



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR, MNDC, MNSD, O

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement and for the cost of emergency repairs to the rental unit pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that on August 23, 2012, she was handed the tenant's written notice to end this tenancy by August 31, 2012. The landlord also confirmed that the tenant handed her a copy of the tenant's dispute resolution hearing package on September 10, 2012. I am satisfied that the tenant served the above documents to the landlord in accordance with the *Act*.

The Residential Tenancy Branch (the RTB) was not provided with much of both parties' evidence until less than seven days before this hearing. The tenant's extensive folder of written and photographic evidence was not received by the RTB until the day before this hearing. Despite these delays, both parties said that they had received one another's evidence in time to review it and were prepared to proceed with this hearing. The landlord testified that she received the tenant's folder of evidence on November 16, 2012. The landlord said that she had not accessed a CD of additional material that the tenant had attached to her folder, as she was concerned about the potential for viruses. As the tenant had not checked with the landlord to confirm that the CD was accessible to the landlord, I have not reviewed that portion of the tenant's evidence. I have considered the remainder of both parties' oral, written and photographic evidence.

### Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Is the tenant entitled to a monetary award for the return of her security deposit?

### Background and Evidence

This fixed term tenancy for a rental unit in a multi-level strata building commenced on October 15, 2011. According to the terms of the Residential Tenancy Agreement (the Agreement) entered into written evidence, both parties initialled that this tenancy was to end by August 31, 2012. Monthly rent was set at \$800.00, payable in advance on the first of each month, plus hydro. The tenant paid a \$400.00 security deposit on or about February 1, 2010, an amount carried forward from a previous tenancy.

The tenant testified that she and her son were affected by a black mould problem in the rental unit. She entered into written evidence a copy of a June 12, 2012 letter from her son's allergist with respect to a recurring rash and red bumps that had been appearing on her three-year old son. The doctor concluded as follows:

*...While it is possible that R is reacting to second hand tobacco smoke it is also possible that his sinus irritation is due to the mould. Furthermore I think that he is experiencing recurrent bouts of flea bites and I think the best thing for the family would be to move. I think the mould is a problem that needs to be dealt with...*

Shortly after receiving this diagnosis and advice, the tenant discovered on June 28, 2012 that bed bugs were in her rental unit. The tenant entered conflicting oral and written evidence as to when she first contacted the landlord about this problem and when the landlord undertook a first thermal heat treatment from a pest control company. According to some of the tenant's written evidence, she first contacted the landlord about this problem on July 5, 2012 and it took 11 days before the rental unit was given a heat treatment to remove the bed bugs. However, elsewhere in the tenant's written evidence, she maintained that the first treatment occurred on July 7 or July 18, 2012.

At the hearing, the tenant did not dispute the landlord's sworn testimony that the first thermal heat treatment to the rental unit occurred on Sunday, July 8, 2012. The parties agreed that the landlord committed to obtain estimates from pest control companies to treat the premises. In the interim, the tenant conducted her own research and expressed a marked preference for the more expensive \$1,100.00 thermal heat treatment of her rental unit as opposed to the \$400.00 pesticide spraying that the landlord originally planned to provide. As a limited number of companies offered this service in this small community and preparations could not be made to conduct immediate treatment of the premises, the first treatment did not occur until July 8.

Although the tenant maintained in her written evidence that she had been "homeless" since June 28, 2012, she did return to the premises shortly after the first treatment. She testified that a few weeks after the initial treatment, she discovered more bed bugs in the rental unit. By that time, it had become apparent that treating her rental unit without

treating the residences on either side of her, above her and below her in this building might lead to an ongoing recurrence of bed bug problems.

The landlord confirmed that she was notified by the tenant that bed bugs had returned to this rental unit between mid-July and July 23, 2012. By July 30, the landlord notified the strata corporation to seek information on the owners of the four units surrounding this rental unit. The landlord took this step in an effort to alert others who might also be affected by this bed bug infestation so that a co-ordinated approach could be taken. The landlord testified that she was able to contact two of the owners of these strata units, but two others did not respond. Due to the delays in hearing back from nearby strata owners, summer holidays and the unavailability of the thermal heat treatment company, the landlord could not obtain a second treatment of the rental unit until August 30, 2012. The parties agreed that the tenant did not move back into this rental unit, but did leave her belongings in the rental unit and failed to fully vacate the rental unit until September 25, 2012. The landlord did not charge the tenant for any rent in September. The landlord testified that new tenants moved into the rental unit on September 27, 2012. The landlord said that the new tenants have not reported any bed bug problems.

