



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HEATHER PARK PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants under the *Residential Tenancy Act* (the “*Act*”) for a monetary order in the amount of \$4,915.14 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants and two agents for the landlord (the “agents”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the relevant evidence is provided below and includes only that which is relevant to the matters before me. The hearing commenced on June 28, 2016 and after 63 minutes, the hearing was adjourned to allow additional time to hear the evidence from both parties. An Interim Decision was issued dated June 28, 2016 which should be read in conjunction with this Decision. On August 26, 2016 the hearing reconvened and after an additional 90 minutes of testimony the hearing concluded.

Neither party raised any concerns regarding the service of documentary evidence.

### Issue to be Decided

- Have the tenants provided sufficient evidence to prove that they are entitled to compensation under the *Act*, regulation or tenancy agreement, and if so, in what amount?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 1, 2014 and ended when the tenants vacated the rental unit on

July 31, 2015. Monthly rent of \$850.00 was due on the first day of each month during the tenancy.

The tenants' monetary claim of \$4,915.14 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
Item 1. 35% rent reduction for full duration of tenancy (calculated at \$850.00 per month – 35% x 9 months)	\$2,677.50
Item 2. Replacement cost of sofa bed	\$894.88
Item 3. Replacement cost of mattress	\$390.88
Item 4. Bed frame	\$156.79
Item 5. Bed bug oven	\$311.57
Item 6. Steam cleaner	\$359.53
Item 7. Bed bug traps	\$24.99
Item 8. Bed bug traps (additional)	\$24.99
Item 9. Encasements	\$74.01
<b>TOTAL</b>	<b>\$4,915.14</b>

#### Settlement Agreement

During the hearing, the parties agreed to a mutually settled agreement on item 9, Encasements in the amount of \$74.01. As a result, item 9 will be accounted for later in this Decision. The settlement agreement between the parties was reached in accordance with section 63 of the *Residential Tenancy Act*.

#### Evidence Related to Remaining Items of Tenants' Claim

Item 1 - The tenants are claiming for a retroactive rent reduction of 35% for the entire duration of the tenancy as according to the tenants, they were not able to fully use the suite due to bedbugs. The tenants confirmed that they first advised the landlord of bedbugs on November 18, 2014 via text message. The tenants confirmed that they did not have tenants' insurance and have never carried tenants' insurance. The tenants also confirmed that they do not currently have tenants insurance.

The tenants stated that on November 20, 2014 the tenants had a conversation by phone with an agent for the landlord P.T. and that steam cleaning was recommended to the tenants. The tenants stated that they originally purchased a steam cleaner at either

the end of November or beginning of December and had to return it as it stopped working from what the tenants allege was overuse. The tenants purchased a new steam cleaner in late April 2015.

On January 23, 2015, the tenants claim they saw another bed bug and the agent for the landlord P.T. requested a photo so she could forward that to the pest control company. The tenants claim they sent photos by email on January 23, 2015. The tenants stated that they did not hear back from agent P.T. until February 8, 2015. On February 9, 2015 pest control was contacted by the agents and on February 11, 2015 an inspection was completed. Following the inspection, on February 16, 2015 the pest control company attended and treated the rental unit which was paid for by the landlord. The agents stated that all treatment costs have been provided by the landlord.

The tenants stated they could not recall the next date but claimed there were additional bed bugs after February 16, 2015 which resulted in the next treatment of the rental unit on March 10, 2015. On April 22, 2015, the tenants stated they found more bed bugs and advised the landlord via text message and got a response the next day although the next treatment was not until July 6, 2015. In July of 2015, the tenants stated they found bed bugs in the hallway near a different rental unit. On July 14, 2015 the entire floor and hallways were treated for bed bugs by the landlord. The agents testified that each rental unit is dealt with individually and that the tenants were the first in the building to complain about bed bugs and that the male tenant indicated to the agents that he was concerned that they brought them with them although the agents are not blaming anyone for the presence of bed bugs in the building. Of note, the agents stated that since the tenants have vacated the rental unit, there have been no further incidents of bed bugs in the building.

