



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNSD, MNDC, FF

### **Introduction**

This is the Tenant's application for compensation for damage or loss; for return of the security deposit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant mailed the Notice of Hearing documents and copies of his documentary evidence to the Landlord, by registered mail, on February 15, 2011. The Tenant provided a copy of the registered mail receipt and tracking number in evidence.

The Landlord testified that he mailed copies of his documentary evidence to the Tenant, by registered mail, on April 7, 2011. The Tenant testified that he did not receive any documents from the Landlord. The Landlord did not have the receipt or tracking number available. Therefore, the Landlord has not provided sufficient evidence that he served the Tenant with copies of his documentary evidence and it was not considered. The Landlord was invited to provide affirmed testimony with respect to that evidence.

### **Issues to be Decided**

- Is the Tenant entitled to compensation as a result of an alleged bedbug infestation at the rental unit?
- Is the Tenant entitled to return of the security deposit?

### **Background and Evidence**

This tenancy started on January 15, 2011. Monthly rent was \$515.00 due on the first day of each month. The Tenant paid a security deposit in the amount of \$260.00 on

January 3, 2011. On February 1, 2011, the Tenant gave notice to the Landlord that he was ending the tenancy effective immediately. The Tenant paid rent for the month of January, 2011. The Landlord agreed to accept \$425.00 for rent for the month of February, 2011, in order to compensate the Tenant for the cost of paint that the Tenant purchased and the Tenant's ruined bedding.

The Tenant gave the following testimony:

On January 13, 2011, the Tenant went to view the rental unit as a prospective place to live. The Tenant noted that the rental unit needed to be cleaned, and the Landlord said it would be ready for him and that the Tenant could move in on January 15, 2011. The Tenant also noticed that there was a bedroom suite in the rental unit. The Landlord told the Tenant that he could use the bedroom suite.

The Tenant moved in on January 15, 2011. There was no move-in condition inspection report done when he moved in. He noticed that the carpets had been shampooed, but the bathroom, fridge and stove were still dirty. He also noticed that the kitchen tap was dripping. The Landlord said he would fix it but he never did.

The Tenant set up the bed and put new bedding on it. That night he was awoken by hundreds of bed bugs. He called the Landlord, who brought a carpet shampooer and some Raid. The Landlord said that he used a steam cleaner at hotels and it gets rid of bed bugs. The Landlord helped him to move the used mattress outside. The Tenant bought a new bed, but the Tenant was still getting bitten by bedbugs. The Tenant even got bitten when he sat on his futon. The Tenant tried to live there, but after two weeks, he had to move out. The Tenant provided photographs of the used mattress, which show a substance the Tenant believes to be bedbug droppings under the pillow top of the mattress. He also provided photographs of some insects he believed to be bedbugs on the mattress, a comforter and the floor.

The fridge and freezer did not work properly and the Tenant lost some chicken that he had placed in the freezer, because it did not freeze.

The Tenant seeks compensation, as follows:

Return of security deposit	\$260.00
Return of February rent	\$425.00
Return of January rent	\$515.00
Cost of new mattress, ruined by bed bugs	\$400.00
Cost of second hand futon and other used furniture, ruined by bed bugs	\$89.00
Total	\$1,229.00

The Landlord gave the following testimony:

The rental unit was clean when the Tenant moved in. The Landlord agreed that the freezer did not work properly.

The Landlord left the bedroom suite in the rental unit at the request of the Tenant. It had been left by a previous tenant.

When the Landlord got the call from the Tenant about bedbugs, he brought his steam cleaner to the rental unit and steam cleaned the carpets. The Landlord did not see any sign of bedbugs. The Landlord did not tell the Tenant that he had used a steam cleaner at hotels, or that it would kill bed bugs. He was trying to calm the Tenant down.

The Landlord was out of the country from January 30 to February 21, 2010, and told the Tenant to contact the Landlord's sister if there were any problems. The Landlord was grieving his father's death and did not wish to deal with the problem. When the Landlord returned, he called a pest control company. The pest control company inspected the rental unit on April 6, 2011, and found no live bugs or signs of any bugs, so they did not fumigate the rental unit.