The tenant also provided conflicting evidence with respect to some of the dates and times associated with where she was staying from her first discovery of bed bugs in her rental unit. Although she claimed in her written evidence that she was homeless from June 28, 2012 until after the end of her tenancy, a November 14, 2012 letter from her social worker at the Ministry of Children and Family Development noted that she continued to live in the rental unit without her son. The tenant also entered into written evidence a letter to confirm that she and her son stayed in a campground in a provincial park from July 25, 2012 until August 9, 2012. She was charged \$12.00 per night for her campsite and lived in the campground in a tent with her young son. The parties agreed that the landlord paid the tenant for her campground fees of \$168.00 for this period. The landlord entered into written evidence undisputed copies of receipts for these payments. The tenant did not dispute the landlord's claim that she gave the tenant \$100.00 in quarters to enable her to wash and dry all of her clothes and those of her son. The tenant also testified that the landlord gave her \$200.00 at the campground to assist the tenant with the additional food expenditures she was incurring at the campground while she could not return to her rental unit.

The tenant also entered into written evidence a copy of a November 14, 2012 letter from a Transition Society that had found housing for her and her son at their shelter facility from August 10, 2012 to October 1, 2012.

The tenant's application for a monetary award of \$6,000.00 included the following items:

Item	Amount
Return of Security Deposit	\$400.00
Recovery of August 2012 Rent	800.00
Estimated Replacement Cost of Tenant's Belongings	5,000.00
<b>Total Monetary Award Requested</b>	<b>\$6,200.00</b>

The tenant's application for a monetary award for the replacement of her belongings was based on her need to replace items she believed she had to discard because of the bed bug infestation in her rental unit. She claimed that she was advised by a pesticide treatment official (or officials) retained by the landlord that she would have to replace everything in her rental unit. She based her replacement estimate on her need to dispose of bed frames, electronics (including televisions, DVDs, two computers, telephones), 32 bags of linen, curtains, rugs, clothes, expensive picture frames, desks, a kitchen table and chairs, food, etc.

#### Analysis – Security Deposit

The landlord maintained that she returned the tenant's security deposit to the tenant in full on July 24, 2012. The landlord entered into written evidence a copy of a July 24, 2012 cheque for \$400.00 to the tenant in which there was a notation "Bed Bug Crisis" Security Deposit Advance, the tenant's signature from the back of that cheque, and a bank record noting that \$400.00 was withdrawn from the landlord's chequing account in the amount of \$400.00 on July 24, 2012. The tenant testified that the landlord has returned only one-half of her security deposit, on July 24, 2012.

Based on a balance of probabilities, I find that the landlord has provided compelling evidence that she did return the tenant's \$400.00 security deposit on July 24, 2012, in advance of the end of this tenancy. The landlord provided written evidence, including the tenant's signature on a cheque, to demonstrate that the security deposit has been returned to the tenant. The tenant's only evidence that the landlord did not return one-half of her security deposit was by way of her sworn testimony that this was so. I dismiss the tenant's application to obtain a return of any portion of her security deposit without leave to reapply as I find that the landlord has already returned all of that deposit to the tenant.

#### Analysis – Tenant's Claim for Recovery of Rent

Section 32(1)(a) of the *Act* places a responsibility on a landlord to maintain residential property in a state of repair that

*(a) complies with the health, safety and housing standards required by law, and*

*(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Section 65 of the Act also establishes the following:

**65** *(1) ... if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:...*

*(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;...*

There is no dispute that the tenant continued to pay rent for July and August 2012, after first discovering the bed bug problem in her rental unit. The tenant has not made any claim for recovery of rent for July 2012, even though she did not have full use of her rental unit for portions of this month. However, the tenant did continue to live in this rental unit for much of July 2012 and may not have notified the landlord of the bed bug problem until July 5, 2012.

After the tenant first reported the bed bug problem to the landlord, the landlord took prompt and effective action to provide the tenant with the type of thermal heat treatment of the rental unit she was requesting, even though this treatment was more expensive than the standard pesticide spraying. Given the tenant's son's ongoing health problems that had required examination by a specialist, the measures that all parties exercised at that time by obtaining the thermal heat treatment was commendable.

Within a few weeks of the initial thermal heat treatment, it became apparent that the bed bugs had returned to the rental unit, perhaps from an adjacent residence in this multi-family strata building. If the landlord also owned each of the other units in this building, the landlord could have made an immediate decision to have additional units checked for bed bugs and treated accordingly. However, in a strata building where some units are owner-occupied and some are rented to tenants, the process of treating for bed bugs is considerably more complex. I also appreciate why the landlord was understandably more cautious in securing another set of thermal heat treatment for this rental unit. Without treating all affected units in a multi-family building, the treatment of individual units can prove futile, not to mention exceedingly costly. For this reason, I

can appreciate that the landlord would be interested in obtaining to the extent possible a more comprehensive solution to the bed bug problem that may not have been isolated to the one rental unit in this strata property that the landlord owns.

Based on the evidence before me, I find that the landlord has been very willing to provide assistance to the tenant to help her meet some of the extra costs that she has incurred as a result of the bed bug problem in her rental unit. There is undisputed evidence that the landlord has provided the following to the tenant:

- payment of all campground fees;
- provision of laundry funds'
- payment of extra food costs; and
- an early advance of the tenant's security deposit.

