

## **DECISION**

### **Dispute Codes**

For the landlords OPR, MNR, MND, MNSD, FF

For the tenant – MNDC, MNSD

### **Introduction**

This decision deals with two applications for dispute resolution, one brought by the landlords and one brought by the tenant. Both files were heard together. The landlords seek a Monetary Order for unpaid rent, for damage to the rental unit and to recover the filing fee. The landlords also request an Order to keep the security deposit. The landlords withdraw their application for an Order of Possession as the tenant has moved from the rental unit. The tenant seeks a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and an Order for the return of the security deposit.

The landlords served the tenant by registered mail on March 24, 2010 with a copy of the Application and Notice of Hearing. The tenant served the landlords in person on April 22, 2010 with a copy of the application and a Notice of the Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The landlords appeared and the tenant and his advocate appeared. All Parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

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

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for damage to the rental unit?
- Are the landlords entitled to keep the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for loss or damage under the *Act*?
- Is the tenant entitled to recover double the security deposit?

### Background and Evidence

Both Parties agree that this tenancy started on March 04, 2008. This was a fixed term tenancy which reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$650.00 per month and was due on the first of each month. The tenant paid a security deposit of \$325.00 on March 04, 2008. The move in and a move out condition inspection reports were completed. The tenant gave the landlords his forwarding address in writing on March 08, 2010.

### The landlord's application

The landlords testify that the tenant lived in the rental unit for nearly two years before he discovered a bed bug infestation. The landlords testify that this is a trailer on a mobile home park and they have had no reports of any other trailers suffering with bedbugs. The landlords claim that the bedbugs must have been brought into the unit through actions of the tenant and they are not therefore responsible to pay for an exterminator to remove the bedbugs. The landlords testify that the tenant informed them in January, 2010 about the bedbugs and told them that he had done his research and was dealing with them. By the end of February, 2010 the landlords claim the tenant told them that they were responsible for removing the bedbugs.

The landlords testify that on February 28, 2010 the tenant gave them written notice to end the tenancy for the end of March, 2010. The tenant did not pay rent for March, 2010 and a 10 Day Notice to End Tenancy was issued. This notice informed the tenant to pay the outstanding rent within five days, apply for dispute resolution within five days or end the tenancy on March 14, 2010. The landlords claim the tenant moved out of the unit by March 04, 2010 and on March 08, 2010 they received a note from the tenant with his forwarding address.

The landlord's claim they could not re-rent the unit due to the bedbugs and had to have three separate treatments carried out by an exterminator to rid the unit of the bugs. The unit was re-rented on May 01, 2010.

The landlords claim that the tenant did not arrange for a professional pest control treatment of the unit and the landlords had to organise and pay for these treatments at a cost of \$682.50. The landlords had to pay for a human pest test where a human had to sleep in the unit after the first and second treatments at a cost of \$100.00 (the landlord slept in the unit after the third

treatment). Two furnace filters had to be replaced at a cost of \$11.18. The carpets had to be professionally cleaned at a cost of \$73.50. The tenant had a dialyse machine in the unit and had to make holes in the walls for the tubes. The landlord had to repair some wall panels due to this and remove and replace baseboards due to the bedbugs and install a door at a total cost of \$535.68. The landlords had to purchase some new baseboards at a cost of \$36.85. The landlords had to pay a cleaner to clean and install blinds which took 18.7 hours at \$15.00 per hour to a total sum of \$280.00. The landlords cleaned the home and yard for 21 hours at \$20.00 per hour to a total cost of \$420.00. The landlords had to replace the window blinds and are seeking 50% of these costs to a sum of \$39.60.

The landlords claim the tenant damaged the dryer door and they replaced the dryer with a second hand one and claim 50% of this cost to a sum of \$62.50. The landlords claim the sum of \$5.59 for vacuum bags which could only be used once due to the bedbugs. The landlords had to purchase paint for wall panels and baseboards at a cost of \$22.39. The landlords paid \$80.00 to remove abandoned belongings to the landfill. The landlords seek the cost of replacing the bedroom door for \$39.20. The landlords seek their filing and registered mail costs for this application of \$61.76. The landlords also seek a loss of rental income for April, 2010 due to the length of time between pest control treatments before the unit could be re-rented at a cost of \$650.00. The landlord has provided receipts and invoices for these costs.

The tenant disputes the landlords claim. The tenant testifies that when he first discovered he was being bitten by bedbugs he attempted to eradicate them by using a Raid treatment. The tenant felt that he had not been negligent in bringing the bedbugs into his living space and therefore it was the landlord's responsibility to pay for a professional treatment of the bedbugs. The tenant claims he notified the landlord in writing about this and gave them notice that he would end the tenancy due to a breach of a material term of the tenancy agreement if the landlords failed to act in this matter. The tenant claims the landlords refused to treat his unit and due to health risks he was forced to move from the rental unit. The tenant argues that even if the landlords are not in breach of a material term then the tenancy became frustrated because he could no longer continue to live in the rental unit due to the bedbugs and the impact these had on his ability to perform his medical procedures necessary due to his kidney condition. The tenant argues that he is therefore not responsible to pay rent for March, 2010 or for the landlord's loss of rental income for April, 2010.

