenant's room or any other action taken to mitigate the loss to the tenant, I find the tenant's claim convincing.

The landlord testified that rooms are routinely treated for pests on a rotated basis; which indicates that any room suffering a severe infestation, as described by the tenant, would be left for a period of three months before a follow-up treatment would occur. This would provide the tenant with as few as two treatments during his time in room 412. I find that this frequency would effectively render any treatment of an infested room inadequate and render the landlord culpable for loss experienced by the tenant. I also base this decision on the testimony of the landlord's witness who stated that during his four year tenancy his room has been treated for pests on three to four occasions. By the landlord's own testimony, it would be expected that the witness' room to have been routinely treated much more frequently.

The landlord did not respond to the claim that the tenant had been without hot water; therefore, in the absence of evidence to the contrary, I accept the tenant's statement that he was without hot water for a period of 2.5 months.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The tenant has submitted that he did not have use of a bed for much of the last eight months of his tenancy. The landlord denied removal of the bed. The tenant did not provide a date upon which his bed was removed, although I have accepted the tenant's statement that he was without a bed for at least a period of time and find his statement that the bed was given to another tenant credible. The landlord's witness testified that the tenant had moved his bed; however, I place little weight on this testimony, given this witness' presence throughout the entire hearing.

I have considered the landlord witness' testimony in relation to the lock on the tenant's door and discount this testimony as the witness was present, without my knowledge, throughout the hearing. I have accepted the tenant's submission that he could not lock his room. The tenant has not offered any evidence that anyone entered his room or breached the security of his room, but I find that the lack of a functional lock could be reasonably expected to diminish the tenant's sense of security and to have impacted the tenant's right to quiet enjoyment as determined by section 28 of the Act which provides:

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch policy suggests that historically a breach of the covenant of quiet enjoyment could include action or inaction by the landlord which renders the premises unfit for occupancy for the purposes for which they were leased. I find that the landlord has failed to provide evidence of any attempt to respond to the concerns expressed by the tenant.

In relation to the loss of personal belongings, the lack of pest control treatment during an eight month period of time could be expected to allow an infestation of bed bugs and mice to reach the point where it could likely result in damage and loss of personal effects. There is no evidence before me of a treatment program that was carried out in the tenant's room and I have found the landlord agent's testimony unconvincing. Even if room 412 had been treated on several occasions, at three month intervals during the time in question, I find that this would have been inadequate to eradicate an infestation. I find that the tenant did experience a loss of personal effects and base this decision on the failure of the landlord to provide any evidence of treatments to room 412 or room inspection reports during the tenancy and upon the sworn affidavit submitted by the tenant.



Residential Tenancy Branch  
Ministry of Housing and Social Development

Based on these findings I have determined that the value of this tenancy was reduced due to a failure to treat for pests, the loss of hot water, the loss of quiet enjoyment and that the tenant is entitled to compensation in the sum of \$150.00 per month for an eight month period of time.

In relation to the tenant's claim for aggravated damages; these damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's wilful or reckless indifferent behaviour. They are measured by the wronged person's suffering. The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. The damage must also be of the type that:

- the wrongdoer should reasonably have foreseen that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed;
- they must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life.
- They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses.

The tenant has resorted to living in a homeless shelter due to the poor state of his rental unit. The tenant lived in the same residence for approximately eight years and chose to suddenly vacate, without having arranged alternate accommodation. The tenant has presented evidence that he had lived in a substandard room for a period of eight months, during which time it would not be unreasonable for the tenant to have identified alternate accommodation, prior to abandoning his room. Therefore, I dismiss without leave to reapply the claim for aggravated damages.

## Conclusion

I find that the tenant has established a total monetary claim of \$1,394.13 comprised of damages and loss in the sum of \$1,200.00 and return of the deposit plus interest in the sum of \$194.13 and I grant the tenant an order under section 67 in that amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: November 3, 2009.

---

Dispute Resolution Officer