The rental unit is part of a 1970's building and the agents testified that this was the first time they had to treat for bedbugs. The agents stated that in April 2015, the tenants would not allow treatment for bed bugs in the rental unit as they had a cat and everyone with pets had to be out of the rental unit for 4-5 hours when the units were treated. The tenants deny that they refused treatment in April 2015.

Both parties referred to emails and photos submitted in evidence and provided testimony regarding the issue of bed bugs in the rental unit and the various forms of communication with some being via text, others by email and the agents stating that phone calls were also part of the communication between the parties.

The tenants referred to a May 31, 2015 photo showing bed bug treatment powder (the "powder") around outlets to kill any bed bugs entering through outlet areas. On June 4,

2015, the tenants stated that found a bed bug in the hallway and referred to a photo of a bed bug trap that caught a bed bug after the trap was set in the hallways for one night. The agents stated that they did not receive the May 31, 2015 photos evidence until after the tenants vacated the rental unit and served their claim for compensation in December 2015.

Regarding the list of bed bugs treatments the parties agreed on the following:

1. February 16, 2015 – rental unit and both neighbouring units
2. March 10, 2015 – five units including the rental unit.
3. July 6, 2015 – three units including rental unit
4. July 14, 2015 – the entire floor and hallway which included the rental unit

Of note, on April 29, 2015 the agents referred to a document where the male tenant refers to the bed bug powder and indicates that it seems to be working. The agents also referred to a June 19 text message where the tenants were asked how things were going and the next response from the tenant was their notice to vacate the rental unit dated June 30, 2015 with a move-out date scheduled for July 31, 2015.

The agents referred to a text message dated April 29, 2015 from the tenants asking if the pest control company rents out bed bug heaters and yet the next day the tenants purchased a bed bug oven online. The agents' position is that one day is not enough time to respond to the tenants and that they simply acted on their own. The agents testified that the landlord ultimately spent over \$2,000.00 of a larger version of a bed bug heater that the tenants could have used at no cost to them however the tenants made the decision to instead throw out their personal belongings and vacate the rental unit. The agents stated that even though the tenants disposed of their bed bug infested items in the dumpster which cost the landlord extra money in disposal fees, they returned the tenants' security deposit in full.

Item 2 – The tenants have claimed \$894.88 for this portion of their claim for the replacement of a sofa bed. The agents stated that they were not notified of this claim until almost six months after the tenancy ended and the tenants made the decision to throw their sofa bed away and place it in a dumpster. The agents stated that steam cleaning and other treatments can be used to treat furniture to avoid having to throw it away. The tenants deny having had bedbugs previously however earlier stated that they were worried that they may have brought them into the building which the agents claim is contradictory. The tenants provided an online quote in the amount of \$894.88 in support of this portion of their claim and a copy of the original pickup slip for the sofa bed dated in 2013.

Item 3 – The tenants have claimed \$390.88 for this portion of their claim for the replacement cost of a new mattress. The tenants did not submit an original receipt and stated that their mattress was approximately 10 years old. The agents referred to a photo submitted in evidence which showed the mattress being inside a bed bug encasement and that nothing can get in or out of those encasements. The tenants stated that they did not want to keep the mattress to avoid the chance of bringing bed bugs to their new rental unit when they moved.

Item 4 – The tenants have claimed \$156.79 for this portion of their claim for the replacement cost of their bed frame. The tenants confirmed that they did not have an original receipt for a bed frame but did agree that the bed frame was metal. The agents stated that bed bugs were unable to penetrate a metal bed frame. The tenants responded by stating that the bed frame had hollow tubing where bed bugs could live, to which the agents responded by stating that the tubing could have been steam cleaned, hosed off, etc.

Item 5 – This portion of the tenants' claim is for \$311.57 and relates to a bed bug oven. The agents stated that the tenants asked them on April 29, 2015 if the pest control company would rent out a bed bug heater/oven, and the next day the tenants purchased a bed bug oven online. The agents stated that one day is not a reasonable amount of time to respond to the tenants before they decide to purchase an item such as a bed bug oven and hope to be compensated for it. Furthermore, the agents stated that the landlord spent over \$2,000.00 on a larger bed bug heater but by the time it arrived the tenants had already vacated the rental unit.

