



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order to retain all or part of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the Hearing, the naming of the Parties was reviewed. The named company on the tenancy agreement was confirmed by the Tenant to have rented the unit on behalf of their employee, the second named Tenant. The Parties agree that one person named as a Tenant on the application is not a Party to the tenancy agreement and did not sign the tenancy agreement on behalf of either the company or the Tenant. Accordingly, this Party’s name is removed from the application.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy of a furnished one bedroom and den unit began on January 5, 2011 for a fixed term to April 30, 2011 with rent payable in the amount of \$1,775.00. The Landlord

collected a security deposit of \$797.50 and a key deposit of \$100.00. On March 30, 2011, following an inquiry by the Landlord, the Tenant indicated that they wished the tenancy to continue and on April 4, 2011, the Parties signed a second fixed term tenancy with an end date of November 30, 2011. Both tenancy agreements indicate that at the end of the fixed term the tenancy may continue on a month-to-month basis or another fixed term. The agreements also have the Parties initials for the option indicating that the tenancy ends at the end date of November 30, 2011 and that the tenant must move out. Rent of \$1,600.00 was agreed to for this tenancy period.

The Landlord states that although a letter was sent on October 13, 2011 enquiring about the end of the tenancy, no response was received from the Tenant. The Landlord states that a second letter was sent on November 17, 2011 again enquiring whether the tenancy was to continue. This letter informs the Tenant that as no response was received from the October letter that the tenancy has become a month-to-month lease. The Landlord states that the Tenant moved out of the unit on November 23 or 24, 2011 without notice and claims lost rental income of **\$1,600.00** for December 2011. The Landlord states that the unit was advertised on December 10, 2011 and was rented for December 15, 2011 for a monthly rent of \$1,695.00. The Landlord states that the keys/fob to the unit were not returned until December 8, 2011 and as a result of this late date, the fob was cancelled and the deposit was not returned. The Landlord states that no claim is being made in relation to the keys/fob.

The Tenant states that no response was sent to the Landlord in relation to extending or changing the tenancy agreement and that as the tenancy was a fixed term, no notice was required to vacate the unit by the end date.

The Parties conducted a move-in inspection on January 7, 2011 and a copy was provided as evidence. The Landlord states that the Parties did a "quick visual" of the unit on November 23, 2011 however, the move-out inspection report does not include the signature of the Tenant and the Landlord states that the Tenant was not provided

with a copy of the move-out inspection report. The Tenant states that no mutual inspection was conducted with the Landlord.

The Landlord states that the Tenant left the unit unclean and in particular, infested with bed bugs. The Landlord supplied photos of the unit and states that the photos of the mattress and linen show the evidence of bedbugs. It is noted that no bedbugs are visually apparent in any of the photos. The Landlord states that linens were also missing. The Landlord states that the cleaning of the unit was completed by the Landlord who personally steam cleaned the unit, including the couch and the mattress, to rid the unit of bedbugs. The Landlord states that there may have been a prior infestation of bedbugs in the unit next to the Tenant's unit. The Landlord did not call in a professional company to deal with the infestation as the Landlord claims both sufficient experience and knowledge on how to identify and eradicate bedbugs. The Landlord claims **\$185.18** for the replacement cost of linens, **\$59.20** for dry-cleaning a comforter, and **\$536.25** for cleaning the unit.

The Tenant states that the Landlord did not inform them of any bedbugs or missing linens and that they became aware of this information after receiving the Landlord's application. The Tenant states that the Landlord has failed to provide any professional opinion on the claim in relation to bedbugs and that the bedbugs may have been in the unit prior to the tenancy.

### Analysis

Section 7 of the Act provides that if a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the other for damage or loss that results. There is no dispute that the tenancy agreement is a fixed term agreement ending on November 30, 2011. Whether the tenancy reverts to a month to month at the end of the term or whether the tenant must move out is not clear given the selection of both options by the Parties. There is no dispute however that the first renewal of the tenancy agreement occurred following an offer by the Landlord to renew and an acceptance of the Tenant to renew, a month in advance of the end of the term. Given

these facts, it can be inferred that the intention of the Parties for a second renewal would follow the same procedure. Given that the Landlord made an offer to renew the tenancy agreement on October 13, 2011 and did not receive any acceptance from the Tenant, I find that no notice from the Tenant was required as the Tenant was obliged to move-out of the unit by November 30, 2011. I therefore dismiss the Landlord's claim in relation to lost rental income.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear and the tenant must return the keys. The Landlord states that the Tenant brought bedbugs into the unit, requiring a higher level of cleaning, and provided photos as evidence. As there are no visible marks of any kind on these photos, I find that they do not provide evidence of bedbugs. Further, given the Landlord's evidence that the unit next may have had a prior infestation, I find that the Landlord has failed to prove on a balance of probabilities, that if a bedbug infestation did occur, the Tenant was responsible. I find therefore that the Landlord is not entitled to any costs associated with cleaning the unit over the required reasonably clean state.

As no evidence was provided indicating what portion of the claim for the replacement of linens occurred as a result of bedbugs, I find that the Landlord has failed to substantiate, on a balance of probabilities, a loss related to the actions of the Tenant and I dismiss this part of the claim. As there is no dispute that the Tenant failed to clean the unit, I find that the Landlord has substantiated a reasonable cost of **\$100.00** for such cleaning. Given that linen cleaning would be reasonably expected from the departing Tenant, I also find that the Landlord has substantiated **\$59.20** for bedding dry cleaning costs for a total entitlement of **\$159.20**. As the Landlord's application has met with limited success, I decline to make an order for recovery of the filing fee. I order the Landlord to retain **\$159.20** from the security deposit plus interest of **\$797.50** and to return the remaining amount of **\$638.30** to the Tenant forthwith.

Conclusion

I Order the Landlord to retain **\$159.20** from the security deposit plus interest in the amount of \$797.50 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$638.30**. If necessary, this order may be filed in the Small Claims 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: February 24, 2012.

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Residential Tenancy Branch