



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hollyburn Estates Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, MNDC, MNR, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on August 5, 2014 for:

1. A Monetary Order for compensation – Section 67;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. An Order to retain the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on January 6, 2015 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order for the return of the security deposit – Section 38.

The Tenant and Landlords were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Preliminary Matter

The Landlord named as AP in the application states that she is only an employee of the Landlord and requests that the application be amended to remove her name. The Tenant has no objection to any monetary order issued in favour of the Tenant naming only the Landlord company and not the employee. Given the Tenant’s consent in relation to a monetary order, if successful, only as against the Landlord company, I decline to amend the application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on February 3, 2014 on a one year fixed term to February 28, 2015. The tenancy ended on July 31, 2014. Rent of \$1,570.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$785.00 as a security deposit and \$50.00 as a fob deposit. The tenancy agreement provides for liquidated damages of \$300.00 and the Tenant does not dispute this claim. The Tenant provided its forwarding address on the move-out inspection.

The Landlord states that the unit was advertised on July 8, 2014 at a rental rate of \$1,660.00 and was filled on August 15, 2015. The Landlord claims lost rental income for the period August 1 to 14, 2015.

The Tenant states that he ended the tenancy due to the presence of bedbugs discovered in the unit late April 2014. The Tenant states that he was extremely allergic to the bites and that although the Landlord was treating the unit for the bugs, the Tenant could not tolerate living in the unit due to his physical reaction to bedbugs, his elderly age, his deteriorating eyesight, emotional stress and fear of more bites. The Tenant states that the bites caused his eye to swell. The Tenant provided a witness letter of the eye swelling and a physician's note that the Tenant experienced an allergic reaction to insect bites. The Tenant claims \$25,000.00 for physical and mental suffering.

The Landlord states that as soon as the bugs were reported the Landlord inspected and treated the unit. The Landlord states that a follow-up inspection did not show any bugs remaining. The Landlord states that the adjoining units were also inspected and no bugs were found. The Landlord states that the Tenant prevented a follow up and proactive treatment to the unit. The Landlord states that they never saw any allergic

reactions by the Tenant and argues that the Tenant has not provided any supporting evidence of mental or physical suffering. The Landlord provided documentary evidence of the timelines and treatments and argues that they were not negligent in their response to the presence of the bugs and are not responsible for the Tenant's claimed injuries.

### Analysis

Section 7 of the Act provides that where a tenant or landlord does not comply with tenancy agreement, the tenant or landlord must compensate the other for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Although the Tenant ended the tenancy earlier than allowed under the tenancy agreement given that the Landlord advertised the unit for a higher rent than was being paid by the Tenant I find that the Landlord failed to mitigate its losses and I dismiss the Landlord's claim for lost rental income. As the Tenant has not disputed the claim for liquidated damages, I find that the Landlord has substantiated its claim to **\$300.00**. Deducting this amount from the security deposit of \$785.00 plus zero interest leaves **\$485.00** owed to the Tenant. I also find that the Tenant is entitled to return of the **\$50.00** fob deposit. As the Landlord's application has met with no success beyond the undisputed portion of the application, I decline to award recovery of the filing fee.

Accepting the Landlord's undisputed evidence that the unit was treated and considering the Landlord's supporting evidence of the timelines for reporting and treating the bugs, I find that the Tenant has not substantiated on a balance of probabilities that the Landlord acted negligently or caused the unit to have bedbugs. Further, while the presence of bedbugs could reasonably be found to be disturbing, the Tenant provided no supporting evidence of mental disturbance and very weak evidence of physical injury to justify the

amount of damages being sought. I therefore dismiss the Tenant's claim for compensation.

Conclusion

I Order the Landlord to retain \$300.00 from the security deposit plus interest of \$785.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$535.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 27, 2015

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Residential Tenancy Branch

