



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications. The landlord applied for a Monetary Order for damage to the rental unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; authorization to retain the security deposit and recovery of the filing fee. The tenant indicated on her application that she was seeking compensation for return of double the security deposit, return of last month's rent and compensation for bed bug pest control supplies.

Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

At the commencement of the hearing the tenant withdrew her request for recovery of last month's rent. The tenant explained that after making the application and submitting her evidence she determined that she had not paid last month's rent to landlord when the tenancy commenced. The landlord was extremely agitated by the tenant's claim for recovery of last month's rent and the tenant's submission of a receipt the landlord did not sign.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit?
2. Has the landlord established an entitlement to unpaid rent or loss of rent?
3. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
4. Has the tenant established an entitlement to return of double the security deposit?
5. Has the tenant established an entitlement to recover bedbug pest control supplies from the landlord?
6. Should the security deposit be retained by the landlord or returned to the tenant?

## Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced in 2005 and the tenant paid a \$460.00 security deposit on June 3, 2005. The tenant was required to pay rent of \$925.00 on the 1<sup>st</sup> day of every month under a verbal tenancy agreement. The tenant gave a written notice to end tenancy to the landlord on August 9, 2010 with an effective date of August 31, 2010.

I heard that the tenant provided a forwarding address to the landlord when the parties completed the move-out inspection. The landlord testified the tenant vacated and the parties inspected the unit on August 30, 2010. The tenant was of the belief the move out inspection was performed on August 29, 2010 but acknowledged that it may have been August 30, 2010.

I also heard that the landlord did not prepare a move-in inspection report or a move-out inspection report. The residential property was constructed in 1967 and is a duplex; however, there were more than two living units in the building during the tenancy.

The parties provided the following submissions with respect to their claims for damages and loss.

### **Landlord's application**

#### ***Unpaid Rent***

The landlord is requesting compensation for loss of rent for the month of September 2010 on the basis the tenant gave insufficient notice to end tenancy. Upon enquiry, the landlord testified that he did not advertise the unit for rent after receiving the tenant's notice as he planned to put new windows in after the tenant vacated. The landlord also testified that he has not yet re-rented the unit as the city is investigating the legal status of the rental unit.

The tenant testified that she was moved quickly because of her concerns over the safety of the deck that she used on a daily basis to come and go from the rental unit. The tenant indicated the failing deck was the final straw and pointed to other issues related to the condition of the residential property and the landlord's entry into her unit without permission a few years ago.

The landlord responded by stating that a temporary support beam was installed to assist the structural integrity of the deck.

***Bathroom paint***

The landlord is requesting compensation of \$100.00 to repaint the bathroom. It was undisputed that the tenant painted the formerly pink walls a taupe colour during the tenancy. It was undisputed that the landlord had last repainted the bathroom walls sometime before the tenancy commenced.

The landlord submitted that the tenant did not get his permission to paint the walls and he would never have approved of the colour she chose. The tenant claims she had discussions with the landlord about painting the bathroom but acknowledged she went ahead and painted it because the landlord did not usually get around to making repairs at the property.

***Mini blinds***

The landlord is claiming \$98.49 for two replacement mini blinds. The landlord submitted the tenant or her cats damaged the blinds. The tenant claimed the string for the blinds broke during normal use. The tenant also claimed some of the slats were bent when she steam cleaned the blinds. Upon enquiry, the landlord estimated the damaged blinds to be 15 years old.

***Fireplace grate support***

The landlord is claiming \$30.00 as an estimate to replace the fireplace grate support. The landlord was of the position the tenant misused the fireplace grate support. The tenant submitted that the fireplace grate support was broken when the tenancy began. Upon enquiry, the landlord testified that the fireplace grate support was approximately 25 years old but then indicated it was likely original to the building.

***Damaged door jamb***

The landlord is claiming \$20.00 for his labour and estimated supplies with respect to the damaged bathroom door jamb. It was undisputed that the tenant's cat was in the bathroom and had caused the vanity drawer to block the bathroom door from opening. The tenant could not get the door open and the landlord responded by drilling a hole in the jamb. The tenant pointed to the unit having bed bugs and the need to spray as the reason the cat was put in the bathroom.

**Tenant's application**

***Bed bug pest control supplies***

The tenant is claiming compensation of \$600.00 as an estimate of the costs she incurred to investigate and treat bed bugs in the rental unit during three months in 2006. The tenant submitted that she called in a pest control company to determine if she had bed bugs. The test came back positive and the tenant tried treating the bedbugs with

sprays she purchased. The tenant's effort to spray was ineffective. The tenant approached the landlord about the problem and the landlord responded by bringing in another pest control company who recommended repeated spray treatments. The tenant did not want more spray treatments and decided to eradicate the bed bugs using steam heat.

The landlord was of the position that the tenant could have brought the bed bugs in the unit. The landlord did not have bed bugs in his unit and the tenant did not notify the landlord about her concerns over the cleanliness of the property. The landlord pointed to the tenant's fraudulent receipt for last month's rent in submitting the tenant's credibility was questionable.

As evidence for this hearing the landlord provided a copy of the tenant's notice to end tenancy, photographs of the rental unit, and a receipt for the replacement mini blinds.