The landlord is to be commended for taking each of these measures to assist the tenant with the difficult set of circumstances she was facing alone with her three-year old son. Despite these measures, I accept the tenant's assertion that the landlord's assistance with paying for her campground fees does not equate to the full value of her tenancy agreement. There is little doubt that it would be much more difficult to reside in a campground than would be the case in the rental unit in a strata building where the tenant was expecting to remain until August 31, 2012, as per the terms of her Agreement with the landlord.

Where the landlord took prompt albeit ultimately ineffective action to secure the initial thermal heat treatment for bed bugs in this rental unit, I find that there was considerable delay in obtaining the second thermal heat treatment. By at least July 24, 2012, the landlord was aware that the first heat treatment had proven unsuccessful. I accept that it would take some time to decide how best to proceed at that point. However, I find that the landlord has failed to demonstrate that a second thermal heat treatment could not have been provided before the second last scheduled day of this tenancy (i.e., August 30, 2012).

Under these circumstances, I find that there has been a loss in value of the tenant's tenancy agreement for August 2012, a month when she was unable to live in this rental unit. Some of her belongings did remain in the rental unit over this period and continued to remain there until September 25, 2012. I also recognize that the landlord reimbursed the tenant for the direct losses she incurred while staying at the campground from July 25, 2012 until August 9, 2012. Since the tenant was living in a shelter facility with her son from August 10, 2012, she has not demonstrated any further direct losses for the remainder of August 2012. I do find that living in a campground

and a shelter facility for the month of August 2012 provides the same value to the tenant as living in her own rental unit. Quantifying the tenant's loss in value of her tenancy over this period is somewhat difficult, especially in the context where the tenancy was scheduled to end by August 31, 2012. I find that the tenant is entitled to a monetary award of \$400.00 for her loss in value of her tenancy for August 2012, an amount representing one-half the value of her monthly tenancy. In coming to this finding, I note the amount of the tenant's entitlement would have been greater had the landlord not already compensated her for her living costs at the campground and for food.

#### Analysis – Tenant's Claim for Replacement of Discarded Belongings

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

At the hearing, the tenant admitted that she had not provided receipts, invoices or accurate estimates for any of the items she had to discard or that she has purchased after this tenancy ended. She explained that she followed the directions of the pest control officials and discarded anything that could possibly have been infested with bed bugs, including presumably any of these types of receipts. She did supply some photos of her lost belongings.

The landlord gave undisputed testimony that the pest control official who conducted the thermal heat treatment advised her that this was a relatively moderate bed bug problem and that there should not have been a need to discard everything in the rental unit. The tenant also provided some evidence that she left some of her belongings behind for a subsequent tenant or tenants. The landlord testified that the tenant was so concerned about her health and that of her son that she may have acted hastily in deciding to discard all of her belongings.

In considering this portion of the tenant's claim, I find on a balance of probabilities that the tenant may not have acted on the basis of clear direction from the landlord or the pest control treatment company retained by the landlord in deciding to discard the range of items she chose to discard. I find that the tenant is chiefly responsible for her decision to discard her belongings. Her failure to provide any receipts or concrete

evidence as to the actual worth of the belongings she left behind also presents problems in assessing her claim.

I do accept that the tenant has experienced some loss arising out of the landlord's failure to maintain the premises in a condition that kept her belongings undamaged. The landlord's delay in obtaining a second heat treatment may also have been partially responsible for her loss of some of her belongings. For these reasons, I issue a monetary award for an admittedly nominal monetary award of \$250.00, which will enable the tenant to recover at least a portion of the worth of the belongings she discarded at the end of this tenancy.

I find that the tenant is not entitled to any specific monetary award resulting from her allegation that her health and that of her son were affected by black mould during the course of their tenancy. I find that the letter from her son's allergist entered into written evidence provided limited evidence at best of a correlation between her son's health problems and any black mould in the rental unit. The subsequent discovery of bed bugs in the rental unit was just as likely a cause as that tentatively identified by the allergist as mould-related in his letter. His flagging of second-hand smoke as another possible cause for the tenant's son's condition further clouds any causal link that might entitle the tenant to compensation from the landlord. I dismiss this element of the tenant's application without leave to reapply.

As I am not satisfied that the tenant conducted any emergency repairs to which she is entitled compensation, I also dismiss this element of her application without leave to reapply.

### Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover a portion of the rent she paid to the landlord for August 2012 and to recover her loss of some of her belongings during this tenancy.

<b>Item</b>	<b>Amount</b>
Recovery of Portion of August 2012 Rent	400.00
Monetary Award for Loss of Tenant's Belongings	250.00
<b>Total Monetary Order</b>	<b>\$650.00</b>

The tenant is provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) fail to



comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the tenant's application to obtain a return of her security deposit without leave to reapply. I also dismiss any remaining elements of the tenant's application for dispute resolution 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, 2012

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Residential Tenancy Branch

