



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNR, MNDC, OLC, ERP, RP, RR, FF

### Introduction

This hearing dealt with the tenants' application to cancel a 1 Month Notice to End Tenancy for Cause; for monetary compensation for emergency repairs and damage or loss under the Act, regulations or tenancy agreement; for Orders for the landlord to comply with the Act, regulations or tenancy agreement; for Orders for the landlord to make repairs and emergency repairs; and, authorization to reduce rent for repairs not provided by the landlord.

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

### Issue(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Have the tenants established an entitlement to compensation for emergency repairs?
3. Have the tenants established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
4. Are the tenants authorized to reduce rent otherwise payable?
5. Is it necessary to issue Orders to the landlord for compliance; repairs or emergency repairs?

### Background and Evidence

The tenancy commenced February 1, 2010 and the tenants are currently paying rent of \$885.00 on the 1<sup>st</sup> day of every month.

### ***Notice to End Tenancy***

On December 27, 2011 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) and posted it on the tenants' door. The tenants filed to dispute the Notice

within the time limit provided by the Act. The Notice has a stated effective date of January 31, 2012 and indicates the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk
- Tenant has not done required repairs of damage to the unit/site

The landlord submitted that the Notice was issued due to ineffective treatment of a bed bug problem in the rental unit that the landlord attributes to the tenants' failure to comply with treatment preparation instructions.

The landlord stated that a complaint was received from the tenants in September 2011 that they had bed bugs in their unit. The landlord has treated the unit for bed bugs using heat treatments, twice: the first time being on September 14, 2011 and again on December 12, 2011. After the December 12, 2011 treatment the tenant complained of bed bugs again. The landlord did not verify whether the tenants still have bedbugs in the unit but accepted the tenants' assessment that bedbugs remain.

The landlord submitted that the tenants were advised to de-clutter the unit in order to prepare for treatments and the landlord has provided the tenant with storage space to assist with this task. On December 5, 2011 the landlord inspected their unit for the purpose of determining whether the unit was in "treatable" condition. The landlord took photographs of the unit that day and submitted them as evidence.

The landlord also provided a written statement of the pest control technician as evidence. The pest control technician was available to testify. The pest control technician states in his letter:

- When the technician attended the unit on September 14, 2011 he found that the unit had not been prepared for treatment in accordance with the written preparation instructions given to the tenants prior to treatment. Treatment went ahead as scheduled.
- Upon hearing the tenants still had bed bugs after the initial treatment the technician and the landlord had verbal discussions with the tenant about the de-cluttering that was required in order to have successful treatment. The technician heard the landlord offer the tenants additional storage space.

- On December 5, 2011 the technician and landlord attended the unit December 5, 2011 and found it was still cluttered although less severe than before. The tenants had a guest in the unit who admitted he had bed bugs in his own residence.
- The technician attended the property on December 12, 2011 for purposes of a second treatment. The unit was still cluttered but treatment went ahead. The unit was treated for six hours instead of the usual four hours.
- The technician attributes the lack of success to the tenants' refusal to de-clutter the unit.

The tenant submitted that she noticed bed bugs coming out of a hole in the wall at the end of August 2011. She put them in a jar and showed them to the manager and claims the manager indicated she was aware of bed bugs in the building. The tenant attributes the lack of success in treating her unit to the landlord not treating the surrounding units or common areas.

The tenant acknowledged receiving one set of written preparation instructions but claimed the written instructions were vague. She also talked to the technician but she claims his verbal instructions were also vague.

The tenant was of the position that the December 5, 2011 inspection was to assess the condition of the unit and provide the tenant advice as to whether further de-cluttering needed to take place. The tenant was of the position the landlord took the photographs from angles that depict the unit more cluttered than it actually was. The tenant also submitted that the inspection of December 5, 2011 was a week before the scheduled treatment and the photographs do not depict the unit in the condition it was in on December 12, 2011.

The tenant acknowledged there was a delay in de-cluttering the unit during October and November and attributed the delay to the tenants' low income and difficulty in purchasing plastic totes. However, the tenants have taken advantage of the extra storage space provided by the landlord and has moved items in to the storage area.

