



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on May 24, 2016 for monetary compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement. The Tenant also applied to recover the filing fee.

The Tenant, the Tenant’s legal counsel, an agent for the Landlord, and the property manager to the corporate Landlord appeared for the hearing. All the parties provided affirmed testimony during the hearing except for the Tenant’s legal counsel who only made submissions and presented evidence. No issues in relation to the service of the Application and the parties’ evidence under the Act and the Residential Tenancy Branch Rules of Procedure were raised.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

### Issues to be Decided

Is the Tenant entitled to monetary compensation for damage and/or loss caused to his furniture and appliances as a result of a pest problem in the rental unit?

### Background and Evidence

The parties agreed that this tenancy began on January 29, 2015 for a fixed term of one year. Rent was payable in the amount of \$765.00 on the first day of each month. The tenancy ended on April 30, 2016.

The Tenant testified that on or around August 2015, he became aware of a cockroach problem in the rental unit. The Tenant reported this verbally to the property manager and asked for the problem to be remedied by a pest control company and with spray treatment. The Tenant was unable to recall the exact date this meeting took place.

The Tenant explained that he was given some sticky traps by the property manager to place in the rental unit in order to determine the extent of the infestation. The Tenant testified that in October 2015 he received a visit from the Landlord's pest control company who examined the traps. The Tenant testified that he asked the pest control company whether they would spray the rental unit to eradicate the problem but the pest control company informed him that the level of cockroach infestation was determined to be low. As a result, the pest control company placed more traps in the rental unit to monitor the activity.

The Tenant testified that he discovered that his neighbors had had their units treated with spray to eradicate the cockroach problem by the Landlord. The Tenant testified that the cockroach problem was getting worse and in January 2016 he again contacted the property manager to inform her of the deteriorating situation. The Tenant stated that the Landlord then arranged for some caulking work to be performed along the baseboards and in the bathrooms to prevent cockroach entry into the rental unit.

The Tenant stated that he was again provided with more traps and it was only in March 2016 did the Landlord undertake spraying of the rental unit. The rental unit was then re-sprayed again before the Tenant vacated the rental unit in April 2016.

The Tenant stated that because the Landlord failed to spray his rental unit and deal with the cockroach problem expeditiously, his furniture and appliances had to be disposed of. The Tenant testified that the cockroaches got into his: air conditioning unit; deep freezer; telephone handsets; microwave; television; blender; couch; and arm chairs. The Tenant provided some black and white photographs of the cockroaches in the rental unit and photographs showing the couch, the deep freezer, the air conditioning unit, the microwave, the telephone handsets, and the armchairs. The Tenant testified when he hit the telephone handset, baby cockroaches would come out showing that the telephone was "infected".

The Tenant stated that because he was moving into another rental unit with these items he could not risk contamination of his next tenancy and therefore he had to dispose of these items. The Tenant stated that he did not have the original invoices to prove the cost of the items he disposed of but relied on estimates he had made for the replacement costs and that the total amount he was seeking from the Landlord

(\$1,954.00) had been reduced to take into account the second hand value of these items. The Tenant also referred to an invoice he had provided into evidence for the amount of \$178.00 which referred to the disposal of the property. The invoice stated, "*Mix junk bedding and dumping fee inclad*".

The Landlord's agent stated that the Tenant did not notice any cockroaches in the rental unit until eight months after the tenancy had started. The property manager disputed the Tenant's dated and testified that the Tenant had informed her verbally of the cockroach problem in late October 2015. The property manager stated that she immediately called their pest control company and scheduled a visit by them to the rental unit. In the interim time the Tenant was provided with traps so that when the pest control company attended the rental unit they would be able to ascertain the level of infestation that was to be dealt with.

The property manager testified that the pest control company attended the rental unit in the first week of November 2015 and suggested that they spray the rental unit. The property manager testified she was present during this visit and she heard the Tenant say to the pest control company that he did not want the rental unit to be sprayed because he had a health condition that would be affected by it. The property manager stated that as the cockroach activity was low and the Tenant did not want the rental unit sprayed they decided to place more traps down instead. The property manager testified that the Tenant was going to inform her if the cockroach activity got worse.

The Landlord's agent testified that the Tenant was asked to keep his rental unit clean. The property manager testified that in December 2016, all the rental units in the building were treated with a gel chemical as an ongoing effort to prevent the spread of cockroaches in the building.

The Landlord's agent testified that they did not hear anything from the Tenant until March 2016 when he explained that he was going to be vacating the rental unit and that he needed the rental unit spraying. The property manager then arranged for the rental unit to be sprayed once in March 2016 and then again in April 2016 after the Tenant made a second request.

In relation to the Tenant's monetary claim, the Landlord's agent stated that the pest control company noted in their treatment report of the rental unit dated April 22, 2016 that the rental unit was only prepared partially so only a limited space was able to be treated. The Landlord's agent submitted that the Tenant failed to clean his rental unit and therefore did not mitigate the pest problem. The Landlord's agent also stated that the Tenant failed to mitigate his loss by obtaining tenant's insurance as he was required

to do pursuant to clause 29 of the tenancy agreement. The Landlord's agent submitted that had the Tenant obtained insurance, any damage to his effects would have been covered.

The Landlord's agent argued that pursuant to clause 14 of the tenancy agreement titled "Use of Rental Unit" the Tenant was prohibited from installing a washer, dryer, dishwasher or similar equipment without the Landlord's prior written consent and therefore, the Tenant should not have had an air-conditioning unit or a deep freezer in the rental unit.

The Landlord's agent then argued that the Tenant had not provided any invoices to support the costs he was claiming and without this it was impossible to account for how much the Tenant had reduced the costs for the depreciation of the appliances and furniture.

