



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Maude, Mackay & Co. Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      MNSD, MNDC, FF

### Introduction

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

The Landlord applied on February 13, 2015 for:

1. An Order to retain the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on February 18, 2015 for:

1. A Monetary Order for compensation - Section 67;
2. An Order to return the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

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

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed, including the security deposit?

Is the Landlord entitled to retain the security deposit?

Are the Parties entitled to recovery of their respective filing fees?

### Background and Evidence

The tenancy started on November 1, 2014 on a fixed term to end on October 31, 2015. Rent of \$1,530.00 was payable monthly and at the outset of the tenancy the Landlord collected \$750.00 as a security deposit. The Parties mutually conducted a move-in inspection and completed a condition report. On January 6, 2015 the Tenant gave notice to end the tenancy for January 9, 2015 and moved out of the unit.

The Landlord states that after providing two opportunities for a move out inspection the Tenant failed to attend for a mutual inspection. The Landlord states that the requests were made by email as that is the method the Parties communicated through during the tenancy. The Landlord states that a call was also made on January 22, 2015 and that a message was left for an inspection. The Landlord states that the move-out inspection was conducted by the Landlord on January 23, 2015. The Landlord provided copies of emails dated January 14 and 15, 2015 to the Tenant's Agent requesting an inspection for either the day of the email or the day after. The Landlord claims return of the security deposit. The Landlord states that the Tenant failed to clean the unit, left damages to the unit and agreed to the payment of liquidated damages. The Landlord limits its claims to costs for the damages to the amount of the security deposit.

The Tenant states that no emails were received by the Tenant for the move-out and that on January 8, 2015 the Tenant texted the Landlord but received no response.

The Tenant states that mice were found in the unit around December 20, 2014 and that this was reported immediately to the Landlord. The Tenant states that a pest control company attended and laid traps. The Tenant states that the company returned a few days later and told the Tenant that another unit on the second floor was also having problems with mice. In January 1 or 2, 2015 the Tenant found another mouse in the unit and notified the Landlord. The Tenant states that remaining in the unit was no longer tolerable so the Tenant moved out.

The Tenant states that the unit was always kept clean and that nothing about the Tenant's cleaning habits was the cause of the mice. The Tenant states that mouse dropping were all over the living room, bathroom, storage and cupboards and that the Landlord told them that the Landlord would take care of cleaning the areas with droppings. The Landlord confirmed that mouse droppings were present in the unit at move-out and that the cleaning company would not clean these areas of the unit so the Landlord did this cleaning.

The Tenant states that the presence of mice resulted in a lack of sleep, stress and emotional harm as the Tenant was afraid of mice. The Tenant states that the kitchen became unusable. The Tenant claims refund of January 2015 rent, the return of the security deposit and \$2,000.00 for mental stress in relation to the rodent infestation.

The Landlord states that the Landlord did agree to clean the areas with mouse droppings. The Landlord states that the Landlord acted immediately to address the problem, that the other unit infested with mice was on the same floor as the Tenant, that the building had its own pest control company and that the problem was just a single unit issue. The Landlord states that the Strat took responsibility for two units that required pest control. The Landlord states that the unit was rented for February 2015. The Landlord states that the Tenant has not substantiated any pain and suffering, that seeing a mouse does not constitute the amount of damages claimed and that the Tenant was not in the unit for some time.

### Analysis

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results.

Based on both the Tenant's and Landlord's evidence I find that mice were in the unit. The Landlord's evidence of the cleaning undertaken at the end of the tenancy supports the Tenant's evidence of the extent of mice in the unit. While there is no doubt that the Landlord called a pest control company as soon as possible after being informed of the problem, there is still no doubt in my mind that this effort was insufficient as the mice continued to remain in the unit causing the Tenant significant discomfort and loss of use of the unit for at least a period of two weeks. I do not find that the presence of mice for two weeks justified an end to the tenancy without sufficient notice and for this reason I find that the Tenant has only substantiated compensation for her loss in the amount of **\$750.00**. Given the lack of any psychological or medical evidence to support the pain and suffering claim, I find that the Tenant has not substantiated this claim and I dismiss it.

Section 35 of the Act provides that at move-out a landlord and tenant must together inspect the condition of a rental unit. Section 36 of the Act provides that the right of a tenant to the return of a security deposit is extinguished if the landlord has given two opportunities for inspection

and the tenant has not participated on either occasion. Although the Tenant's Agent denies receipt of email requests for a move-out inspection, I prefer the Landlord's evidence that both emails and a phone message were left asking about the inspection. As a result, I find that the Landlord has substantiated that the Tenant's right to return of the security deposit has been extinguished and that the Landlord may retain the security deposit of **\$750.00** plus zero interest. As the Landlord has limited its claim to costs for damages by this amount, it is not necessary to consider these claims.

As each Party has been found entitled to equivalent amounts, I decline to award recovery of the filing fees and I find that each Party's claims are satisfied.

#### Conclusion

The Landlord's entitlement is equivalent to the Tenant's entitlement and each are set off against the other in full satisfaction of the claims.

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: April 27, 2015

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Residential Tenancy Branch

