



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC RP LAT FF

### Preliminary Issues

At the outset of this hearing the Landlord testified that the Tenant had made an error and had reversed the rental unit address with his address on her application for dispute resolution. He submitted that the rental unit is a legal basement suite and is registered with the municipality as the address beginning with # 2461, which is listed on the tenancy agreement as the rental unit address. The Landlord argued that his residence is located in the upper floor and has been assigned the municipal address beginning with #2459. The Landlord stated that Canada Post delivers the mail to both addresses by placing mail into one mailbox that is attached to the front of the house and has both addresses written on the mailbox.

The Landlord stated that the Tenant had also spelled his daughter's name incorrectly when listing her as respondent to this dispute. The Landlord requested that all information be corrected on this application.

The Tenant testified and argued that the address had been removed from her rental unit and she was adamant that the tenancy agreement listed 2459 as the rental unit address.

Upon consideration of the foregoing and the tenancy agreement submitted by the Tenant, I accept the Landlord's submission that errors had been made on the Tenant's Application for Dispute Resolution. Accordingly, the style of cause and *Residential Tenancy Branch (RTB)* case management system have been amended to reflect the correct addresses and spelling of the Landlord's daughter's name, pursuant to section 64(3)(c) of the Act.

During the hearing the Tenant provided her new service address, as listed on the front page of this decision.

## Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on August 25, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,139.00; to order the Landlord to make repairs to the unit site or property; to authorize the tenant to change the locks; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony.

The Landlord confirmed receipt of the Tenant's evidence but argued that it was delivered too late. He stated that the evidence was placed inside his mail box on Saturday October 25, 2014.

The RTB Rules of Procedure # 2.5 provides that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch a detailed calculation of any monetary claim being made; a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and copies of all other documentary and digital evidence to be relied on at the hearing.

The RTB Rules of Procedure # 3.11 stipulate that evidence must be served to the other party and submitted to the RTB as soon as reasonably possible. If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

In this case, the Tenant complied with Rule # 2.5 as she submitted her evidence to the RTB on August 25, 2014, the same date she filed her application for dispute resolution; however, the Tenant delayed in serving her evidence to the Landlord until October 18, 2014, two days prior to the hearing. Despite being given fact sheets and information about the service of evidence at the time she filed her application, the Tenant argued that she delayed in serving her evidence to the Landlord because she was not trained in matters pertaining to the law.

Based on the above, I find the Tenant provided insufficient evidence to support the reasons why she delayed serving her evidence to the Landlord. Accordingly, I refused to consider the Tenant's documentary evidence. I did consider the Tenant's oral testimony.

The Landlord testified that he served copies of his evidence to the Tenant on October 9, 2014 by posting the evidence to the Tenant's door. Based on the foregoing, I find the Landlord served his evidence in accordance with section 88 of the Act, and that evidence will be considered in my decision if it relevant to these matters.

During the hearing each party was given the opportunity to provide their evidence orally, and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a six month fixed term tenancy that commenced on May 1, 2014 and was scheduled to end October 31, 2014. The Tenant was required to pay rent of \$860.00 on the first of each month and on or before May 1, 2014 the Tenant paid \$430.00 as the security deposit.

The Tenant testified that she was seeking \$3,139.00 to cover the costs of her furniture, clothing, and possessions she had to leave behind in the rental unit because they were infested with ants, fleas, and bedbugs. She was also seeking to recover costs incurred to pay for her move and for the deposits at her new residence.

The Tenant submitted that on or around August 2, 2014, she and her son were served a 1 Month Notice to end tenancy for cause which required them to vacate the unit by September 30, 2014. She stated that they moved out September 30, 2014, leaving their possessions and clothing behind because of the presence of bedbugs, fleas, and ants. She submitted that she could not take her furniture or clothing because of the presence of fleas and bedbugs and argued that bedbugs can never be fully removed because they can lay dormant for years in baseboards and electrical outlets.

The Tenant stated that they did not tell the Landlord they were moving out, that they decided to leave their possessions behind, and they did not return the keys. The Tenant submitted that the keys were lost in the move. The Tenant could not say for certain which date her son left the rental unit but she said they were both gone by September 30, 2014.

The Landlord testified that the Tenant had told him sometime back in August that she had bedbugs. He stated that he told her that if she now had bedbugs then she must have brought them into her unit because they have never had bedbugs in that unit or any other unit at that property. He noted that the Tenant had left a mattress and box spring outside by the alley and suggested that it was the source of the bedbugs.

The Landlord submitted that he had posted a notice of entry and when he entered the unit 24 hours later on approximately October 3, 2014, he found the unit scattered with furniture, clothing, and with food left inside the refrigerator. He sought confirmation that the Tenant completely moved out so he could regain possession and re-rent the unit. The Landlord stated that he had a hearing in a day or so to hear matters pertaining to his application.

The Tenant stated that she was aware of the upcoming hearing. The Tenant was very clear that she did not want any of the possessions that had been left at the rental unit. She clarified that she had not had any problems with fleas, ants, or bedbugs when she first moved into the unit in May 2014 and clarified that her son did not occupy the rental property until July 2014 when he was there to house sit when the Tenant went on vacation. The Tenant argued that the first time she told the Landlord, in writing, about the bedbugs, was near the beginning of August 2014, which is when he refused to treat her unit. She could not remember if she told the Landlord about the bedbugs before or after she was served with the 1 Month Notice.

In closing, the Tenant stated that she had not contacted a pest control company to find out how much it actually cost to treat bedbugs and/or fleas. She argued that she had no choice but to simply walk away from the rental unit, leaving furniture and clothing behind instead of paying for treatment, because bedbugs can never be completely killed or removed.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

In this case the evidence supports that fleas, ants, and bedbugs were not present at the onset of this tenancy in May 2014. Rather, the evidence supports the presence of such insects was not noticed until August 2014, shortly after the Tenant's son moved into the unit in July 2014.

Although bedbugs may lay dormant for a period of time, fleas are not known to be dormant. Given the ability of bedbugs and fleas to jump from one article to another and to travel with unsuspecting hosts, I cannot determine with any certainty whether the bedbugs and fleas were resident at the beginning of the tenancy or they came later. In addition, the Landlord submitted that the previous tenant who occupied the same unit, and all other occupants of the building, have made no mention of bed bugs or fleas. Therefore, I find there is insufficient evidence to prove the Landlord breached the Act, regulation or tenancy agreement.

In determining the Tenant's claim I must consider if the Tenant did whatever is reasonable to minimize her damage or loss. In matters such as these, I find a reasonable person would have taken action to remediate the situation by either contacting a pest control company to obtain an estimate and/or to schedule pest control treatment of the rental unit or seek assistance from the RTB to have the Landlord arrange for pest control. The Tenant simply made a choice to abandon all of her possessions, leaving her clothing, furniture, and food behind, expecting the Landlord to compensate her in the amount of \$3,139.00.

Based on the above, I find the Tenant did not take reasonable steps to mitigate her loss. Accordingly, I dismiss the Tenant's claim in its entirety, without leave to reapply.

The Tenant has not succeeded with their application; therefore, I declined to award recovery of the filing fee.

#### Conclusion

I HEREBY DISMISS the Tenant's claim, without leave to reapply.

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: October 21, 2014

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Residential Tenancy Branch

