



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

**Dispute Codes:** MNDC

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by to deal with the tenant's claim for compensation for a persistent problem with bedbugs in the suite.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on December 3, 2012 and confirmed with the Canada Post tracking number, the respondent did not appear and the hearing was therefore conducted in the respondent's absence.

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

Is the tenant entitled to monetary compensation in damages section 67 of the Act?

### **Background**

The tenancy began on October 1, 2011 and ended after only one month, on November 1, 2011..

Evidence was submitted that included a copy of a letter from the tenant to the landlord, dated February 25, 2012 discussing the problems she had encountered with bedbugs in the former tenancy which, according to the tenant, forced her to terminate the tenancy and vacate at the end of the first month. No other evidence was submitted.

In this correspondence, the tenant outlined her concerns and acknowledged that the landlord had engaged the services of a professional pest control company which treated the rental unit twice in October 2011. The tenant complained that this did not eradicate the bed bugs and she felt it necessary to move out at the end of October 2011.

The tenant testified that the landlord did not respond to the February 25, 2012 letter and she therefore made an application for dispute resolution on November 27 2012 seeking compensation of \$7,487.77.

No receipts or monetary breakdown was submitted but the tenant stated that the claimed amount represented costs for laundry, accommodation, dumping fees, hydro, moving costs, food and the loss of her possessions.

**Analysis:**

With respect to an Applicant's right to claim damages from another party, I find that section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

**Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

Section 32 of the Act states imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find that, although the presence of vermin could compromise the health, safety and housing standards, the mere existence of a pest infestation is not an issue of fault or blame on either the landlord or the tenant.

The fact that an infestation occurs does not constitute proof that the landlord is in violation of section 32 of the Act. I find that the key factor in determining whether or not the landlord properly complied with section 32, is to examine the question of whether or not the landlord took reasonable measures in trying to control or eliminate the problem.

I find that, once a landlord has been made aware of the presence of vermin, the landlord is responsible under the Act, to take steps to alleviate the infestation through a qualified pest control contractor and I find that this must occur without undue delay.

I find that, if the landlord fails to take timely measures to ensure that pests in the rental are dealt with, then the landlord would be in violation of section 32 of the Act.

I further find that, any re-infestation of bedbugs or other vermin after the fumigation treatment has occurred, is also a matter that is not within the landlord's control to prevent. However, the expectation is that the residence will be re-treated as recommended by the pest control technicians until the problem has been solved.

In this instance, the tenant has testified that the bedbugs persisted after the treatment by the pest control firm and that the landlord refused to re-treat the rental unit which forced her to move and caused her the monetary losses being claimed.

However, I find that the tenant did not support this allegation with any evidence. I find that the tenant only lived in the unit for one month in October 2011 and during that month the unit was treated twice by the landlord's contractor that was a professional company specializing in pest control. Based on the time-line alone, I do not accept the tenant's unsupported verbal testimony that the landlord ignored the problem, nor that the treatment was below standard.

In this instance, I find that no violation of the Act by the landlord, as it was confirmed by the tenant that the landlord had utilized a qualified pest control expert to handle the problem. I find that this measure is the extent of what is expected of the landlord under the Act. For this reason, I find that the actions by this landlord were sufficient to meet the requirements under section 32 of the Act.

In the absence of any violation of the Act or agreement by the landlord, I find that the tenant's monetary claim for damages against the landlord failed to meet element 2 of the test for damages.

Therefore, the tenant's application for monetary compensation is hereby dismissed in its entirety without leave to reapply.

### **Conclusion**

The tenant is not successful in the application and the claim for monetary compensation is dismissed without leave.

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 21, 2013

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Residential Tenancy Branch

