



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MND, MNDC, MNSD

### Introduction

In the first application, by date made, the landlord seeks a monetary award for a lease break fee, some repair costs and for loss of April rental income. In the second application the tenant seeks to recover compensation and expenses for having to vacate the rental unit because of a bug infestation.

### Issue(s) to be Decided

Does the relevant evidence show, on a balance of probabilities, that the tenant was entitled to repudiate the tenancy? Is either party entitled to recover any of the monies claimed?

### Background and Evidence

The rental unit is a three bedroom townhouse. The tenancy started in September 2012 for a fixed term ending August 31, 2013 at a monthly rent of \$1295.00. The tenant resided there with her two children until March 25, 2013, when she vacated on notice given on about March 13<sup>th</sup>.

On or about March 5<sup>th</sup>, the tenant and her children developed itches. She noticed that her skin was red in spots and rash-like. She called the landlord the next day who arranged for an exterminator to attend. On March 8, the exterminator came to look. He could not find any infestation and could not identify the bug samples the tenant had collected to show him. He confirmed there were no bed bugs, at least.

There is some dispute about whether the exterminator came again on March 14<sup>th</sup>, after a second complaint by the tenant. In any event, the tenant went to a medical doctor and came away on the understanding that she had “fungiform papillae” on her tongue (it

should be noted that everyone has these. They are the little bumps on a tongue). The doctor prescribed a sedative used in the treatment of anxiety and similar conditions.

No other rental unit in the complex reported a problem with bugs.

In an effort to protect her health and the health of her children, the tenant vacated the rental unit on March 25<sup>th</sup>. She destroyed or otherwise gave up much of her large furniture and at least one mattress, considering them to be infested. The parties conducted an inspection and all was found to be fine, but for a damaged closet door track and three non-working light bulbs, for which the landlord paid a contractor \$83.16 to fix/replace.

The landlord informed the tenant it did not agree with her leaving before the end of the fixed term and told her she would be responsible for any loss of rental income. It began to advertise for new tenants on March 14, seeking the same monthly rent. As of the hearing date a new tenant has not been located and the landlord seeks to recover for the loss of April rental income.

The landlord also seeks to recover the equivalent of one-half month's rent under a damages clause in the tenancy agreement.

### Analysis

This is a very unfortunate case. The tenant appears to be convinced her apartment had a bug infestation and that it was the landlord's responsibility to eradicate it. But the evidence does not show that there was a bug problem in this rental unit. The photos presented by the tenant show evidence of some larvae cases and possibly pieces of insects mixed in with the general dirt and grime of normal living. It was certainly not on any scale approaching the abnormal. The exterminator, an apparently independent exterminator, who arguably has a vested interest in finding infestations to eradicate, found nothing of concern. There was no problem for the first six months of the tenancy. No one else in the complex had a bug problem.

As well, the existence of bugs in the rental unit is not automatically the landlord's problem. Bugs might be in an apartment and might be at the level of an infestation, without the landlord having done anything or failed to do anything. Here, there is no evidence to conclude the landlord introduced the bugs into the premises or that the bugs appeared in the rental unit because the landlord failed to do something it should have done. The bugs might as easily have flown in a window or come in on a shoe.

I find that the tenant was not entitled to repudiate the fixed term tenancy agreement and leave before the end of the term in August 2013. She is therefore not entitled to recover the costs and expenses incurred in doing so. Her application must be dismissed.

The landlord properly put the tenant on notice that it would seek to recover for the loss of rental income over the balance of the lease. I find that the landlord has taken reasonable steps to mitigate its loss but has suffered the loss of April rental income of \$1295.00 and I award it that amount.

I award the landlord the claimed \$83.16 for repairs to the closet and for bulb replacement.

The tenancy agreement contains a clause 3 in the nature of a "liquidated damages" clause under the heading "EARLY TERMINATION," the relevant portion of which reads,

The Tenant further agrees that upon termination, the Tenant shall pay an early termination fee of 50% of one month's rent. This amount is to reimburse the Landlord for the placement fee charged by its agent for finding a new tenant. The early termination fee is due and payable at such time that Tenant submits written request of early termination to Landlord as described in Section 7 "Notices" of this Lease.

Section 7 deals with the form, postage and address for delivery of notices generally and is not particularly relevant.

The clause in question is ambiguous. The tenancy agreement shows that the "landlord" and the "agent" are the same. The landlord is the agent acting for an undisclosed owner. In interpreting this clause it is proper to consider that the landlord was the one who drafted it. The tenant is therefore the one entitled to the benefit of any doubt. In addition, the tenancy agreement is what is sometimes known as a "contract of adhesion;" a take-it-or-leave-it document imposed on a person usually holding significantly less bargaining power than the author. In that respect as well, the tenant is entitled to the benefit of any doubt. I doubt that the agent would be charging itself 50% of one month's rent for finding a new tenant and so in the circumstances of this case the clause would not appear to apply. I therefore dismiss this part of the landlord's claim.

Additionally, I would dismiss this item of the landlord's claim because the early termination fee is described to be due and payable "at such time that Tenant submits written request of early termination" but the tenant has not submitted a written "request"

of early termination and so the charge is not due and payable. The landlord chose these words to use in the tenancy agreement and must live by them

I dismiss the landlord's claim for an early termination fee under clause 3 of the tenancy agreement.

### Conclusion

The tenant's application is dismissed.

The landlord's application is allowed in part. It will have a monetary award of \$1378.16 plus the \$50.00 filing fee for a total of \$1428.16. I authorize the landlord to retain the 647.50 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$780.66

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 17, 2013

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Residential Tenancy Branch

