



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

**MNDC, OLC, RP**

### **Introduction**

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant requested compensation for damage or loss under the Act, an Order that the landlord comply with the Act and make repairs to the rental unit.

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 evidence and testimony provided.

### **Preliminary Matters**

On December 18, 2013 the tenant submitted her initial application in which she claimed compensation in the sum of \$744.00. The landlord confirmed receipt of that application within the required time-frame.

On January 13, 2014 the tenant amended the application, increasing the sum claimed as compensation to \$2,418.50. The amended application was sent to the landlord via registered mail and was received by the landlord on January 17, 2014.

Residential Tenancy Branch Rules of Procedure, section 2.5, requires a party to serve an amended application to the other party at least 5 days prior to the hearing. When the landlord received the amended application on January 17, 2014 the tenant failed to establish service as required by the Rules of Procedure. Section 90 of the Act would deem the registered mail served on the 5<sup>th</sup> day after mailing; the landlord confirmed receipt on the 4<sup>th</sup> day after mailing; 4 days prior to the hearing.

Therefore, as the landlord was given a copy of the amended application only 4 days prior to the hearing I determined that I would consider only the claim made on the original application given to the landlord in December 2013.

Issue(s) to be Decided

Is the tenant entitled to compensation for the cost of pest inspection services in the sum of \$157.50?

Is the tenant entitled to rent abatement in the sum of \$586.50 for loss of quiet enjoyment of the unit?

Must the landlord be Ordered to complete pest inspections and treatment?

Background and Evidence

The tenancy commenced on July 25, 2012; rent in the sum of \$1,488.00 is due on the 1<sup>st</sup> day of each month. The tenant lives in the upper floor of a home; the lower unit is occupied by other tenants.

There was no dispute that in August 2013 bed bugs were found in the home and both units were treated by a pest control company on 1 occasion.

The parties did not dispute the content of copies of text messages that were supplied as evidence. On December 9, 2013 the tenant sent the landlord a message and tried to reach him by telephone, as she had discovered bed bugs in the unit. When the tenant reached the landlord by telephone he hung up on her.

On December 10, 2013 the landlord responded, indicating that it had been 5 months since treatment and that the tenant should consider where she and her family had been. The landlord said that the tenant had brought bed bugs into the home and that he would not be responsible; the tenant would have to deal with the problem herself.

On December 18, 2013 the tenant had both units inspected by a professional pest control company. A copy of the invoice was supplied as evidence. A canine was used during the inspection and evidence of bed bugs was established throughout both units in the home. The invoice was given to the landlord via registered mail sent with evidence on December 19, 2013. The landlord received this evidence on December 23, 2013.

The landlord supplied a copy of a December 20, 2013 text asking the tenant if he could treat the unit the next morning. The landlord did not receive a response.

The parties agreed that after issuing the tenant a letter for a monthly inspection that they met at the rental unit on January 8, 2014. The tenant said that on January 8, 2014

the landlord refused to treat the unit until after the hearing was held. The landlord said he wanted to treat the unit but the tenant would not cooperate and let him into the unit.

The tenant's witness provided affirmed testimony that she signed a statement that was supplied as evidence. The witness said she did not write the statement and that she did not recall much of what was said when she was present with the landlord and tenant on January 8, 2014. The witness believed that agreement had been reached on a date for treatment and that the landlord said he would wait until the hearing. The witness was not sure why the plans changed. The witness babysits for the tenant.

The tenant said she was in the hospital between December 26 and 28, 2013 having a baby. The tenant did not provide testimony in relation to the time between the December 20, 2013 text sent by the landlord and December 26. The tenant said that as a result of the landlord's failure to treat the unit she must now purchase new box springs, mattress covers and that she has had to deal with bed bug droppings in her son's room. The tenant supplied a photograph of what appeared to be a bed bug, taken on her son's box spring. Another photograph of a bed bug was supplied; it was caught after biting the babysitter on the arm on December 9, 2013.

The tenant has requested compensation in the sum of \$586.50 as compensation for damage or loss due to the failure of the landlord to treat the unit in a reasonable period of time after being notified of the presence of bed bugs.

#### Mutually Settled Agreement – Pest control and Compensation

During the hearing the parties reached a partial mutually settled agreement.