The tenant has provided substantial information about bedbugs, their cause, treatment and life cycles. The tenant argues that the bedbugs were not his responsibility and he can only speculate how his unit became infested. The tenant argues that he informed the landlords of the infestation so they could take the required action to eradicate the problem. The tenant also argues that he fulfilled his obligations as a tenant concerning the bedbugs. The tenant claims he notified the landlords that he did not have any money available to pay for an exterminator and asked for their help. The tenant claims the landlords told him that they don't deal with bedbugs.

The tenant disputes the remainder of the landlords claim for damages to the rental unit. The tenant claims the carpets did not have to be cleaned twice; only the wall panels cut for his dialysis tubes required replacing and he claims he kept a clean and tidy home. The door was left off its hinges by the landlord's son and the dryer door catch was left in the dryer. The tenant enlisted the help of his social worker who spoke to the landlords to try to persuade them to perform the necessary treatment for bedbugs. The tenant claims the landlords told his social worker they had negotiated a lesser cost for extermination of the bugs due to the fact the tenant was unemployed and had kidney disease. The tenant claims he took all necessary precautions such as washing his clothes and keeping them in garbage bags and sealing his futon in plastic sheeting in an attempt to prepare his unit for treatment. However, he states the landlords did not have any intention of paying for the treatment and that their negotiations were their way of helping the tenant gets a cheaper rate.

The tenant states that his medical condition became worse as the bedbugs were attracted to his fistula and he was left with many bites in this area which prevented his treatment for dialysis. The tenant felt the tenancy had become frustrated due to the landlord's inability to address the bedbugs and so the tenant found alternative accommodation and moved from the rental unit. The tenant claims his intention was to return to the rental unit after the fumigation had taken place to clean the unit and remove his belongings.

#### The tenants' application

The tenant seeks the return of double his security deposit. The tenant states he gave the landlords his forwarding address in writing on March 08, 2010. The tenant claims the landlord did not return his security deposit within 15 days.

The landlords testify that they made an application to keep the security deposit within 15 days of receiving the tenants forwarding address.

The tenant claims the landlords removed a pair of futon beds, a sofa, a reclining chair, a wall unit, a microwave, golf bag, skis, clothing a television, a vacuum and an ironing board. The tenant seeks compensation for the loss of these belongings to a sum of \$1,100.00. The tenant also seeks restitution for the funds provided by the Kidney Foundation of Canada who paid to have his laundry cleaned at a cost of \$314.00 and to have an exterminator clean his car to remove any trace of bedbugs at a cost of \$200.00. The tenant also seeks a 50% rent reduction for February, 2010 (tenant paid \$650.00) and a rent reduction for the March rent (unpaid) to cancel any outstanding debt to the landlords for March's rent.

The tenant claims he did not authorise the landlords to dispose of his belongings. The tenant testifies that he told the landlord his belongings should stay in the rental unit when it is fumigated so his belongings will also be fumigated along with the unit. This would enable him to retrieve his belongs after the treatments were finished so they could be safely moved to his new accommodation and limit the spread of bedbugs. The tenant testifies that he did burn some items on the landlord's bonfire. The tenant testifies that he had to abandon his home and find another rental unit so he could get his artificial kidney moved and functioning. The tenant claims that he was weak due to not being able to dialyse effectively. The tenant testifies that he indicated to the landlords in writing that they had until March 17, 2010 to carry out the required treatments and he could then return to safely remove his belongings. The tenant thought his belongings remaining in the unit would be safe as a landlord has an obligation to store them for 60 days. The tenant claims his belongings were worth more than \$500.00 and the landlord has undervalued them to avoid storing them.

The landlords claim the tenant returned to the unit to remove some of his belongings and a conversation took place about his belongings where the landlords told the tenant they were having a fire and he could burn anything that he did not want to take to his new unit because of the bedbugs. The landlords claim the tenant discussed his belongings with them and at one point stated he did not want to take anything else with him for fear of spreading the bedbugs to his new unit. The landlords have transcribed the conversation that took place. in this transcript the tenant states "I need to think that frame (futon bed frame) could be salvaged but I really don't want any of this stuff, for risk, I was hoping what we could do is to get that big pile in the front yard going and just stoke the fire" the tenant and landlord go on to discuss what could be

thrown on the fire such as items that are wood. The landlords and tenant agree that the tenant did put some of his belongings on the fire.

The landlords claim that they contacted three storage companies concerning the storage of the remainder of the tenants' belongings but due to the bedbugs his belongings were considered unsuitable to store. The landlords took an inventory of the tenants abandoned belongings and estimated what they would sell for if there had not been a bedbug issue with them. They estimated the tenants' belongings to be of a value equal to \$142.00, however due to the bedbug issue this value is reduced to zero.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for unpaid rent for March and April, 2009; Section 26 of the *Act* states: a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The tenant argues that the landlords are either in breach of the *Act* by not taking steps to deal with the bedbug infestation or that the tenancy is frustrated due to tenant not being able to live in the rental unit because of the bedbugs and the impact this had on his dialysis treatment required to keep him alive. In this instance the burden of prove lies with the tenant to prove that the bedbugs were either in the rental unit at the start of his tenancy, that they had come from another adjacent rental unit or the landlords had acted negligently in some way by allowing the bedbugs to enter the unit. I find the tenant has provided no evidence to support his claim that the landlords were responsible for the bedbugs or that the landlords were in breach of a material term of the tenancy agreement by not dealing with the bedbugs as no term exists in the tenancy agreement.