Legal counsel for the Tenant stated that the Tenant's testimony should be sufficient to verify the losses being claimed by the Tenant and that the amount he was seeking had accounted for the depreciation. Legal counsel also submitted that the Tenant had not refused at any point the spraying of his rental unit as he had complained to the Landlord the impact the pest problem was having on him. Legal counsel denied that the Tenant had any medical health issues that hindered the spray treatment. Legal counsel submitted that the comments made by the pest control company on their report that the Tenant is required to keep the rental unit clean was a generic statement that all pest control companies document in these type of treatments.

The Tenant confirmed that he had not provided any written requests for spray treatment prior to the first spray treatment that had been undertaken in March 2016. In response to the pest control company's statements regarding the partial treatment, the Tenant explained that this was due to the fact that he had not sufficiently moved his personal belongings from the edges of certain parts of the rental unit for the treatment to take place. The Tenant explained that the pest control company did not give him specific instructions as to the distance he was supposed to move his personal property.

Legal counsel submitted that the Landlord failed in their duty to maintain the property in a reasonable state of repair and argued that the Landlord had not provided any evidence to show that the Tenant had rejected spray treatment of the rental unit when they visited the rental unit to assess the problem.

#### Analysis

Under Section 7 of the Act a party who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss. Section 67 of the Act provides that if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may determine the amount of compensation that is due and order that the responsible party pay compensation to the other party.

When a party makes a claim for damage or loss under the Act, the burden of proof is on the applicant to prove the existence of the loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the Arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have carefully considered the evidence before me in this case and I make the following findings. Firstly, I find that both parties provided insufficient evidence to show the source of the cockroach problem in the rental unit. I accept the Landlord's evidence that the cockroach problem was not present or apparent at the start of the tenancy. Conversely, I find that the Landlord failed to show that the source of the cockroach problem was due to the Tenant's alleged failure to keep the rental unit clean. However, I do find there is evidence that a pest problem existed in the rental unit and neither was this disputed by the parties.

As a result, I turn my mind to the Tenant's allegation that the Landlord breached the Act by not dealing properly with the cockroach problem after being notified of it. Section 32(1) of the Act requires a landlord to maintain a rental unit that complies with the health, safety and housing standards required by law and make it suitable for occupation by the tenant.

As the Tenant failed to put the Landlord on notice of the cockroach problem in writing, the Tenant was unable to satisfy me of the exact date he verbally informed the Landlord

of the cockroach problem. Therefore, I accept the property manager's evidence that the Tenant informed her of the problem in late October 2015.

I find that after the property manager was notified of this problem in late October 2015 she took reasonable and diligent steps to remedy the problem by arranging for the pest control company to visit the rental unit in the first week of November 2015 and giving the Tenant traps to place in the rental unit. I accept that this would have assisted the pest control company and furthered their assessment and treatment of the problem.

The Tenant relies on his oral testimony that he asked the pest control company and the Landlord to spray the rental unit because the cockroaches were having a profound effect on the Tenant. However, the property manager denied the Tenant's testimony that the Tenant made any request to have the rental unit sprayed and that this was denied by the Tenant because of health conditions. I find that in this respect, the Tenant's oral evidence is no more compelling than the property manager's evidence. Instead, I am only able to conclude that if the spraying of the rental unit was an essential requirement the Tenant made during the tenancy and is the basis on which he makes this monetary claim, then it would have been incumbent on the Tenant to have requested this in writing from the Landlord and documented the repeated requests he allegedly made to the property manager. The Tenant also had remedy through dispute resolution to request the Landlord to spray the rental unit which he did not pursue during the six months after which he became aware of the pest issue. Therefore, I find there is insufficient evidence to show that the Landlord was requested to spray the rental unit from the onset of the problem.

I find that the evidence shows the Landlord took steps to deal with the pest problem by having a pest control company visit the rental unit and lay traps to remediate the problem. I find that the Landlord's actions to also deal with the cockroach problem outside of the rental unit, such as applying gel treatment in other rental units, is evidence that suggests the Landlord was not negligent or slow in dealing with the pest problem in the rental unit. Accordingly, I find that the Tenant's oral evidence does not satisfy me that the Landlord breached Section 32(1) of the Act.

In relation to the Tenant's monetary claim which is the issue before me, the Tenant claims for the replacement cost of furniture items and appliances which he states that he had to dispose of because they had been compromised or "infected" by the cockroaches. I have examined the Tenant's photographs of the furniture and appliances which he provided into evidence and I find that they fail to show evidence of damage caused by the cockroaches. I find the Tenant failed to provide sufficient evidence that the cockroaches actually interfered with or caused damage to the furniture and

appliances that rendered them unusable and to the point that the Tenant had to dispose of them. I find the Tenant's evidence suggests that he disposed of these items out of an abundance of caution to prevent possible contamination to the property he was moving into. Therefore, I find the Landlord should not be held liable for the Tenant's concern and fear about possible or unproven cross contamination.

Furthermore, I find the Tenant has failed to verify the losses he claims from the Landlord. I agree with the Landlord's agent's submission that the Tenant failed to provide sufficient evidence to show how he determined (a) the original costs of the furniture and appliances and, (b) how the Tenant calculated and determined the depreciation value of these items. The Tenant failed to provide comparative evidence, such as estimates or advertisements, corroborating or supporting the original costs for similar items he had disposed of. Therefore, I find the Tenant's disputed oral evidence of the amounts being claimed is not on its own sufficient for me to concur with them and these losses cannot be verified.

### Conclusion

Based on the foregoing, I find the Tenant has provided insufficient evidence to meet the burden to prove his entitlement to the replacement cost of his furniture and appliances. Therefore, I must dismiss the Tenant's Application without leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 17, 2016

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Residential Tenancy Branch