



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEWPORT PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*") 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, to keep all or part of the security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the "agent"), a property manager for the landlord, and the tenant appeared at the start of the teleconference hearing on October 28, 2015. The hearing was adjourned to January 6, 2016 at 11:00 a.m. to allow for additional time to consider all of the evidence. The tenant; however, failed to attend at the reconvened hearing. As a result of the tenant failing to attend the entire proceeding, I find the landlord's application to be undisputed.

An Interim Decision was issued dated October 28, 2015, which should be read in conjunction with this Decision. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began initially began on or about December of 2006. The agent testified that each year, a new one-year fixed term tenancy was entered into by the parties with the most recent fixed term running from October 1, 2014 to October 1, 2015. The tenant vacated the rental unit contrary to the terms of the fixed term tenancy on May 31, 2015. Monthly rent in the amount of \$1,010.00 plus \$25.00 parking for a total of \$1,035.00 for rent plus parking was due on the first day of each month. A security deposit of \$447.50 was paid by the tenant on November 6, 2006, which the landlord continues to hold.

The landlord's monetary claim is for \$5,866.10, which the tenant confirmed he understood during the hearing as the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Mary's Tailoring (labour for replacement drapes)	\$745.00
2. Parry's Hauling #13973	\$129.95
3. Parry's Hauling #13981	\$81.90
4. Victoria Pest Control #29025	\$141.75
5. Victoria Pest Control #29042	\$2,047.50
6. Cleaning costs	\$200.00
7. Repairs to walls and touch-up painting	\$500.00
8. Loss of June 2015 and July 2015 rent due to bed bug infestation and condition of rental unit (comprised of 2 months at \$1,010.00 per month)	\$2,020.00
<b>TOTAL</b>	<b>\$5,866.10</b>

The landlord submitted a copy of the condition inspection and photographs of the rental unit in evidence in support of his claim.

Regarding item 1, the landlord has claimed \$745.00 for the labour involved to repair the drapes due to what the agent described as bed bugs on the drapes. A receipt for \$745.00 was submitted in evidence.

Regarding item 2, the agent testified that they paid a hauling company \$129.95 to remove all of the items placed at the disposal bins by the tenant. The property manager testified that earlier on May 31, 2015 before the tenant vacated the rental unit the disposal bins were  $\frac{3}{4}$  empty and after the tenant removed his personal belongings, the

tenant's mattress was in the disposal bins infested with bed bugs, and that the disposal bins were overflowing with garbage bags, which was supported by the photos submitted in evidence. A receipt in the amount of \$129.95 was submitted in evidence to support this portion of the landlord's claim. The agent also referred to clause #25 from the tenancy agreement which reads in part "...Any large item to be discarded, such as furniture, must not be abandoned or placed in garbage collection areas, but must be removed from the rental property by the Tenant at the Tenant's expense...".

Regarding item 3, the agent testified that due to the tenant discarding his mattress in the disposal bin infested with bed bugs they had to hire the hauling company to dispose of the mattress in a "controlled waste" process that cost the landlord \$81.90 to ensure the tenant's mattress that was heavily infested with bed bugs was contained. A copy of a receipt for \$81.90 was submitted in evidence.

Regarding item 4, the agent testified that this portion of the landlord's claim was for \$141.75 which was divided into two parts; the first portion relating to the inspection of bed bugs in the rental unit, and the second portion relating to the encasing of the tenant's mattress that was discarded in the disposal bin that was heavily infested with bed bugs. The property manager testified that the dishwasher was also full of bed bug larvae which was supported by a photo submitted in evidence. A receipt in the amount of \$141.75 was submitted in evidence to support this portion of the landlord's claim.

Regarding item 5, the agent testified that this portion of the landlord's claim in the amount of \$2,047.50 was for bed bug thermal heat treatment and dispersal mitigation, which is supported by the receipt submitted in evidence by the landlord. The agent referred to the other four other adjoining units in the rental building that were impacted by the infestation of bed bugs that was confirmed by the pest control company as having originated in the tenant's rental unit and spread to the four other adjoining units.

Item 6, as described by the agent is for cleaning costs of \$200.00 which were estimated at the time of the landlord's application. The agent stated that the actual amount of cleaning was \$235.20 by a cleaning company K.K. & C. and provided an invoice number in evidence. The agent testified that the entire rental unit needed cleaning and that due to the carpets being replaced, the landlord was not charging the tenant for the carpets. The agents stated that the cleaning costs were comprised of eight hours at \$28.00 per hour plus taxes.

Regarding item 7, the agents testified that the landlord is seeking \$500.00 to repair the walls of the rental unit and the touch-up painting required after the walls were repaired. The agent referred to the condition inspection report and several photos in support of

this portion of their claim. The agent also stated that while the full amount of the repairs totalled \$3,071.25, they were only claiming \$500.00 of that amount.

The last item of the landlord's claim, item 8; refers to the loss of June 2015 rent of \$1,010.00 and the loss of July 2015 rent of \$1,010.00. The agent stated that while the tenant was obligated to fulfill the terms of his fixed term tenancy, the landlord was unable to mitigate their loss for June and July due to the poor condition of the rental unit including bedbug infestation, the needs for repairs, and to repaint walls and replace carpets, while also attending to other rental units where bedbugs from the rental unit had spread to and required treatment.

### Analysis

Based on details of the application and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

#### Test for damages or loss

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 what was reasonable to minimize the damage or loss.

Section 37 of the *Act* applies and states:

### **Leaving the rental unit at the end of a tenancy**

**37 (2)** When a tenant vacates a rental unit, the tenant must

**(a) leave the rental unit reasonably clean, and  
undamaged except for reasonable wear and tear,  
and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[my emphasis added]

Based on the undisputed testimony of the landlord as the tenant failed to attend the entire proceeding in response to the landlord's monetary claim, I find the tenant breached section 37 of the *Act*. In reaching this finding, I have considered the agent's testimony, condition inspection report, photos and receipts submitted in evidence by the landlord.

As a result of the above, I find the landlord has provided sufficient evidence to support items 1 through 7 of the landlord's monetary claim. Regarding item 8, I find the tenant breached section 45 of the *Act* by failing to comply with the terms of the fixed term tenancy and that the landlord was unable to minimize their loss for June and July of 2015 due to the poor condition of the rental unit and the bedbug infestation left by the tenant for the landlord to contain, treat and repair. As a result, I find that the landlord suffered a loss of \$2,020.00 as claimed by the landlord.

As the landlord's application is fully successful, I grant the landlord the recovery of the filing fee in the amount of \$100.00.

I find the landlord has established a total monetary claim in the amount of **\$5,966.10**, comprised of \$5,866.10 for items 1 through 8 described above, plus recovery of the \$100.00 filing fee. The landlord continues to hold the tenant's security deposit of \$447.50, which has accrued \$13.89 in interest since the start of the tenancy for a total security deposit plus interest amount of \$461.39.

**I authorize** the landlord to retain the tenant's full security deposit plus interest in the amount of \$461.39 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$5,504.71.

Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$5,966.10. The landlord has been authorized to retain the tenant's full security deposit including interest in the amount of \$461.39 in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$5,504.71. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless 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: January 18, 2016

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Residential Tenancy Branch

