



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary orders for compensation under the Act or tenancy agreement, for the return of double the security deposit, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Is the Tenant entitled to the return of double the security deposit?

Is the Tenant entitled to other monetary compensation from the Landlord?

### Background and Evidence

This tenancy began on July 1, 2009, with the parties agreeing on rent of \$700.00 per month, payable on the first day of the month. The Tenant paid a security deposit of \$350.00 on June 26, 2009.

The Tenant is claiming the Landlord failed to maintain the common areas of the building where the rental unit is located, did not address a bed bug infestation in his rental unit in a timely manner, disposed of the Tenant's personal property without permission and failed to return the security deposit as required under section 38 of the Act.

The Tenant claims it was a material term of the tenancy agreement that the Landlord would keep the common areas of the rental building clean. In particular, the Tenant submits that the Landlord failed to keep the bathroom facilities clean and sanitary. The Tenant explained that the occupants of the units share a common bathroom on the same floor. The Tenant submitted photographic evidence that the floor of the bathroom had urine, feces and blood on them. The Tenant submits this was an ongoing problem and he began to make complaints to the then building manager in September of 2009. He testified that he made many complaints over the months to the Agent for the Landlord. The Tenant submits he made these complaints on an ongoing basis as the Landlord's Agents failed to maintain the bathroom facility.

In evidence the Tenant provided a statutory declaration, made by the Tenant's brother, regarding events witnessed in the bathroom. The declarant states he and the Tenant were told, when first viewing the rental unit, that the bathroom facilities were cleaned on a daily basis by another occupant who was paid by the Landlord. The declarant states he witnessed in the bathroom, "... blood stains on walls that were present for weeks...", before they were removed, and "... urine and feces were on the floor all the time and routinely stepped in." The declarant also states he saw "...dirty needles and other drug paraphanelia [which] were left in the bathroom, creating a serious health issue."

In early February of 2010, the Tenant had an infestation of bed bugs in the rental unit and reported this to an Agent for the Landlord. The Tenant reported this several times before the Agent informed him that he had no authority to have the rental unit treated for beg bugs as a new building manager was taking over. The Tenant attempted to treat the bed bugs by using pesticides he bought himself, however, this did not alleviate the infestation.

Towards the end of February 2010, the Tenant met with the new Agent for the Landlord and one of the property owners and informed them about the bed bug infestation and poor condition of the common area bathroom. According to the evidence of the Tenant, he was informed the problems would be addressed quickly. A week later the Tenant complained again and the Agent informed the Tenant he had no authority to have the unit treated. The Tenant alleges he was told the building was a low priority for the owners.

On March 26, 2010, the Landlord had a pest abatement company treat the rental unit for bed bugs. As is the usual course, a follow up treatment was done one month later, on April 26, 2010. The Tenant was informed that the eggs could lie dormant and could hatch at a later date.

On April 29, 2010, the Tenant issued the Landlord a one month Notice to End Tenancy, to be effective on May 31, 2010. The Tenant cites the problems of bed bugs and unsanitary bathrooms as his reasons for vacating. In this Notice the Tenant also provides his written forwarding address. The Tenant also advises the Landlord he will be requesting compensation due to the alleged problems.

The Tenant vacated the rental unit on May 13, 2010, and a move out condition inspection report was performed on May 14, 2010. In the condition inspection report notes the Agent for the Landlord writes that the Tenant left the rental unit clean and undamaged, and that the Tenant had failed to pay rent for May 2010, and the Tenant had left unwanted furniture on the lawn of the rental unit.

The Tenant testified he left the personal property on the front lawn, as a friend of his was going to pick these up. The Agent for the Landlord wanted the Tenant to pay \$96.50 for the disposal of this and noted this on the outgoing condition inspection report.

The Tenant is claiming for \$1,780.00, comprised of \$700.00 for double the security deposit, a 5% rent reduction for six months for the Landlord's alleged failure to maintain the common areas, a 30% rent reduction for two months due to the bed bug infestation, and \$450.00 as the depreciated value of lost property due to the infestation.

In reply the Agent for the Landlord testified that the Tenant and his Advocate had intentionally omitted the fact the Tenant did not pay rent for May 2010.

The Agent testified that they never received any written complaint from the Tenant about his concerns.

The Agent explained the Landlord is providing a rooming house for the hard to house. The Agent testified it is cleaned on a daily basis, and the Landlord is doing a good service for the community.

The Agent alleges the Tenant may have brought the bed bugs in himself as no other rental unit in the building was infested, and no other occupant has filed a complaint or an Application for Dispute Resolution.

The Agent alleged that the Tenant is trying to extort money from the Landlord and the Landlord was never given a chance in writing to address the Tenant's concerns. The Agent alleged that if the conditions were so bad in the rental unit, the Tenant should have applied for emergency repairs.

## Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find the Landlord has breached the Act and must pay the Tenant double the security deposit, in accordance with section 38(6) of the Act. There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit.

By failing to perform an incoming condition inspection report the Landlord has extinguished their right to claim against the security deposit, pursuant to section 24 of the Act.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act. Here the Landlord had insufficient evidence it had authority under the Act to keep any portion of the security deposit.

I further find the Landlord has breached section 32 of the Act, by failing to provide and maintain the rental unit, both for cleanliness and in failing to provide a timely remedy for the bed bug infestation. There is nothing under the Act which required the Tenant to provide written notice to the Landlord of necessary cleaning to the bathroom and to provide pest control for the rental unit. Rather, providing such a written request is an evidentiary issue, which helps establish when the Tenant began asking the Landlord for repairs. In this instance the Tenant has provided his own testimony and the declaration of a third party, albeit his brother, as to the conditions of the bathroom and the rental unit. Based on the testimony and evidence, I find the Tenant began to complain of the bathroom conditions in September of 2009, and of the bed bug infestation in early February of 2010. I find the Landlord did not respond to the bed bug infestation in a timely manner. I also find the Landlord had insufficient evidence to prove the Tenant brought in the bed bugs. I further find the monetary request of the Tenant here to be reasonable and appropriate to his losses, and award him \$210.00 for a 5% rent reduction for six months, and \$420.00 for a 30% rent reduction for two months.

I also find the Landlord failed to follow the regulation to the Act in handling the personal property left by the Tenant. The Landlord had no right or authority to dispose of the

Tenant's personal property in the way it did. The Landlord should have followed part five of the regulations to deal with this property.

Nevertheless, I find the Tenant had insufficient evidence to prove the value of all of this property, except for the replacement of his bed. I order the Landlord to compensate the Tenant for his bed in the amount of \$336.00, as support by his invoice.

As to the issue of the rent, the Landlord did not make an Application for Dispute Resolution to claim this amount. The Landlord is not able to advance a monetary claim against the Tenant in his Application, and must make its own Application for alleged losses.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Tenant has established losses for a total monetary claim of **\$1,716.00**, comprised of \$700.00 for the security deposit (no interest is payable in 2009 or 2010), \$630.00 in retroactive rent reductions, \$336.00 for personal property and the \$50.00 fee paid for this application.

The Tenant is given a formal Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court 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: October 20, 2010.

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Dispute Resolution Officer