The Tenant moved out without leaving a forwarding address and left the futon and the bed at the rental unit, along with other items. The Landlord had to dispose of them.

The Landlord has not yet re-rented the rental unit.

### **Analysis**

The Landlord provided testimony suggesting that he was entitled to compensation from the Tenant for removal of the Tenant's property at the end of the tenancy. This Hearing was convened to determine the Tenant's application. The Landlord has not filed an Application for Dispute Resolution and therefore I will not consider any claim the Landlord may have in this Decision.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord received the Tenant's forwarding address in writing when he was served with the Tenant's Application for Dispute Resolution in the Notice of Hearing package. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's forwarding address, nor did the Landlord file for dispute resolution against the security deposit. In any event, I find that the Landlord's right to claim against the security deposit was extinguished under the provisions of Section 24(2) of the Act (failure to complete a move-in condition inspection report).

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, the Tenant is entitled to a monetary order for double the security deposit, in the amount of \$520.00.

Section 45(1) of the Act provides how a tenant may end a month-to-month (periodic) tenancy:

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
  - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Tenant did not give the Landlord one month's notice to end the tenancy.

Section 45(3) of the Act provides:

- 45** (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a **reasonable period** after the tenant gives **written notice of the failure**, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(emphasis added)

The Tenant did not give the Landlord written notice that the Landlord had failed to comply with a material term of the tenancy agreement. Therefore, I find that the Tenant did not end the tenancy in a manner allowed by the Act. His application for return of rent for February, 2011, is dismissed.

Section 32 of the Act requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The issue here is not who was responsible for bringing the bedbugs into the rental unit, or even if there were bedbugs in the rental unit. The Tenant told the Landlord that he had been bitten by what he believed to be bedbugs. The Landlord, by his own admission, attempted to mollify the Tenant by steam cleaning the carpets. The Landlord did not investigate the cause of the Tenant's bites. The Landlord did not instruct his agent (his sister) to investigate the cause. The Landlord did not make any attempt to investigate until after he received the Tenant's application for dispute resolution.

The Landlord testified that he did not tell the Tenant that steam cleaning the carpets and spraying insecticide would kill any bedbugs that were in the rental unit. The Tenant testified that the Landlord told him that he had done this procedure before and that it eliminated bed bugs. I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed facts. The test of the truth of the story must align with the balance of probabilities and, in the circumstances before me, I find the version of events provided by the Tenant to be highly probable. Considered in its totality, I favour the evidence of the Tenant over the Landlord.

I find that the Tenant was alarmed by the possibility that there was a bedbug infestation and was led to believe that the Landlord had addressed his concern by steam cleaning the carpets, spraying insecticide and disposing of the used mattress. The Tenant bought a new mattress, believing that the bedbugs had been eliminated, and then discovered he was still being bitten. I find that the Tenant suffered a financial loss when he brought the new mattress into the rental unit and that he suffered that loss as a result of the Landlord's actions, or inactions. I allow the Tenant's claim for the cost of the new mattress. The Tenant provided a receipt in evidence in the amount of \$410.00 and I award him that amount. Likewise, I find that the Tenant is entitled to compensation for the cost of the remainder of the used furniture that the Tenant believed to be infested by bedbugs. The Tenant provided a receipt in the amount of \$89.95 for these items and I award him that amount.

I find that the Tenant has been adequately compensated for his loss and dismiss his application for a refund of January's rent. I note that the Tenant's own documentary evidence (canceled cheques) shows that the Tenant paid \$260.00 in rent for the month of January, not the \$515.00 that he claimed in his application.

The Tenant has been largely successful in his application and is entitled to recover the cost of the \$50.00 filing fee from the Landlord.

The Tenant has established a monetary award, calculated as follows:

Double the amount of the security deposit	\$520.00
Compensation for cost of new mattress	\$410.00
Compensation for cost of second hand futon and other used furniture	\$89.95
Recovery of filing fee	\$50.00
Total	\$1,069.95

### **Conclusion**

I hereby grant the Tenant a Monetary in the amount of **\$1,069.95** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (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 *Manufactured Home Park Tenancy Act*.

Dated: April 29, 2011.

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