



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, compensation for damage or loss, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting compensation for damage or loss under the Act and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the included evidence and testimony provided.

### Preliminary Matters

The landlord's application detailed calculation included a request to retain the security deposit; therefore, I have considered that claim.

The landlord claimed both unpaid rent and loss of rent revenue; I have considered the claim in relation to a loss of rent revenue.

The landlord served the tenant several evidence submissions, sent via regular mail to the tenant's service address. The tenant said she did not receive that mail. As the tenant had not received the evidence submissions the landlord was at liberty to provide affirmed testimony in relation to that evidence.

The tenant did not include her detailed calculation with the application, which the landlord received on March 25, 2013. The landlord received the detailed calculation on May 23, 2013, but was prepared to consider the claim as it was set out in that calculation.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$3,833.50 in damage or loss under the Act?

Is the landlord entitled to compensation for loss of rent revenue in the sum of \$950.00?

Is the landlord entitled to retain the \$475.00 security deposit?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 1, 2011, rent was \$950.00 due on the 1<sup>st</sup> day of each month. A deposit in the sum of \$475.00 was paid at the start of the tenancy. A tenancy agreement was not signed.

The rental unit was a cottage on a rural property.

The parties agreed that on February 16, 2013 the tenant gave notice, sent via email, ending the tenancy effective February 28, 2013.

A condition inspection report was completed on February 28, 2013, at which point the landlord received the tenant's written forwarding address. The landlord submitted a claim against the deposit within fifteen days, on March 5, 2013.

The tenant has made the following claim:

September & October 2012 rent reduction - 25%	\$475.00
November & December 2012 rent reduction – 50%	950.00
January & February 2013 rent reduction – 100%	1,900.00
Damaged property value	475.00
Landfill costs	33.50
<b>TOTAL</b>	<b>\$3,833.50</b>

The landlord has claimed the loss of March 2013 rent, as the result of the tenant's failure to provide proper notice ending the tenancy.

There was no dispute that on September 8, 2013 the tenant informed the landlord of a problem with mice in the cottage and that she requested an exterminator.

On September 11, 2012 the landlord replied to the tenant's email saying they would come by to check and on the next day the tenant met with the landlord, who came to the unit.

On September 12, 2012 the landlord sent the tenant a message saying that they have to keep traps out year-round and they recommended the tenant use peanut butter on traps. The tenant is allergic to peanuts and told the landlord that type of bait would not be suitable for her to handle.

There was no dispute that the tenant trapped twelve mice in September; she was reimbursed for the cost of traps. The tenant said that by the end of October she had trapped fifteen mice.

The landlord said that the tenant trapped twelve mice during September and that over the next 5 months an additional 7 mice were trapped. The landlord acknowledged that they knew in September 2012 mice were in the walls and that they took steps to respond, by sealing potential points of entry. The landlord also called a professional pest control company and told them they had mice in the walls and a bedroom; the pest control technician told the landlord that they were taking the same action the company would recommend; such as trapping and looking for points of entry. The landlord lives on the same property and said that, given their rural location, mice were not unusual.

There was no further contact in relation to the mice until November 30, 2012 when the tenant sent the landlord notice she would end her tenancy effective December 31, 2012. The email sent indicated that the tenant needed a home closer to town and mentioned that the mouse problem had not been solved. The landlord then investigated for points of entry; no traps were set.

On December 3, 2012 the tenant and landlord met and it was agreed that as the unit had not yet been rented and the tenant had yet to find a better rental unit that the tenancy would be reinstated. The tenant agreed to remain in the unit at least until the landlord returned from holiday in mid-February, 2013.

On December 13, 2012 the tenant sent the landlord an email again asking to have the mouse problem solved. At this point the tenant said she was not staying in the rental, that the mouse problem had become so disturbing that the home was not habitable. The landlord said they replied on December 13; they asked for permission to winterize the cottage; the landlord did not feel the mouse problem was that urgent and found 1 point of possible entry that required blocking.

