



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** CNL, DRI, ERP, RP, OLC, MNDC, FF

### **Introduction**

This matter dealt with an application by the Tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 1, 2011, to dispute a rent increase, for an Order that the Landlords make emergency repairs and general repairs, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlord, M.W., said the Landlords were withdrawing the 2 Month Notice to End Tenancy and as a result, the Tenant's application to cancel it is dismissed without leave to reapply.

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

1. Are repairs required?
2. Is the Tenant entitled to recover overpayments of rent?
3. Is the Tenant entitled to other compensation and if so, how much?

### **Background and Evidence**

This tenancy started on May 1, 2004. Rent was \$1,200.00 per month until October 1, 2010 when it was increased to \$1,250.00 per month pursuant to a Notice of Rent Increase served on the Tenant by the Landlords. The Tenant has paid the increased rent for the period, October 2010 to July 2011.

The Tenant said that he noticed mice in the rental unit in June 2010 and advised the Landlords about it. The Tenant said the Landlords hired a pest control company and they placed baited traps, live traps and poison in the rental unit. The Tenant said he believed the pest control company came to the rental property only once in 2010 (on July 6<sup>th</sup>) however the Landlords submitted an unsigned written statement purported made by an agent of the pest control company who claimed that he also attended the rental unit in August and October 2010.

The Tenant said he thought the pest control company was dealing with the Landlords about following up with the plan. The Tenant said he initially thought the steps being

taken were working because he was finding both live and dead mice. The Tenant said that by January 2011 however the mouse problem had not resolved and he could still hear mice, was finding mouse feces and began seeing live ones running around. Consequently, the Tenant said he took steps to plug obvious holes and contacted the Landlord again to ask him to have the pest control company return. The Tenant admitted that the Landlord contacted the pest control company again and that an agent came to the rental unit in March 2011 to re-set traps and put out poison. The Tenant said the pest control agent told him at that time that he was surprised that the Landlord had not contacted him earlier to follow up on the mouse traps. The Tenant also said that this was the first time that he discovered that the Landlord had not purchased a 6 month continuous service package but instead had opted for the more economical "as required" service. The Tenant admitted that the pest control company returned in April, 2011 to follow up but argued that he had no knowledge of and there was little evidence (in the form of an invoice) to show that the pest control people had been to the rental unit at the end of February 2011 or on May 23, 2011 as the Landlord claimed.

The Tenant admitted that he of late he has seen fewer mice however he claimed he still finds fresh mouse droppings in the kitchen from time to time and that at least one hole that he blocked with expanding foam in the laundry room was chewed through. The Tenant said the pest control company has recommended that the Landlords install baseboards as a more permanent way of preventing the mice from entering the rental unit. The Tenant argued that the Landlord failed to take adequate steps to deal with the mouse infestation and that as a result, he has had to live with mice for approximately a year. Consequently the Tenant sought compensation equal to 15% of his rent for the previous year.

The Landlords argued that they relied on the pest control company to take whatever steps they thought were necessary and had no way to know if the mouse problem was any better or worse because the Tenant did not report it to him. One of the Landlords said he took immediate steps to deal with the mouse infestation when the Tenant did report it to him. The Landlord said he was considering installing baseboards but that if the mouse problem persisted, he would have to evict the Tenant in order to do more extensive renovations.

The Tenant also claimed that the back stairs on the rental property are old, rotting and unsafe to walk on. The Tenant said at least one of the rungs needs to be replaced and possibly all of the stairs leading from a landing to the ground level. The Landlords claimed that only some rungs needed to be replaced and that he has arranged for these to be repaired or replaced within the next week.

### **Analysis**

- Repairs: The Tenant admitted that prior to filing his application in this matter, he did not advise the Landlord that the stairs at the back of the property needed to

be repaired. Although the Tenant said he believes that the rungs and runners both need to be replaced, he said he is confident that the Landlords' carpenters will repair the stairs as required. Consequently, I make no order for the repair of the stairs. If the stairs are not repaired in a satisfactory manner, the Tenant may reapply for this relief.

