



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, O, FF

### Introduction

This hearing dealt with an application by the tenant for money owed or compensation due to damage or loss, other and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

### Background and Evidence

This tenancy began December 16, 2009 with monthly rent of \$850.00 and the tenant paid a security deposit of \$425.00.

Matters related to this tenancy were heard September 13, 2011 under file 778565. The landlord in this hearing was awarded an order of possession for unpaid rent and a monetary order for unpaid rent.

The landlord testified that the tenant has not provide the landlord with a forwarding address for service of evidence and that the registered mail sent to the address provided by the tenant, which is the tenant's former residence, was returned to the landlord. The tenant stated that he applied to have his mail forwarded through Canada Post and that this was done after the landlord had attempted service at the dispute address.

The landlord stated that he did not receive the tenant's evidence package and the tenant confirmed delivery of his evidence to the landlord by registered mail. The tenant also maintained that an evidence package was delivered to the caretaker of the apartment building. The landlord stated that the tenant did not submit his photographs to the landlord for this file but that he was in possession of this same evidence as the tenant had submitted it for file 778565. As the landlord was in possession of the tenant's evidence the hearing proceeded.

The tenant testified that shortly after moving into the rental unit he was bitten by some type of bug and that during the tenancy he had been bitten two or three times. The tenant also stated that the bugs kept trying to chew through the caulking and that his clothing had holes chewed in them by the bugs.

The tenant stated that he had complained to the landlord, building caretaker and the landlord's mother about the bugs and that nothing was ever done about them. The tenant did acknowledge that the landlord came to the rental unit on a couple of occasions to caulk or plaster any holes that the tenant believed the bugs were entering through. The tenant also referred to his photographic evidence that shows something crawling on the floor, a dirty intake air vent and bug marks on the ceiling.

The landlord stated that they have had problems with mice getting into the apartment building a couple of times but that he has not had complaints from any other tenants regarding bugs. The landlord stated that when the tenant complained about bugs getting in through cracks in the caulking or plaster he went to the rental unit and completed repairs.

The landlord also commented that the tenant went to the hospital to get verification as to what he had been bitten by but that the landlord was never provided with any documentation of what type of bug this may have been. The landlord verified that a number of the photos submitted into evidence by the tenant are not of the tenant's rental unit but the lobby of the apartment building.

The tenant stated that he had not applied for dispute resolution during his tenancy to address issues with the tenancy as he had not been aware of the process.

### Analysis

There is no substantiation or proof, that the landlord caused the tenant to suffer or incur a loss due to a bug infestation in the rental unit. The tenant stated that he had been bitten 'two or three times' during this 1 ½ year tenancy, yet has not submitted any tangible evidence in this regard. Additionally, I find the tenant has submitted insufficient evidence to prove that the tenant has suffered a financial loss in relation to this claim.

A claim in Tort is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find on a balance of probabilities that this claim rises to that requirement.

**Residential Tenancy Policy Guideline 5. speaks to the "Duty to Minimize Loss," and provides in part as follows:**

*Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation),*

*the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss<sup>1</sup>. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.*

*The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.*

*The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.*

The tenant has not established that any such loss was incurred because of negligence or an intentional act on the part of the landlord. The tenant also did not make any effort to mitigate his loss during the tenancy and waited to bring this application forward until the day prior to the landlord's application for an order of possession was being heard. The tenant's application is hereby dismissed without leave to reapply.

As the tenant has not been successful in their application the tenant is not entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: November 28, 2011.

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Residential Tenancy Branch