The tenant emailed the landlord again on December 28th explaining she had not been to the unit due to the mouse infestation and she again requested an exterminator, as the landlord was leaving for Mexico. The landlord replied that after receiving the email

that had gone to the unit, had set traps and continued to look for potential points of entry.

Starting on December 28, 2012 the landlord began to set traps and monitor them on a daily basis; the tenant was not staying at the home during this time. On January 12, 2013 the landlord emailed the tenant to tell her that over the past 10 days they had trapped 1 mouse. By January 15, 2013, when the landlord left on holiday, 2 mice had been trapped.

On January 12, 2013 the tenant found traps set with peanut butter – she could not deal with these, as she is very allergic to peanuts and had told the landlord she could not use peanuts as bait.

The tenant said that during September and October 2012 the value of the rental unit was diminished by 25%; by November and December 2012 she was just 50% satisfied with the state of the unit and that by January 2013 the unit had lost all value. The tenant did not stay in the unit for more than 1 night since October 2012. The landlord said that was because the tenant was choosing to stay with her boyfriend.

The tenant agreed she had not contacted the landlord between September and November 2012 and that she then reversed her decision to vacate in December, as other rental options were much worse. The tenant felt the landlord was nonchalant, that they accepted mice would enter the home. The tenant understood there could be some problems but that the number of mice and the landlord's failure to aggressively pursue the problem resulted in a loss of value of the tenancy that increased over time.

In early February the tenant called a professional pest control company, to discuss the problem. She was told not to enter the cottage unless she wore gloves and a respirator. At this time the tenant found that items left in the bedroom closet and attic had to be thrown out as the mice has nested in them.

On February 16, 2013 the tenant emailed the landlord giving notice, as a result of the landlord's failure to be proactive in relation to the mouse problem. The tenant asked the landlord to complete treatments and provide her with rent reduction. Since February 1, 2013 the tenant had trapped 2 mice and the tenant believed that a health risk now existed.

The tenant said she was not aware of her rights and that it was not until February that she obtained advice that the landlord had an obligation to respond to her concerns. The tenant stated she should have been more assertive with the landlord.

On February 20, 2013, the landlord had a professional pest control company inspect the cottage. The report indicated that there was no evidence of a mouse infestation or current activity, no odour, that there were older droppings in the attic, and hot water tank area and kitchen.

The tenant has claimed the loss of personal property that mice had used for nesting; she also claimed the cost of landfill fees. A February 2, 2013 receipt from the landfill was supplied as evidence. The tenant had to replace her mattress and other personal items.

The landlord said that the original notice given by the tenant on December 1, 2012 did not mention mice and that after deciding to remain in the unit it was not until the end of December that another report of mice was made. The landlord responded by setting traps and checking them daily until they left for holiday on January 14, 2013. Some weather stripping was also repaired. When the landlord returned from vacation on February 16, 2013, a notice ending tenancy was given to the tenant as she had not paid rent.

The tenant confirmed receipt of the 10 Day Notice to End Tenancy issued on February 18, 2013; she received that Notice on February 22, 2013 and paid the rent on the same day. The tenant thought that she had paid outside of the 5 day time-frame and that the tenancy would then have ended on the effective date of the Notice.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

There was no dispute that as early as September 8, 2012 the landlord was well aware of the presence of mice in the rental unit. The landlord confirmed that mice were in the walls and a bedroom and that they were not an unusual occurrence when living in a rural location.

I have considered the tenant's obligation to mitigate a claim she has made, against the landlord's obligation to maintain the rental unit, in accordance with section 32 of the Act.