Item 6 – The tenants have claimed \$359.53 for the cost of a steam cleaner. The tenants referred to a fact sheet submitted in evidence that recommends steam cleaning for bed bugs and indicated that in the text message communications between the tenants and the landlord that steam cleaning was recommended when bed bugs were first discovered. The agents testified that the tenants did not ask the landlord if there was a steam cleaner that they could use. The agents testified that they have a steam cleaner available for tenants to use but were not asked for it. The position of the landlord is that the tenants could have minimized their loss if they had asked to borrow a steam cleaner instead of buying one on their own and then seeking compensation for it after the tenancy ended. A receipt was submitted in evidence by the tenants.

Items 7 and 8 – These items claimed by the tenants both relate to bed bug traps at the cost of \$24.99 for item 7 and \$24.99 for item 8. The tenants provided photographic evidence in support that bed bug traps were used by the tenants in the rental unit. The

agents did not agree to this portion of the tenants' claim as the agents stated that bed bug traps are provided by the pest control company and instead of using traps from the pest control company the tenants made the decision to purchase their own traps and then claim for them after the tenancy ended. The agents stated that the tenants were not expected to purchase their own bed bug traps regardless of how the bed bugs were introduced into the building. Receipts for these items were submitted in evidence by the tenants.

Item 9 – As mentioned above, the parties reached a settlement agreement regarding this portion of the tenants' claim in the amount of \$74.01 for encasements.

### Analysis

Based on the documentary evidence and the 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.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**Items 1 to 4** - The tenants have claimed for a 35% retroactive rent reduction for the entire duration of the tenancy due to bed bugs in the rental unit. In addition, the tenants have claimed \$894.88 for the replacement of their sofa bed, \$390.88 for the replacement cost of their mattress and \$156.79 for the replacement cost of their bed frame. Firstly, after considering the evidence before me, I am not satisfied that the tenants have provided sufficient evidence that the landlords breached the *Act* and have failed to meet part one of the four part test described above. Secondly, I find the tenants failed to meet part four of the four part test for damages or loss by failing to have tenants' insurance which would have minimized their loss. The landlord is not the tenants' insurer. Therefore, I find that the tenants breached section 7 of the *Act* which states:

**Liability for not complying with this Act or a tenancy agreement**

**7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

**(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.**

[my emphasis added]

Based on the above, **I dismiss** items 1 to 4 of the tenants' claim due to insufficient evidence.

**Items 5 to 8** – These portions of the tenants' relates to a claim for the cost of a bed bug oven, steam cleaner and bed bug traps. Consistent with my find regarding items 1 to 4 above, I find the tenants failed to minimize their loss by providing the landlord sufficient time to respond to their question about whether the pest control company rents out bed bug ovens and decided to purchase a beg bug oven before a response from the landlord was received. I also find that the tenants failed to ask if the landlord had a steam cleaner they could borrow, which the agents confirmed was available for tenant use and did not have to be purchased by the tenants. I have also considered the undisputed testimony of the agents that the pest control company would provide bed bug traps for tenants and that they were not expected to purchase their own. Therefore, **I dismiss** these portions of the tenants' claim due to insufficient evidence.

**Item 9** – Pursuant to section 63 of the *Act* the parties reached a mutually settled agreement in the amount of \$74.01 for encasements. The tenants are awarded a monetary order pursuant to section 67 of the *Act* in the amount of **\$74.01** as a result.

Other than item 9 which was resolved by way of a mutually settled agreement, the tenants' claim did not have merit. Therefore, I decline to grant the tenants the recovery of the cost of the filing fee.

### Conclusion

Other than item 9 which was resolved by way of a mutually settled agreement between the parties, the tenants' claim fails.

I order the parties to comply with their mutually settled agreement regarding item #9 above in the amount of \$74.01 to be paid by the landlord to the tenants.

Pursuant to section 67 of the *Act* I grant the tenants a monetary order in the amount of \$74.01. Should the landlord fail to pay the tenants the amount of \$74.01, the landlord must be served with the monetary order and the monetary order 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: September 19, 2016

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Residential Tenancy Branch