



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, MNDC, MNR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed their Application requesting a monetary order for money owed or compensation under the Act or tenancy agreement, for an order to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

The Tenant filed for a monetary order for return of double the security deposit, for money owed or compensation under the Act or tenancy agreement, for the cost of emergency repairs, and to recover the filing fee for the Application.

Both parties appeared at these hearings and the Agent for the Landlord was assisted by a translator. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

At the outset of the first hearing it was apparent that the Agent for the Landlord had not received the Tenant's Application for Dispute Resolution. The Tenant had properly sent it by registered mail in the name of the Landlord; however, the Agent was unable to receive the registered mail as their names are different.

As the Tenant had received the Landlord's Application, both parties agreed we would proceed with the hearing of the Landlord's Application in the first hearing, and then we would adjourn for the Tenant to serve the Agent for the Landlord with her Application and proceed with the Tenant's Application at the second hearing.

Between the hearings the Landlord submitted evidence without authorization from the Arbitrator to do so. Therefore, this evidence was not admitted.

### Issue(s) to be Decided

Is the Landlord entitled to the relief sought?

Is the Tenant entitled to return of double the security deposit and the other relief sought?

### Background and Evidence

This tenancy began on August 1, 2013, with the parties entering into a written, fixed term tenancy agreement, for a period of one year. However, neither party submitted a copy of the tenancy agreement in evidence.

The parties agreed during the hearing that it was a fixed term tenancy of one year, that the Tenant paid a security deposit of \$427.50 on or about July 31, 2013, and that the monthly rent was \$855.00, payable on the first day of each month.

On September 14, 2013, the Tenant gave the Landlord a notice she was ending the tenancy and vacating the rental unit on October 1, 2013. The Tenant wrote in her notice she was moving out, "Due to Bedbugs I was not warned about prior to my move in date."

### The Landlord's Claim

The Agent for the Landlord testified that the rental unit was re-rented on October 15, 2013, and therefore the Landlord is claiming for one half of a months' rent.

The Agent for the Landlord testified that shortly after the Tenant moved in she informed him that there were bed bugs in the rental unit. The Agent testified he went to the rental unit and did not see any bedbugs.

The Agent for the Landlord testified he was surprised because when he went to the rental unit the Tenant informed him she had already called a pest control company. He testified he did not see any bugs in the rental unit or produced by the Tenant.

The Agent for the Landlord testified that the Tenant did not give the Landlord sufficient time to deal with the bedbugs. The Agent testified that the Tenant had breached the tenancy agreement and the Act by ending the fixed term tenancy.

The Landlord claims for one half a months of rent in the amount of \$427.50, plus the filing fee for the Application of \$50.00, totalling **\$477.50**.

In reply, the Tenant testified that she gave the Landlord the notice to end the tenancy due to unliveable conditions in the rental unit. She testified that she gave the notice because there were bedbugs in the rental unit. She testified that she verbally told the Agent for the Landlord that she would end the tenancy if the bedbugs were not dealt with, but the Tenant agreed she did not put this in writing.

The Tenant testified that she had this conversation with the Agent two days after she had requested help with the bedbugs. She testified she asked for help with the bugs on September 11, 2013, and the Agent came to the rental unit on September 13, 2013. The Tenant alleged that the Agent for the Landlord informed her they would have someone come in to look at the bugs in a week. The Tenant testified she had contacted a pest control company and they informed her they could be there in three days to treat the bugs.

The Tenant testified she had asked the Agent when she was looking at the rental unit if bedbugs were a problem in the building. The Tenant alleges that she was not informed of the bugs.

The Tenant testified she heard from other renters in the building that bed bugs were a problem.

The Agent replied that the Tenant did not tell him she would move out if the bugs were not dealt with. The Agent alleges that the Tenant had already called the pest control company before he went to the rental unit.

### The Tenant's Claims

The Tenant claims she should be entitled to double the security deposit because the Landlord did not provide her with copies of the incoming or outgoing condition inspection reports. She claims for **\$855.00** for portion of her Application.

The Tenant claims she was forced to break the lease due to the bed bugs in the rental unit. She testified she was not informed there was a bedbug problem in the rental unit. She alleges she asked about this during the condition inspection report at the outset of the tenancy. I note that neither party provided a copy of the condition inspection reports in evidence.