As evidence for this hearing the tenant provided a written submission in response to the landlord's claims and the claims that the unit had bed bugs. In addition, the tenant provided photographs of the residential property including the deck, the yard, and the laundry area. The tenant provided copies of receipts for rent and the security deposit and payment to the pest control company hired by the tenant.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The above criteria apply to both the landlord's claims for unpaid rent and damages and the tenant's claim for compensation for bedbug pest control supplies.

## **Landlord's application**

### ***Unpaid rent***

With respect to the landlord's claim for unpaid rent I accept that the tenant gave less than 30 days of written notice to end the tenancy which violates the requirements of the Act. However, since I heard the landlord made no attempts to re-rent the unit for September 2010 I find the landlord did not take reasonable measures to minimize his loss of rent. Where a landlord takes the opportunity to make improvements or upgrades to a rental unit during a vacancy and chooses not to advertise the unit for rent, the tenant cannot be held liable to compensate the landlord for the landlord's decision not to advertise. Therefore, I dismiss the landlord's claim for loss of rent for failure to meet the fourth requirement outlined above.

### ***Damages to rental unit***

The Act requires a tenant to repair damages the tenant caused during the tenancy. It is important to note that normal wear and tear does not constitute damages. Even if damage by the tenant is established the amount of award will be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. Where necessary to estimate the depreciation of a damaged item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37.

### ***Bathroom paint***

Interior painting has an ordinary useful life of four years. The tenancy was greater than five years in duration and having heard the landlord had last repainted the unit before the tenancy commenced, I find the landlord's pink wall paint was at the end of its useful life and fully depreciated at the end of the tenancy. In other words, the landlord would have been in a position to repaint the unit even if the tenant did not paint the walls. Accordingly, I do not find the landlord has suffered a loss as a result of the tenant painting the walls during the tenancy, even if the taupe colour is not to the landlord's taste. Therefore, I dismiss the landlord's claim for painting.

### ***Mini blinds***

Window blinds have an ordinary useful life of 10 years. Having heard the blinds that were replaced by the landlord were approximately 15 years old at the end of the tenancy I find the blinds were fully depreciated and of very little value. Therefore, I find little or no loss incurred by the landlord and I dismiss the landlord's claim for new blinds.

### **Fireplace Grate**

Having heard the house was constructed in 1967 and the landlord acknowledge the fireplace grate was likely original to the building, I find the fireplace grate was closer to 43 years old than 25 years old as first estimated by the landlord. I find a fireplace grate of that age to be fully depreciated and of little value. Further, in the absence of a move-in inspection report, the landlord has not been able to substantiate the condition of the fireplace grate at the beginning of the tenancy. Therefore, I dismiss the landlord's claim for a replacement fireplace grate.

### ***Damaged door jamb***

With respect to the hole drilled in the bathroom door jamb I award the landlord the amount claimed. The reason the hole was drilled is because the tenant's cat had caused the vanity drawer to open. The tenant is responsible for the actions of her pet. Having heard the tenant could not get the door open with her own efforts and the landlord was called in to rectify the situation I find the landlord's actions were warranted and the damages that resulted are recoverable from the tenant.

In summary, the landlord has been awarded \$20.00 for damage to the bathroom door jamb.

### **Tenant's application**

#### ***Return of double security deposit***

A landlord was required to comply with section 38(1) of the Act by either returning the security deposit and interest to the tenant or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

I heard the tenant provided her forwarding address in writing on August 29, 2010 or August 30, 2010; however, in the absence of corroborating evidence from the tenant, I accept that the landlord received the forwarding address August 30, 2010. Since the landlord made an application on September 14, 2010 I do not find sufficient evidence the landlord violated section 38(1) of the Act. Therefore, I do not award the tenant double the security deposit.

The tenant is, however, entitled to return of the security deposit, plus applicable interest, less any amounts awarded the landlord with this decision.

***Bedbug pest control supplies***

With respect to the tenant's claim for compensation for bedbug pest control supplies, I find as follows. Where a tenant is in need of repairs or pest control it is upon the tenant to notify the landlord of such a need. If a landlord does not take sufficient action in response to the tenant's complaint, the tenant may make an application seeking repair orders. In this case, the tenant did not seek repair orders and took it upon herself to hire a pest control company and purchase her own supplies. Therefore, I do not award the tenant for costs she incurred for pest control services and sprays.

I also find that landlord did respond to the tenant's subsequent complaints by bringing in a pest control company who recommended spraying. I accept that spraying is an acceptable form of treatment although it was not the preferred treatment for the tenant. Again, I find in the absence of a previous application to seek alternative remedies, I find the tenant took it upon herself to remedy the bedbugs using steam heat. The tenant is not entitled to damages or loss related to her choice of action.

For the above reasons, and the lack of proof of payment for the majority of the claim, I dismiss the tenant's request for compensation for bedbug pest control supplies.

**Monetary Order**

Given the limited success of the landlord, I do not award the landlord the filing fee. The landlord is ordered to repay the security deposit and interest to the tenant less the \$20.00 award to the landlord. I provide the tenant a Monetary Order calculated as follows:

Security deposit	\$ 460.00
Interest on deposit	16.29
Less: award to landlord	<u>(20.00)</u>
Monetary Order for tenant	\$ 456.29

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord established an entitlement to compensation of \$20.00. The tenant is entitled to return of her security deposit, plus interest totalling \$476.29. I have offset these amounts and provide the tenant with a Monetary Order in the net amount of \$456.29 to serve upon the landlord.

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: January 20, 2011.

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Residential Tenancy Branch