



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cardinal Creek Investments Ltd. c/o Realty Executives  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with applications by both the tenant and the landlord. The tenant applied for a monetary order for the return of her security deposit, for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover her RTB filing fee. The landlord applied for a monetary order for damage to the unit, site, or property, for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and to recover the RTB filing fee.

The tenant attended the teleconference hearing and gave affirmed evidence, but the landlord did not attend. The tenant gave evidence that she personally served the landlord with the Notice of a Dispute Resolution Hearing and Tenant's Application for Dispute Resolution on January 10, 2014 by giving the documents to the staff at the property management office. I find the landlord was properly served.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The tenancy agreement signed by the parties on September 11, 2010 indicates the tenancy started September 15, 2010 and the tenant was initially obligated to pay \$650.00 rent monthly in advance on the first day of the month, and a security deposit of \$325.00. The tenant gave evidence that the rent was increased to \$674.70 effective December 1, 2013.

The tenant gave evidence that there was a rodent infestation in the rental building that caused the rental unit to become uninhabitable.

The tenant gave evidence that she first became aware of the problem in early December 2013 when she heard noises in the walls. She recognized the noises as being animals of some kind and believes they were rats because of the volume of the noise. In approximately the first week of December, she bought and installed electronic gadgets that are meant to repel rodents but they had no impact.

The tenant gave evidence that she contacted the landlord on December 9, 2013 and he told her to call the City of Prince Rupert. The tenant says she went to city hall and was told the landlord should contact the City. The tenant's evidence is that the City of Prince Rupert has a rat control program whereby the City will investigate and deal with possible rat infestations but if, on investigation, the infestation turns out to be a mouse problem rather than a rat problem, the City will charge the cost of pest control back to the landlord.

The tenant gave evidence that the landlord's handyman came to the rental property on about December 10, 2013 and put traps and poison around the rental unit. She says he advised her to wait a day or two before going to the rental unit. Accordingly, she took a few things and went to stay with her sister for a few days. She returned to the rental unit on December 13, 2013 but after an hour she could hear loud noises in the walls. Her evidence is that the animals were quite loud and it sounded as though there were several of them. She decided to go back to her sister's place.

The tenant gave evidence that she could not reach the landlord again until December 16, 2013 because the office was closed over the weekend. She says she told the landlord there was still a problem and asked him to call the city. She believes that she told the landlord on that day that she intended to move out and asked him for a refund of December 2013 rent. The landlord refused to refund her December 2013 rent and for that reason she could not rent a new place until January. The tenant's evidence is that the landlord implied the rodent infestation was her fault. She states she became frustrated with what she perceived as his unwillingness to deal with the situation and his implication that she had caused the problem, and so she swore and hung up on him.

The tenant gave evidence that she returned to the rental unit again on December 22, 2013 and slept there. She heard the rodents in the walls and ceiling again, and the next day went back to her sister's place and did not return to the rental unit again until December 31, 2013 when she picked up her belongings.

The tenant's evidence is that there was no sign anyone had been at the rental unit when she returned to pick up her belongings on December 31, 2013. The tenant states she

returned the key to the landlord on January 7, 2014. The tenant gave evidence that the landlord returned her security deposit of \$325.00 on January 10, 2014.

The rental unit is one side of a duplex. The tenant gave evidence that she never saw a rat in the house but once saw one in the backyard. The tenant gave evidence that she had noticed garbage on the other side of the duplex at the front door and on the back porch. Her evidence is that there is weekly curbside garbage pickup but she believes the neighbours on the other side of the duplex were missing pickups.

The tenant's position is that the rental unit was not habitable once the rodents infested it, because of the noise the rodents made. She states she tried to contact the RTB in December 2013 but she works Monday to Friday and was not able to wait on hold to speak with someone.

The tenant gave evidence that she could not find a new rental unit for the same price because there is a low vacancy rate in Prince Rupert. Her new rent is \$850.00.

The tenant claims a refund of her December 2013 rent of \$674.70, her RTB filing fee \$50.00, compensation for moving expenses of \$250.00, and the equivalent of one month's rent at her new rental unit \$850.00 as compensation for the fact that she had to move to a more expensive rental unit. The tenant says she had friends and family help her move and she gave a total of \$250.00 to various people for their assistance and gas money. The tenant's total claim is \$1824.50.

### Analysis

Since the landlord did not attend the hearing to advance the landlord's application, the landlord's application is dismissed.

According to Section 32(1) of the Act:

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 the tenant.

Where a landlord breaches his or her obligations under Section 32, and the tenant sustains loss or damage as a result of the breach, the landlord may be required to compensate the tenant for that loss or damage.

I accept the undisputed evidence of the tenant regarding the rodent infestation. However, the period of time between when she first made the landlord aware of the problem (December 9, 2013) and when she states she decided to move out (December 16, 2013) was only one week. I am unable to find that the landlord breached his obligations to maintain the residential property when the tenant only gave him one week to do so. According to the tenant's evidence, the landlord took some steps to deal with the problem during that week, however those steps were unsuccessful. There is insufficient evidence to know whether the landlord took further steps, such as contacting the City of Prince Rupert, after December 16, 2013 because the tenant was only at the rental unit for one night after that date.

Since I do not find that the landlord breached his obligations under Section 32, the landlord is not liable to refund the December 2013 rent or to compensate the tenant for her moving costs and increased rent. Accordingly, the tenant's application is dismissed.

### Conclusion

The landlord's application is dismissed. The tenant's application 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 07, 2014

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Residential Tenancy Branch