The Tenant claims the Landlord provided no help to her for the bedbugs. She testified that the bugs were an emergency and she was not provided with an emergency contact

number for the Landlord. She testified she did have the Agent for the Landlord contact information.

The Tenant alleges that after she contacted the Agent for the Landlord she waited three days and was then told that no one could fumigate the rental unit for at least a week. The Tenant testified she went ahead and had a pest control company treat the rental unit on September 16, 2013, and claims **\$299.25** for this. In evidence the Tenant provided a copy of the receipt from this company. The pest company receipt, dated September 16, 2013, includes the following notes:

“Treated [subject rental unit] for bedbugs – found evidence of bedbugs of mattress and bed frame – client throwing both these items out. Treated set of drawers, desk, and baseboards. Following up at new location – client will make the address known A.S.A.P.”

[Reproduced as written.]

The Tenant testified she was also concerned about the safety in the building. She alleges she saw people passed out in the building, apparently from using drugs. She alleges she saw the building doors being left open and unlocked. The Tenant alleges that the renter in the rental unit below the subject rental unit let her dog defecate on the balcony and then not clean it up.

The Tenant acknowledged that she did not put these complaints in writing to the Landlord or the Agent. She testified she told the Agent about these events many times.

The Tenant testified that she did not feel the building was safe and she lost her right to quiet enjoyment. She testified she was forced to move out due to health and safety concerns.

The Tenant alleges that at the end of the tenancy, when the Agent was doing the outgoing condition inspection report, the Agent told her not to give him the forwarding address to return the deposit to, because he would have to do legal action and he did not like to make renters cry. She alleges he showed her court documents and that he told her these made the other renters cry when they went to court.

The Tenant claims for reimbursement for medical attention and ensuing expenses required to deal with distress, fear, panic and anxiety associated with the bedbug infestation and the way the Agent for the Landlord dealt with her at the outgoing condition inspection report. The Tenant provided three invoices, each in the amount of \$130.00 from a counselor. The invoices state the counselor provides, “consulting/coaching/counselling”. The Tenant claims **\$390.00** for these sessions.

The Tenant also claims for a bed (\$49.00), mattress (\$399.00), linen (\$50.00), winter coat (\$95.00), dress (\$25.00), sweater (\$25.00), towels (\$30.00) and books (\$50.00), totalling **\$724.00**.

In reply, the Agent for the Landlord testified that when the Tenant texted him about bedbugs he replied right away by text message. He testified that he told the Tenant to get some of the bugs to show him but when he arrived at the rental unit she informed him she threw them away.

The Agent testified that the Tenant had initially requested some 'diatomaceous earth' to put in front of the door to the rental unit. He testified he left some for her at the door of the rental unit.

The Agent for the Landlord testified that when he met on September 14, 2013, she told him she wanted to move out earlier than what the lease allowed. He testified that he offered to have the pest company that the Landlord uses to come to the rental unit. He testified that he wanted to make the arrangements for the pest company to attend, but the Tenant refused to wait.

The Agent denied telling the Tenant to not give him the forwarding address for the return of the security deposit.

The Agent for the Landlord agreed that the Landlord would pay **\$195.00** toward the pest control paid for by the Tenant, as this is what the Landlord's pest control company charges them for a rental unit of this size.

In reply, the Tenant testified that she wanted 'diatomaceous earth' to place in front of the door and that on the 14<sup>th</sup> of September she had quite a few bedbugs in a jar to show the Agent for the Landlord. She testified he took the jar and looked at it.

The Tenant testified she called the pest control company as three days had passed since the Agent told her he would come to the rental unit, and then because the Agent told her it would take a week for the Landlord's pest control company to come out. The Tenant testified that she told the Agent a week was too long. The Tenant also testified she called the pest control company the day before the Agent came to the rental unit and they informed her they could be there in three days. The Tenant testified that the Agent told her he could not come that day but would come the following day. The Tenant then alleged that the Landlord refused to give assistance to her for the bedbugs.

In reply, the Agent for the Landlord testified that according to the text messages exchanged he never said the Landlord's pest control company would come next week. The Agent alleged that the Tenant had already made the plans to have her own company do the pest treatment. The Agent submitted that the Tenant did not give the Landlord a chance to do the pest control.