Section 7 of the Act provides:

### ***Liability for not complying with this Act or a tenancy agreement***

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the*

*regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

(Emphasis added)

Section 32 of the Act provides, in part:

**32** (1) *A landlord must provide and maintain residential property in a state of decoration and 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.*

I have considered the initial report of pests made in September and what I find was intermittent follow-up by the landlord, to address the mouse issue. Even though the tenant did not complain between mid-September to the end of November, I find that the tenant did give notice in November, ending the tenancy as a result of the presence of mice in the unit. Whether this was the sole reason the tenant had elected to end the tenancy in December, I find that the written Notice again informed the landlord that mice continued to be a problem.

It was not until later in the month of December that the landlord began regular checks of the cottage and setting of traps.

I find that the trapping of at least fifteen mice over a period of 6 months was not insignificant and, despite the report made by the pest control company in February, I find that there had definitely been a problem with mice that had caused a loss of value of the rental unit to the tenant.

The tenant did rescind notice she gave ending the tenancy in December; she could not find a rental unit that was any better than her current unit and the landlord had yet to locate a new occupant. The tenant then continued to complain about the mice. While the landlord took some steps to set traps and look for points of egress I find that the action taken by the landlord was sporadic, at best. Rather than have traps set and the problem managed while they were on holiday the landlord left without a treatment plan in place.

I find that the inspection completed on February 20, 2013 by the pest control company did confirm that mice had been present; feces were found in several locations.

Residential Tenancy Branch policy suggests that where a landlord breaches the Residential Tenancy Act, the tenant has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to

mitigate. This means that, in this case, the tenant must have taken reasonable steps to keep the loss as low as reasonably possible. The tenant cannot be awarded 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 Act requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. Policy also suggests that if a party claiming damages has not minimized the loss, that compensation may be adjusted to allow the amount that might have been saved.

I find, on the balance of probabilities, that the landlord was adequately informed of the mouse infestation and that the landlord failed to respond in a manner that ensured the tenant did not suffer a loss of value of the tenancy. The tenant has claimed compensation from the start of the tenancy, yet I find that she failed to take steps such as making an application for Orders, requesting that the landlord comply with the Act and by more consistently addressing the mouse problem at a point earlier in the tenancy.

Therefore, in the absence of efforts by the tenant to address the mouse infestation earlier, in order to mitigate the claim she has now made, I find that the tenant is entitled to compensation for a loss of value of the tenancy in a reduced sum of 25% for each of January and February 2013; totalling \$475.00. The fact that the landlord left on holiday without a treatment plan in place was a failure on the landlord's part to ensure that the rental unit was properly maintained. Even though someone was at the landlord's home to receive complaints, I find that the landlord was well aware that mice were an on-going problem.

Even though the tenant was not aware of her rights until later in the tenancy, the absence of knowledge does not support a claim for compensation. Therefore, the balance of the claim for loss of value of the tenancy is dismissed.

In relation to the landlord's claim for loss of March 2013 rent, I find that the tenant ended the tenancy in accordance with section 45(3) of the act, which provides:

*3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice*

The tenant ended the tenancy once as a result of mice, but agreed to remain in the unit, while continuing to complain of a mouse problem. Even though the number of mice

trapped declined, there is no doubt that the problem had continued. There was also no evidence before me that during the last 2 months of the tenancy that any concerted efforts were made to trap mice.

As the tenant had made multiple written requests to have the problem addressed and, as the efforts for control were sporadic, I find that the tenant was within her right to end the tenancy with the Notice given on February 16, 2013. Therefore, I find that the claim for loss of March 2013 rent revenue is dismissed.

In the absence of evidence verifying the cost of personal property the tenant said she disposed of, I find that the claim for personal property is dismissed.

In the absence of a record of items that were taken to the landfill, I find that this portion of the claim is dismissed.

I find that the tenant's application has merit and that the tenant is entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of \$525.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

### Conclusion

The tenant is entitled to compensation in the sum of \$475.00.

The tenant is entitled to filing fee costs.

The landlord's claim is dismissed.

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: May 31, 2013

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Residential Tenancy Branch