



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MNR FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The tenant agreed the landlord served them with the Application for Dispute Resolution and said they also served the landlord with evidence. The landlord agreed he received their evidence. The landlord applies pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for rental loss due to underpayment of rent by the tenant;
- c) An Order that the rebate of rent ceased on September 1, 2016 as professionals confirmed the mouse problem was resolved; and
- d) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Is the landlord entitled to a Monetary Order for rental loss and an Order that the rent resumes to the full rent as of September 1, 2016? Are they entitled to recover their filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced June 1, 2014, a security deposit of \$460 was paid and rent as of June 1, 2016 is \$956 a month. The parties confirmed that a portion of the tenant's rent is paid by outside agencies.

In a previous hearing on May 26, 2016, the arbitrator determined that there was a mouse infestation in the tenant's unit and ordered that the tenant be given a rebate of 50% of her rent (\$478) for May and continue until full eradication was accomplished. The arbitrator said, "Full eradication will be considered to have occurred if the tenant has observed or heard no evidence of a mouse for a two week period and the landlord's

pest control company confirms in writing that the unit is no longer subject to mouse activity”.

In a second hearing on August 16, 2016, the arbitrator determined that the landlord had failed to produce evidence of intensified efforts to eradicate the mouse problem and awarded the tenant an 80% reduction of her rent retroactively for June, July and August. The arbitrator calculated this as \$286.80 per month difference (from the 50% (\$478) previously determined to be her monthly rent) This was added to the \$956 rebate already awarded in the prior Decision for a total rent abatement of \$1816.40.

In the present hearing, the landlord is claiming \$660 rent arrears for June 2016 as they said the payment had been stopped as shown in their ledger. They also request that rent in full be payable as of September 1, 2016 as the pest control company has confirmed there is no longer evidence of mouse infestation. They pointed out that the tenant is not maintaining their suite in a sanitary manner which encourages mice and defeats their efforts to eradicate them. They gave evidence of a 24 hour notice of entry for pest inspection on October 25, 2016 but said the tenants would not allow them in. The tenants said they did not get the notice and when 3 big men came to the door, the mother who was home alone with younger children was intimidated and embarrassed and she refused them entry as was her right. When questioned, she said she did recognize one of them as the pest control person and the landlord said the second person was the property manager whom she sees often. On November 24, 2016, they again gave notice of entry for inspection but the tenants said they were busy and wanted to defer it until this morning (the morning of the hearing).

The tenants said they had seen another mouse and the rent rebate was to continue for two weeks after they had seen no mouse activity. They believe it should be continued. The landlord requests the balance of the full rent from September 8, 2016 when the pest control company confirmed no further mouse activity. The resident manager in a letter dated October 6, 2016 said the unit is clear of mouse issues as confirmed by the pest control company and the tenant has made no complaints about any mouse problem since the last visit from the pest control company (September 8, 2016).

In evidence are many pest control reports, letters, the rental ledger, a photo of a mouse in a trap and other photos, some of which are unclear. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

### **Analysis**

I find the landlord's evidence credible that the mouse infestation has been eradicated as of September 8, 2016 as it is well supported by the pest control reports in evidence and

the letter and testimony of the resident manager. Although the tenant alleges they saw a mouse again this week, I find their evidence not credible. Although they provided some photographs, I find insufficient evidence as to the date and setting of the photographs. A photo of a dead mouse in a trap does not provide sufficient evidence that they still have an infestation. I find their evidence is self serving and may be motivated by obtaining further rebates. The fact that they denied inspections by the pest control company on two occasions is also inconsistent with having an ongoing problem. I find further that the pest control company details poor sanitary conditions with food being left out and snack items under the bed and the resident manager's testimony noted this as well. Section 32 of the Act places a responsibility on the tenant to maintain the unit in a sanitary condition so as not to attract rodents. I find the landlord has fulfilled their obligation as set out in previous Decisions and the rent reverts back to the regular rent of \$956 a month effective September 8, 2016.

As the tenant pointed out a previous Decision noted full eradication would not be considered to occur until two weeks after such a pest control report and the tenant's confirmation. On August 26, 2016, a report states the tenants told the pest control company that about 3 weeks prior one mouse had been caught and a dying mouse had also been removed by another company. On August 31, 2016 the pest control company notes in the report that no recent activity was reported by tenants since last visit or seen in unit and again on September 8, 2016 the same was noted and that bait was untouched. Food sources were still noted under the bed in the living room. I find that from August 26, 2016 eradication had occurred so full rent is payable two weeks after that date in accordance with the previous Decisions. I find full rent is payable from September 8, 2016. Prorated rent for September then is \$700.92 ( $\$31.86 \text{ day} \times 22 \text{ days}$ ) and according to the ledger, the tenant paid \$478 of this. I find they owe a balance of \$222.92 for September and \$956 for each of October and November. The rental ledger shows the tenant paid \$478 of October's rent on October 16, 2016 and was issued a cheque of \$1816.40 for a total of all the rebates awarded in the previous Decisions. I find the landlord entitled to a monetary order for \$1656.92 (\$222.92 Sept., \$478 October balance, \$956 November). I accept the submission of the landlord that November's rent should be included in the Order as it has not been paid. This avoids a multiplicity of proceedings and extra filing fees to the tenant.

Although the landlord is claiming \$660 arrears from June 2016, I decline to consider this. The tenant said she had no notice of this claim and has proof the rent was paid in full. The rental ledger shows the stop payment to which they referred occurred June 10, 2016 and the Decision on rebates is dated August 16, 2016. The landlord had an agent present to represent them in that hearing. The arbitrator at that time made calculations of rebates based on the evidence and the landlord's agent should have presented any

evidence of arrears of June rent at that time. I decline to go behind the August Decision and recalculate amounts owing. I also note the rental ledger shows the balance owing on June 10, 2016 as zero after a \$660 payment was made so this does not support the landlord's submission.

**Conclusion:**

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Sept. 2016 prorated rent	222.92
Oct 2016 balance not paid	478.00
November 2016 rent in full owed	956.00
Filing fee	100.00
<b>Total Monetary Order to Landlord</b>	<b>1756.92</b>

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: November 29, 2016

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Residential Tenancy Branch