Both parties agreed that the tenants have a cat in the rental unit. The landlord acknowledged that a professional pest control technician has not inspected adjacent units. Rather, the landlord has relied upon the building's caretaker to determine whether adjacent units are infested with bed bugs.

***Monetary compensation***

The tenants have sought compensation of \$4,100.00 with this application. The tenant submitted that they have incurred additional laundry costs as a result of the infestation and have had to purchase plastic bags.

The tenants submitted a monetary worksheet indicating claims for moving truck costs and pest control services. These costs have not been incurred by the tenants.

***Orders for compliance, repairs and emergency repairs***

The tenants are requesting Orders for the landlord to sufficiently treat their unit and surrounding areas for bed bugs.

Further, the tenants had requested the landlord provide them with plastic totes in which to store their items but the landlord had denied this request.

***Rent reduction***

The tenants have requested that their rent be reduced until such time the bed bug infestation has been successfully treated.

**Analysis**

Upon consideration of all of the evidence before me I provide the following findings and reasons with respect to this application.

***Notice to End Tenancy***

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

In this case, the landlord has indicated four reasons for ending the tenancy; however, I find insufficient evidence that other occupants have been unreasonably disturbed or interfered with by the tenants. Nor do I find the tenants were required to make repairs to the unit. Therefore, I do not consider these reasons further.

Having heard from the parties and upon review of the evidence I have considered whether the tenants' actions, or failure to take sufficient action, has put the landlord's

property at significant risk or seriously jeopardized the health of other occupants or the landlord's lawful right to successfully treat the unit for bed bugs.

The original source of a bed bug infestation is almost impossible to determine and I make no finding as to whether the tenants or the landlord is responsible for the bedbugs finding their way into this unit. Rather, I accept that there has been a complaint of bed bugs, a pest control company has been employed by the landlord to treat for bed bugs, and there has been a subsequent complaint of bed bugs after two treatments. Thus, I find the issue to determine is whether there continues to be a bed bug infestation in the unit and if so, have the tenants' actions, or lack of action, resulted in unsuccessful treatment of the infestation.

Generally, a landlord is responsible for arranging for and paying for a pest exterminator and the tenant is responsible for preparing the unit for treatment and not interfering with the landlord's lawful treatment efforts. If a tenant interferes with a landlord's treatment efforts, either intentionally or through failure to properly prepare their unit for treatment, the landlord may be in a position to end the tenancy for cause. However, there is a reasonable expectation that if the tenant is responsible for preparing the unit for treatment the tenant would be notified of their what is required of them.

While it was undisputed that one set of written instructions were provided to the tenants prior to the first treatment I was not provided with a copy of those instructions. The tenant submitted that the instructions were vague. I find that in the absence of a copy of the written instructions I cannot determine whether the instructions were sufficiently clear.

Both parties submitted that there were verbal discussions between the tenant and the pest control technician with respect to preparing the unit; but the tenant submitted the verbal instructions were also vague. I appreciate the pest control technician was available to testify during the hearing; however, I determined that calling the witness would provide little more than dispute verbal testimony regarding verbal discussions that took place months ago. I find such disputed verbal testimony would be insufficient to meet the landlord's burden of proof. Again, providing evidence of clearly written instructions would have been the best evidence as to what the tenants were required to do in preparation for treatment.

I am also unsatisfied that bed bugs remain an issue in light of the fact this was not confirmed by a professional and upon considering: the tenants have a cat in the unit and the short amount of time between the second treatment and the tenant's complaint of bite marks. However, if bed bugs do remain in the unit, I am not satisfied the landlord

has enlisted the assistance of a professional to investigate the possibility of bed bugs residing in common areas or adjacent units.

In light of all of the above, I find the landlord has not demonstrated that bed bugs remain in the unit; that the tenants failed to comply with clear, written instructions with respect to bed bug treatment preparation; or, that the landlord has sufficiently determined whether surrounding areas require treatment. Therefore, I cancel the Notice issued December 27, 2011 with the effect that this tenancy continues at this time.

### ***Monetary Compensation***

While the landlord had the burden to prove the tenancy should end for reasons indicated on a Notice to End Tenancy, the tenants bear the burden to prove an entitlement to monetary compensation.