- Dispute a Rent Increase: The Parties agree that the Landlords gave the Tenant a Notice of Rent Increase to take effect on October 1, 2010 which had the effect of increasing the Tenant's rent by \$50.00 per month. I find that this rent increase did not comply with the approved amount for increases under the Regulations to the Act for 2010 which was 3.2% or \$38.40. Consequently, I find that the Tenant is entitled to recover his overpayments of rent for the period October 2010 to July 2011 in the total amount of \$116.00.

As a further consequence, the Tenant's rent will be \$1,238.40 until such time as the Landlords serve the Tenant with another Notice of Rent Increase in an amount that complies with the Act or until such time as the Landlords obtain an Order from the Residential Tenancy Branch authorizing them to impose a rent increase in excess of the annual allowable amount or get the Tenant's written approval for that amount.

- Compensation for a Mouse Infestation: The Tenant argued that the Landlord did not take adequate steps to deal with a mouse infestation however the Landlord argued that he was unaware if the pest control program that he purchased was working or not because the Tenant did not contact him about it until January 2011. One of the Landlords said when he was advised by the Tenant that the problem was persisting he took immediate steps to deal with it.

I find that the Landlords did not take adequate steps to deal with the mouse infestation and in particular, I find that the Landlords opted to use the inferior "as needed program" rather than a more aggressive 6 month eradication program with bi-weekly follow up inspections. Although the Landlords argued that the Tenant failed to advise him whether the pest control program was working or not, I find that there was no reasonable way for the Tenant to know if the program was working or not in part because he was not a pest control expert and in part because he was not privy to the services contracted for by the Landlords. This was evident from the Tenant's evidence when he said he thought dead mice was evidence that the poison was working but realized later that it may no longer have been effective and that part of the problem was that more mice were getting into the rental unit through holes. The Tenant also claimed that he was not permitted to get information from the pest control company for the hearing because he was not privy to the Landlords' contract. I also find that the

Landlords left it to the Tenant to block holes under the cupboards and elsewhere although he did compensate the Tenant for his time and supplies.

In summary, I find that the mouse infestation in the rental unit persisted for an unreasonable length of time (ie. from June 2010 until June 2011) due to inadequate steps taken by the Landlords to eradicate them. I also find that had the Landlords implemented a bi-weekly follow up program with the Pest control company over a 6 month period (as was an option for him to do), the mouse infestation would likely have been eradicated or improved in a much shorter period of time. Furthermore, although the Landlords alleged they had the pest control agent follow up with the mouse eradication program on several occasions during this period, I do not give much weight to the unsigned witness statement provided by the Landlords as it is hearsay and that person did not attend the hearing to be cross-examined on his statement. The Tenant claimed at the hearing that the Landlords had provided him with copies of invoices for various dates of alleged services, those invoices were not submitted as evidence at the hearing and therefore I cannot give them any weight.

Consequently, I find that the Tenant is entitled to compensation for the last 8 months during which the mouse infestation should have been resolved or greatly improved had the Landlords taken adequate steps. The Tenant requested compensation equal to 15% of his rent which I find is reasonable in the circumstances for a breach of his right to quiet enjoyment under s. 28 of the Act. As a result, I find that the Tenant is entitled to compensation of \$1,486.08.

As the Tenant has been successful in this matter, I also find that he is entitled to recover from the Landlord the \$50.00 filing fee he paid for this proceeding for a total monetary award of **\$1,652.08**. I order pursuant to s. 65(1) and s. 72(2) of the Act that the Tenant may deduct one-half of this amount (or \$826.04) from his rent for each of August and September 2011 when rent is due for those months.

### Conclusion

The Tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 1, 2011 is dismissed without leave to reapply. The Tenant's application for a repair order is dismissed with leave to reapply. The balance of the Tenant's application is granted. 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: July 18, 2011.

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Residential Tenancy Branch