The parties agreed:

- Immediately, but no later than January 29, 2014, the landlord will have both units in the home treated for bed bugs by a professional, licenced pest control company;
- The landlord will send the tenant a text message providing her with the time and date of the treatment;
- The tenant will respond to the text message, confirming receipt;
- The tenant will provide the pest control company with access to the unit;
- The tenant will properly prepare her unit for treatment;
- The landlord will follow the recommendations of the professional, licenced pest control company, which may include a timely follow-up inspection and further treatment if deemed necessary;
- That the tenant will be immediately provided with copies of all invoices issued by the pest control company; and
- That the tenant is entitled to compensation in the sum she paid for the December 18, 2013 inspection: \$157.50.

Section 63 of the Act provides:

***Opportunity to settle dispute***

- 63** (1) *The director may assist the parties, or offer the parties an opportunity, to settle their dispute.*  
(2) *If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.*

Therefore, in support of the mutual agreement of the parties, pursuant to section 63(2) of the Act, I Order:

- The landlord to immediately, and no later than January 29, 2014, have the rental unit professionally treated for bed bugs;
- that the landlord follow the instructions of the professional licenced pest control company in relation to follow-up inspections and further treatment;
- that the landlord immediately provide the tenant with copies of any pest control company invoices;
- that the tenant provide her agreement for entry and, in the absence of agreement, that the landlord issue notice of entry in accordance with section 29 of the Act, which is appended after the conclusion of the decision; and
- that the tenant is entitled to compensation in the sum of \$157.50 for the pest control inspection and that this sum may be deducted from the next month's rent due.

**Analysis – Balance of Claim for Compensation**

The tenant has claimed compensation in the sum of \$586.50 for the loss of quiet enjoyment of the unit during which time the rental unit was left untreated by bedbugs and the landlord's failure to adequately respond to the report of bed bugs.

Section 28 of the Act provides:

***Protection of tenant's right to quiet enjoyment***

- 28** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
- (a) reasonable privacy;*
  - (b) freedom from unreasonable disturbance;*
  - (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
  - (d) use of common areas for reasonable and lawful purposes, free from significant interference*

Residential Tenancy Branch policy suggests that if a tenant is deprived of the use of the rental unit, through no fault of their own, a tenant may be entitled to damages. Compensation may be in the form of rent abatement or a monetary award. Nominal compensation may be provided when there is no significant loss or a significant loss has not been proven, but they affirm there has been a breach of a legal right.

An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I have considered the landlord’s initial response to the tenant sent on December 10, 2013 and the time that elapsed until December 20, 2013, when he offered to treat the home the next day. Section 32 of the Act requires a landlord to maintain the residential property taking into account housing and safety standards required by law. The landlord had no evidence that the tenant had caused the bed bugs to reappear in the unit and there was no evidence of any follow-up inspection or treatment since the initial August 2013 treatment.

During the hearing it was explained that if the tenant was not cooperative the landlord could issue a notice of entry for the pest control service and that the tenant could not deny access. This did not occur and it appears that communication between the 2 parties deteriorated and that miscommunication on January 8, 2014 led to the landlord waiting until this hearing before making any further attempts to have the unit treated.

The witness said she could not recall the details of the discussion on January 8, 2013 and stated that she did not write her statement, but agreed to sign it. As the witness could not give consistent testimony and did not write the statement, from her own memory of events, I have given her testimony little weight.

I find, on the balance of probabilities that between December 9, when the landlord became aware of the bed bugs and December 20, 2013 when the landlord offered to treat the unit that the tenant did suffer a loss of quiet enjoyment is entitled to nominal compensation in the sum of \$100.00. This recognizes the stress and time that the tenant believed the landlord would not take any action to address the re-emergence of bed bugs. The tenant did not offer a response to the landlord’s December 20, 2013 text message, offering to treat the unit the next day, at which point I find the right to compensation ended.

Therefore, I find that the tenant is entitled to rent abatement in the total of \$257.50 from the next month’s rent due. The balance of the claim is dismissed.

### Conclusion

The parties have reached mutual agreement in relation to bed bug treatment; Orders have been issued in support of the agreement.

The tenant is entitled to compensation, by agreement and Order, in the sum of \$257.50 which may be deducted from the next month's rent due.

The balance of the monetary 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: January 22, 2014

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Residential Tenancy Branch

***Landlord's right to enter rental unit restricted***

- 29** (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
  - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
    - (i) the purpose for entering, which must be reasonable;*
    - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
  - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;*
  - (d) the landlord has an order of the director authorizing the entry;*
  - (e) the tenant has abandoned the rental unit;*
  - (f) an emergency exists and the entry is necessary to protect life or property.*
- (2) *A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).*

