



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, OLC, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit and a cross-application by the tenant for a monetary order and an order that the landlord return the security deposit. Both parties participated in the conference call hearing.

The landlords connected to the conference call one half hour after it began and explained that they had thought the hearing began at 11:00 rather than 10:30. I advised the landlords that I would not require the tenant to repeat the testimony which had been given prior to the time the landlords joined the call.

At the hearing the tenant was represented by a legal advocate. The landlords strenuously objected and insisted that they should have opportunity to retain counsel. Although a formal request for an adjournment was not made, I advised the landlords that as they had filed their application in October 2010, they had ample opportunity to arrange for representation and the hearing would not be adjourned.

At the outset of the hearing the tenant's advocate advised that the tenant would not be pursuing the claim he had originally made for the return of 2 month's rent. I consider that claim to have been withdrawn.

### Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The tenancy began on August 1, 2009 and ended in September 2010. The tenant paid \$595.00 per month in rent and gave the landlords a \$300.00 security deposit at the outset of the tenancy.

The landlords seeks to recover costs associated with having the rental unit treated for bedbugs, the loss and disposal of a mattress and the cost of an extra TV channel and long distance. The landlords maintained that the tenant brought bedbugs into the rental unit and as a result, the unit had to be prepared and treated and a mattress had to be disposed of. The tenant denied having brought bedbugs into the rental unit. The invoice from the pest control company which treated the unit indicated that 2 bedbugs were located on the dresser. The landlords presented no invoices to support their claim for the cost of long distance and an additional television channel and did not offer any oral testimony to support their claim.

The tenant seeks to recover \$80.00 in repayment of rent for the period from September 27 – 30, double the security deposit and \$5,000.00 as a penalty pursuant to Division 2.1 of the Act.

The tenant testified that he moved substantially all of his belongings out of the rental unit on September 26 and although the landlords requested that he return the keys on that date, he retained the keys. The tenant stated that he returned to the rental unit on September 27 to discover that the landlords had installed a new lock on the door. The landlords admitted him to the unit but would not give him a key to the new locks. The tenant seeks to recover the rent paid for September 27 – 30 as he did not have exclusive possession of the unit during that period. The landlords acknowledged having changed the locks.

The tenant seeks an award of double the security deposit. Although the tenant provided his forwarding address on September 29, 2010 and the landlords filed their application for dispute resolution just 2 days later, the tenant argued that the landlords had extinguished their claim against the deposit by not completing condition inspection reports at the start and end of the tenancy and therefore had no right to make their claim.

### Analysis

First addressing the landlords' claim, in order to recover the cost of treating the unit for bedbugs and other associated costs, the landlords must prove that the tenant either deliberately or negligently brought bedbugs into the unit. I find that the mere fact that the bedbugs were in the rental unit does not prove that the tenant deliberately or negligently brought them there. The tenant had resided in the rental unit for almost a year before the bedbugs were discovered and there is no evidence showing that he brought into the unit items which were likely to be infested with bedbugs. The landlords did not allege that the tenant deliberately brought bedbugs into the unit. I am not satisfied the tenant was negligent and accordingly I find that the claim for the costs associated with bedbugs must be dismissed.

I also dismiss the landlord's claim for the cost of a television channel and long distance as there is no evidence to support this claim.

Turning to the tenant's claim, I find that because the tenant had paid rent for the entire month of September, he was entitled to exclusive possession of the rental unit until 1:00 p.m. on September 30. I find that by installing a new lock and refusing to give the tenant the key, the landlords deprived him of his right to exclusive possession and therefore must refund the rent paid for that period. I award the tenant \$80.00.

It would appear that the landlords have extinguished their right to make a claim against the security deposit as there is no evidence that they completed condition inspection reports at the beginning or end of the tenancy. However, the extinguishment of this claim does not absolve the landlords of their obligation under section 38(1)(d) of the Act, nor is there a provision under the Act whereby tenants are automatically entitled to double the security deposit if the landlords' claim is extinguished. I therefore dismiss the claim for double the security deposit. However, as the landlords' claim has been dismissed, I find the tenant is entitled to the return of the security deposit and I award the tenant \$300.00. I note that no interest is payable.

I dismiss the tenant's claim for \$5,000.00 as a penalty pursuant to Division 2.1 of the Act. The authority to impose those penalties has not been delegated to me by the Director and even if it were, any fine imposed would be payable to the Residential Tenancy Branch, not to the tenant.

### Conclusion

The landlords' claim is dismissed in its entirety and the tenant is awarded \$380.00 which I order the landlords to pay to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$380.00. This 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: March 21, 2011

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Residential Tenancy Branch