In order to establish an entitlement to reimbursement for emergency repairs, the tenants must establish they paid amounts to make an emergency repair. Bed bug preparation costs or treatments are not emergency repairs as defined by section 33 the Act. Thus, I dismiss the tenants' claim for reimbursement of emergency repair costs.

With respect to the tenants' claims for compensation for damage or loss under the Act, regulations or tenancy agreement, the tenants have the burden to 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.

Monetary claims are intended to be restorative and put the party in the same financial position had the applicant not incurred the damage or loss. The majority of the tenants' claims are for anticipated losses, which means the loss has not been incurred. Accordingly, the claims for anticipated moving and pest control treatment costs are not recoverable by the tenants and such claims are dismissed.

The remainder of the tenants' claims relate to additional laundry costs and the purchase of plastic bags. I find the tenants have not established that the landlord has acted negligently or violated the Act by failing to treat the property for bed bugs upon receiving a complaint from the tenants. As mentioned previously, the landlord is responsible for providing pest control treatments, which the landlord has done, and the tenants are

responsible for managing their own possessions as part of treating a bed bug infestation. Accordingly, the claims for laundry costs and plastic bag costs are dismissed.

In light of the above, all of the tenants' monetary claims against the landlord are dismissed.

***Orders for compliance, repairs and emergency repairs***

The treatment of a bed bug infestation is not an emergency repair, as defined by section 33 of the Act, and I do not make any orders for emergency repairs. However, the landlord is obligated to ensure the landlord repairs and maintains a property so that it is suitable for occupation under section 32 of the Act. A tenant also has requirements to maintain a unit under section 32 of the Act.

Upon receipt of a complaint or request for repairs from a tenant the landlord is expected to respond to the complaint in a reasonable and timely manner. In this case, I am satisfied the tenants have complained of bed bugs again in December 2011. Given the circumstances of this case, I find it appropriate to make the following **ORDERS to both parties**:

1. This landlord must obtain a professional opinion as to whether the tenants' unit still has or likely has bed bugs.
2. If, in a professional opinion, the unit still has, or likely has, bedbugs the landlord must treat the unit for bed bugs again.
3. If, in a professional opinion, the tenants' unit still has, or likely has, bedbugs the landlord must obtain a professional opinion as to whether surrounding areas or adjacent units must be treated for bed bugs and treat those areas in accordance with the professional's recommended treatment.
4. Prior to another bed bug treatment in the unit, if any, the landlord must give the tenants written instructions for preparation of the unit and/or their possessions and provide the date of the scheduled treatment to the tenants in writing.
5. The notice given under part 4. must be given the tenants a reasonable amount of time prior to the scheduled treatment date.
6. The tenants must comply with the preparation instructions provided to them by the landlord. If the instructions are not sufficiently clear to the tenants, the tenants must seek any clarification from the landlord in writing.

Further to the above orders, the landlord retains the right to inspect the unit, with proper notice of entry, in advance of the treatment

Ultimately, the efforts of both parties will determine the success of any future bed bug treatments; thus, I encourage the parties to co-operate and accommodate each other where possible. However, should the landlord fail to comply with the orders contained in this decision, the tenants may make another Application for Dispute Resolution seeking further remedy. Should the tenants fail to comply with the order contained in this decision the landlord may issue another Notice to End Tenancy for Cause, on the basis the tenants have failed to comply with an order of the Director, or the landlord may make an Application for Dispute Resolution seeking an alternative remedy.

***Rent reduction***

Considering the landlord has paid for two heat treatments in three months and upon review of the photographs of the tenants' unit, I am not satisfied that it is the landlord that is solely responsible for any bed bug problem that may remain. Nor am I satisfied the landlord has not made reasonable efforts to treat the property based upon the evidence before me. Therefore, I do not authorize the tenants to reduce their rent.

Unless ordered otherwise in a subsequent decision, the landlord shall continue to bear the cost of the exterminator and the tenants must bear the cost of any additional laundry costs and other costs associated with preparing the unit and/or their positions for treatment, including obtaining containers in which to store their possessions.

**Conclusion**

The Notice to End Tenancy has been cancelled and the tenancy continues at this time. The tenants' request for monetary compensation has been dismissed. The tenants request for a rent reduction has been denied. I have issued Orders to both parties with this decision.

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 19, 2012.

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Residential Tenancy Branch