The Tenant finished her submissions by explaining the bedbugs had caused her stress and anxiety and that the rental unit was unsafe and she had to leave it.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on each of the applicants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

### Landlord's Claims

I find the Tenant breached the *Act* and fixed term tenancy by ending a fixed term tenancy without authority to do so under the *Act*.

Under section 45 of the *Act* the Tenant was required to notify the Landlord in writing that she felt the bedbugs, or other problems she alleged, were so serious the Landlord was in breach of a material term of the tenancy agreement and that if the problems were not corrected within a reasonable period of time, the Tenant was going to end the fixed term tenancy. In this instance I find the Tenant failed to provide such written notice to the Landlord.

Even if the Tenant had given such a written notice to the Landlord, I do not find that requiring the Landlord to address the situation in the three days she allegedly gave the

Landlord orally, would have given the Landlord reasonable time to address the problems. Furthermore, the Tenant had insufficient evidence that the Landlord breached a material term of the tenancy agreement.

Having found the Tenant breached the Act and tenancy agreement without authority to do so, I allow the Landlord's claim for **\$477.50**, comprised of \$427.50 for half a month of rent loss and \$50.00 to recover the filing fee for the Application. I allow the Landlord to retain the security deposit of \$427.50 in partial satisfaction of the claim, and grant the Landlord a monetary order for the balance due of **\$50.00, subject to any set off with the Tenant's claims below.**

### Tenant's Claims

I dismiss the Tenant's claim for return of double the security deposit. The Landlord filed the claim against the deposit within the required time limits allowed under section 38 of the Act, and the deposit would therefore not be doubled. By failing to provide a copy of the incoming or outgoing condition inspection reports to the Tenant, the Landlord may have extinguished the right to claim against the security deposit for damages only; however, here the Landlord applied against the deposit for rent which is allowable under the Act.

I allow the Tenant **\$195.00** toward the pest control paid for by the Tenant, as agreed to by the Landlord's Agent. I find that Tenant did not give the Landlord reasonable time to address the bedbug situation and the Landlord should have been given the opportunity to use the services of their own pest control company. Furthermore, I do not find this was an emergency repair as claimed by the Tenant. Emergency repairs are set out in section 33 of the Act, and these do not include bedbugs.

I note that bedbugs are an unfortunate part of living in a large city, and that it is very difficult to determine where they have come from, or who has introduced a bedbug problem in any particular building.

I also do not allow the entire cost of the Tenant's bedbug claim, as the invoice includes a follow up treatment at the Tenant's new address, i.e., "Following up at new location – client will make the address known A.S.A.P." As there is insufficient evidence as to who was responsible for the bedbugs being in the rental unit, I do not find the Landlord should pay for follow up treatments at a different building.

I further find the Tenant has insufficient evidence to prove she lost her right to quiet enjoyment of the rental unit, or that she was forced to move out due to health and safety concerns. The Tenant failed to prove the Landlord was solely responsible for the bedbugs being in the subject rental unit.

The Tenant's claims for reimbursement for medical attention alleged to be associated with the bedbug infestation are also dismissed as the Tenant provided insufficient evidence that these medical treatments were a direct result of the bedbugs, for

example, a letter from her treating doctor with a medical opinion that the bedbugs caused her ailments.

I further dismiss the claims for the personal property of the Tenant. I find the Tenant failed to prove these items were still contaminated after treatment or that she mitigated her losses, as required under section 7 of the Act, by at least trying to have these treated or cleaned prior to disposal.

Therefore, I find the Tenant is entitled to a total monetary claim of **\$220.00** comprised of \$195.00 for pest control and \$25.00 toward the filing fee for the Application. I have reduced the amount awarded for the filing fee due to the limited success of the Tenant in her Application.

#### Set Off

Having made the above findings, I order that the amounts awarded to each party be set off as follows: Tenant award of \$220.00 less Landlord award of \$50.00, the difference being \$170.00. Therefore, I grant the Tenant a monetary order in the amount of **\$170.00**

#### Conclusion

The Tenant breached the Act and a fixed term tenancy agreement by ending it without authority to do so. The Landlord has agreed to reimburse the Tenant the cost of a pest treatment to the amount that the Landlord would have paid.

After setting off the awards to each party, the Landlord is ordered to pay the Tenant the sum of **\$170.00**, and the Tenant is granted a monetary order in that amount. This order must be served on the Landlord and may be enforced in the Provincial Court of British Columbia.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: April 11, 2014

---

Residential Tenancy Branch