The tenant also states that the tenancy was frustrated and therefore he was able to end the tenancy without payment of rent. In this instance I refer both Parties to the Residential Tenancy Policy Guidelines # 34 which deals with Frustration. It explains that a contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now imposable. In this event the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The test for determining that a contract is frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequence of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract frustrated so long as the contract can still be fulfilled according to its terms.

With this in mind I find the tenant did not take the required steps to deal with the bedbug infestation but instead required the landlords to deal with it by paying for professional exterminators to come in to fumigate the unit. As I have previously determined the landlords were not at fault and there is no evidence to indicate that they were responsible for the bedbug infestation in this unit. Therefore, the tenant cannot pass the responsibility for the bedbugs to the landlords to deal with this problem. The tenant has argued that he could not afford to deal with the problem in an effective manner by employing a professional company and asked the landlord for help. While I sympathize with the tenants' predicament and the consequences to his health, a contract cannot be frustrated due to economic hardship and the contract could still have been fulfilled if the tenant had been able to deal with the bedbugs effectively. Consequently I find the landlords application for a Monetary Order for unpaid rent for March, 2010 is upheld and the landlords application for a Monetary Order for a loss of income for April, 2010 is upheld to a total sum of **\$1,300.00** pursuant to section 67 of the *Act*.

With regard to the landlords claim for damages, cleaning and fumigation of the rental unit; I find the landlord has established that the tenant did not clean the rental unit at the end of the tenancy and it has been established that the tenant is responsible for the fumigation of the unit. The tenant argues that he intended to return to the rental unit to clean after it had been fumigated however the landlords did this work before the final fumigation took place and therefore the tenant was denied opportunity to do the clean up. I find the tenant did not communicate to the landlords that he intended to return to clean the unit and work did not have to wait for the final fumigation process. Consequently, I find the landlords have established their claim for fumigation, and cleaning costs to a total sum of **\$2,349.79** pursuant to section 67 of the *Act*. However, the landlord has not established that the tenant was responsible for damage to a bedroom door and the cost of \$39.20 has been deducted from the landlords claim.

The landlord has requested a monetary award for costs incurred in filing this application and registered mail fee of \$61.76. I find the landlord is only entitled to recover their filing fee of **\$50.00** pursuant to section 72(1) of the *Act* and must bear the cost of the registered mail fees themselves.

With regard to the tenants claim for compensation for his belongings; I refer both Parties to Part five of the Residential Tenancy Regulations, In this Part, Section 24(1)(b) states

**Abandonment of personal property**

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph

(1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.



The tenant argues that he informed the landlords that he would return to collect his belongings after the fumigation process was completed to prevent the spread of bedbugs to his new unit. However, the landlord's transcripts of conversations that took place show a conversation where the tenant implied that he no longer wanted the property due to the risks. The tenant has provided no evidence to show that the landlord and tenant made an express agreement to the store the tenants' belongings and the tenant had moved from the rental unit to other accommodation.

Section 25 of the regulations state: landlord's obligations

**25 (2) (2)** Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

I landlords argue that due to the bedbugs the property had a market value of zero. I find they did make enquires with three storage companies to store the tenants belongings but could not do so as it was unsanitary due to the bedbugs. Consequently, I find this section of the tenants' application for a Monetary Order for \$1,100.00 to replace his belongings is dismissed.

With regards to the tenants application for the return of double the security deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant. I find the landlord received the tenants forwarding address on March 08, 2010 and applied for dispute resolution to keep it on March 23, 2010 the 15th day after receiving his forwarding address. Consequently, the tenant is not entitled to recover double the security deposit. I further find as the landlords are entitled to recover unpaid rent that they are entitled to

retain the security deposit and accrued interest of **\$329.04** pursuant to section 38(4)(b) of the Act.

With regards to the tenants' application for money owed or compensation under the *Act* to reimburse the Kidney Foundation of Canada the sum of \$514.00 I find as the tenant has not established that the landlords were responsible for the bedbug infestation that this section of the tenants application has no merit and is dismissed.

The landlords are entitled to a Monetary Order pursuant to section 67 and 72(1) of the Act as follows:

Unpaid rent for March, 2010 and loss of income for April, 2010	\$1,300.00
Filing fee	\$50.00
Subtotal	\$3,699.79
Less security deposit and accrued interest	(-\$329.04)
<b>Total amount due to the landlords</b>	<b>\$3,370.75</b>

### Conclusion

I HEREBY FIND in favor of the majority of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,370.75**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

The tenants' application is dismissed in its entirety 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: May 12, 2010.

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Dispute Resolution Officer