



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF, MND

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The landlord's application is a request for a monetary Order for \$1023.75, and a request for recovery of the filing fee.

The tenant's application is a request for a monetary Order for \$2349.89, and a request for recovery of the filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

### Issue(s) to be Decided

The issue is whether or not the landlord or the tenant has established monetary claim against the other, and if so in what amount.

### Background and Evidence

The parties agree that this tenancy began on April 1, 2015 for a fixed term of one year, expiring March 31, 2016, and with a monthly rent of \$810.00 due on the first of each month.

The parties also agree that the tenant paid a security deposit of \$405.00 prior to the beginning of the tenancy.

The parties also agree that the tenant vacated the rental unit on November 30, 2015.

The landlord testified that the tenant broke the fixed term lease and as a result the tenant is liable for the agreed-upon \$810.00 fee for the landlord to re-rent the unit.

The landlord also testified that the tenant claimed to have bedbugs in a rental unit and therefore he paid to have a pest-control specialist inspect the rental unit; however the pest-control specialist found no dead or alive bedbugs in the rental unit, and therefore he believes the tenant should reimburse him the cost of the pest-control inspection, in the amount of \$78.75.

The landlord also testified that the tenant had agreed to pay for carpet cleaning and failed to do so and therefore he is also requesting a further \$135.00 for carpet cleaning.

The landlord is also requesting recovery of his \$50.00 filing fee.

Therefore the total amount claimed by the landlord is as follows:

lease breaking/re-renting fee	\$810.00
Pest-control cost	\$78.75
Carpet cleaning	\$135.00
Filing fee	\$50.00
Total	\$1073.75

The tenant testified that it was her belief that she had the right to end the tenancy because the landlord failed to treat the rental unit for bedbugs even though she was getting frequently bitten by bedbugs.

The tenant further testified that she reported the problem with bedbugs to the landlord in September 2015; however the landlord refused to do anything about it, and therefore she felt she had no option other than to move out of the rental unit.

The tenant further stated that she is requesting an Order for the return of double her security deposit less the \$135.00 cost of carpet cleaning, to which she agreed, because the landlord did not return her deposit within one month of the end of the tenancy.

The tenant further stated that she wishes to claim the cost of dump fees for having to dispose of some of her furniture for fear of spreading the bed bug infestation to her new premises.

The tenant further stated that she is also requesting an Order for the landlord to pay for the cost of bed bug proof mattress covers.

The tenant also testified that since the landlord refused to deal with the bed bug infestation she was unable to stay in the rental unit from October 10 right through to the end of November 2015 when she finally moved the remainder of her belongings out of the rental unit.

The tenant further testified that the landlord refused to give proper notice of entry when showing the rental unit and therefore she also did not feel comfortable living in the rental unit in the month of November 2015, for fear that the landlord could walk in on her at any moment.

The tenant is therefore requesting a monetary Order as follows:

double security deposit less carpet cleaning cost	\$675.00
Dump fees	\$93.88
Bed bug proof mattress covers	\$222.30
Return of October 2015 rent from October 10-31	\$548.71
Return of November 2015 rent	\$810.00
Filing fee	\$100.00
Total	\$2449.89

In response to the tenants testimony the landlord testified that he does not believe that any of the tenants claim is justified as no bed bugs were ever found in the rental property.

The landlord further testified that even if there were a problem with bedbugs it was unreasonable for the tenant to buy her bed bug proof mattress covers from the United States at an inflated cost when they are available here in Canada for much less. The landlord further testified that he believes he did give the tenant proper notice whenever entering the rental unit, and besides the tenant was not living in the rental unit anyway due to the claim of bed bug infestation.

The landlord further stated that he believes that the tenant simply made up the claim of bedbugs in Order to get out of the fixed term lease, he even questions the tenants Doctors note as that doctors practice is no longer in service and the doctor has retired.

The landlord further testified that a new tenant moved into the rental unit and even though there has been no treatment for bedbugs that new tenant has live there without any evidence of having been bitten by bedbugs whatsoever.

### Analysis

It is my finding that the tenant has not met the burden of proving that she had grounds to end this tenancy prior to the end of the fixed term.

The tenant has alleged that her unit was infested with bedbugs; however she has provided insufficient evidence to support that allegation.

No bed bugs, either alive or dead, were found by the pest-control professional during the inspection, and there is no evidence to show that the new tenant has ever received any bed bug bites.

The photo evidence presented by the tenant is inconclusive because, although it shows spots on her furniture there is no proof been provided to show that was caused by a recent bed bug infestation.

Therefore it is my decision that I will allow the landlords claim for the lease breaking/re-renting fee, the pest-control charge, the carpet cleaning charge, and for recovery of the \$50.00 filing fee.

Therefore the total amount of the landlords claim that I have allowed is as follows:

lease breaking/re-renting fee	\$810.00
Pest-control cost	\$78.75
Carpet cleaning	\$135.00
Filing fee	\$50.00
Total	\$1073.75

As it's my finding that the tenant has not met the burden of proving that there was that I bed bug infestation at the rental unit I deny the following portion of the tenants claim:

dump fees	\$93.88
Bedbug resistant mattress covers	\$222.30
Return of October rent	\$548.71
Total	\$864.89

Further, I will not allow the tenants claim for return of double the security deposit because the landlord applied for dispute resolution within 10 days of the end of the tenancy and therefore the Act would not require that a security deposit be doubled.

With regards to the claim for return of November 2015 rent however, it's my decision that I will allow the claim for return of 50% of the rent for a total of \$405.00, because the landlord did not give the tenant the proper notice of entry required under the Residential Tenancy Act, and, in fact, stated to the tenant that because number 7 in their addendum to the tenancy agreement states *"It is agreed that upon giving written notice to the landlord, the landlord will advertise and show the suite on a daily basis until the suite has been rented"*, that they had no need to give any further notice to enter and would not do so.

Section 29 of the Residential Tenancy Act states:

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

This section very clearly states that the landlord must give at least 24 hour written notice of each entry and it does not allow a blanket notice that covers a whole month period.

This therefore would be considered as a substantial loss of quiet enjoyment because the tenant would never know when the landlord would be entering, even if the tenant had decided not to live in the rental unit as she still had the right to exclusive possession.

Having allowed a portion of the tenant's claim I also allow 50% of the tenants filing fee.

Therefore the total amount of the tenant's claim that I have allowed is as follows:

Security deposit less the hundred and \$135.00 deduction the tenant agreed to	\$270.00
November 2015 rent rebate	\$405.00
One half filing fee	\$50.00
Total	\$725.00

### Conclusion

I have allowed the landlords full claim of \$1073.75, and I have allowed \$725.00 of the tenants claim. I have therefore set off the \$725.00 against the \$1073.75 and pursuant to section 67 of the Residential Tenancy Act I have issued an Order for the tenant to pay the landlord \$348.75.

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: June 27, 2016

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Residential Tenancy Branch