



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC

### Introduction

On June 10, 2016, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained.

The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant testified that he received documentary evidence from the Landlord on December 2, 2016, four days prior to the hearing. The Tenant was asked if he had an opportunity to review and consider the evidence prior to the hearing, and he replied that he had reviewed it and he had no concern with the evidence being considered in the hearing.

The Landlord's evidence received at the Residential Tenancy Branch on December 2, 2016, is admitted and will be considered.

Issue to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement?

Background and Evidence

The parties testified that the tenancy began on January 9, 2014, as a month to month tenancy. Rent in the amount of \$472.00 is due on the first day of each month. A security deposit of \$356.00 was paid by the Tenant to the Landlord.

The Tenant testified that he asked the Landlord's maintenance staff to deal with pests and spiders in his rental unit.

The Tenant submits that he came back from being away at work and the problem with spiders was worse than ever. The Tenant testified that he was bit by a spider twice in the rental unit. He testified that the spider bite was poisonous and that he was at risk of amputation before it got better and left a scar. He submits that he has no feeling in his leg.

The Tenant stated that he cannot have his son come home to stay with him due to all the bugs and spiders that are present.

The Tenant provided a copy of a letter from a doctor at a walk in clinic dated June 8, 2016. The Letter indicates that the Tenant attended the clinic and presented with two localized areas of skin infection which are highly suggestive of spider bites. The Tenant did not provide any medical or documentary evidence to support his testimony regarding the risk of amputation or the loss of feeling in his leg. The Tenant did not provide any photographic evidence of the bites, or scarring. The Tenant did not provide any photographic evidence of spiders or cockroaches in the unit.

In response, the Landlord testified that when the parties participated in a move in inspection, no concerns were noted and the unit was in good condition. The Landlord provided a copy of the move in inspection report.

The Landlord testified that they keep going into the Tenant's unit to treat a pest problem but the Tenant does not keep his unit clean. The Landlord testified that the Tenants unit is in a general state of disrepair.

The Landlord testified that they discovered the Tenant had a ferret, and on June 24, 2015, the Tenant was given a verbal warning to remove the ferret.

The Landlord testified that in July 2015, the Landlord was advised that the ferret was removed from the unit, but the Landlord alleges that the Tenant got the ferret back in December 2015. The Landlord referred to evidence provided showing a picture taken on December 9, 2015, from inside the Tenant's unit showing a of a bowl of pet food on the floor and a water bowl.

The Landlord provided photographic evidence showing the condition of the Tenants unit taken on November 10, 2015, and on December 9, 2015.

The Landlord testified that they arranged for six pest control treatments for the Tenant on the following dates:

- December 9, 2015
- February 19, 2016
- February 29, 2016
- March 7, 2016
- March 28, 2016
- April 25, 2016

The Landlord stated that at the time of the last treatment, the Tenant was away working at a carnival and he did not advise the Landlord that he would be away. The Landlord testified that the Tenant was advised by the Landlord and the pest control company to keep his unit clean.

The Landlord testified that the neighbour of the Tenant alerted the Landlord to a problem with cockroaches. The Landlord investigated and determined that the cock roaches were coming from the Tenant's rental unit and the neighbour was moved.

The Landlord stated that the Tenant's claim is motivated by a different issue. The Landlord testified that there is an ongoing issue with the Tenant on a matter of eligibility to qualify for subsidized family housing since he does not have any children under the age 19 living with him. The Landlord sent the Tenant a letter on April 25, 2016, stating

that he has not provided the required documentation showing the permanent return date of his son, and that a notice to end tenancy may be issued.

The Landlord testified that on May 30, 2016, the Tenant left a message stating that he was suing the Landlord and will not leave the rental unit.

The Landlord testified that they expected that the Tenant would be moving out of the unit after April 2016, so no further treatments were planned until he moved out. The Landlord testified that the wait for this hearing has delayed further action by the Landlord.

In response to the Landlord's testimony the Tenant testified that he does not have any pets now other than a fish. The Tenant testified that the bowl of pet food and water shown in the photograph taken on December 9, 2015, has been there since he got rid of his ferret in July 2015.

The Tenant testified that his son is home with him on weekends.

The Tenant testified that he had no hydro for a few days and he was unable to keep his unit clean when the photographs were taken by the Landlord.

### Analysis

Section 32(2) of the Act states that a Tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the Tenant has access.

Section 7 of the Act states:

*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. 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.*

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.

Based on all of the above, the evidence and testimony, of the Landlord and Tenant and on a balance of probabilities, I find as follows:

I accept the parties evidence that there is a cockroach problem in the Tenant's rental unit. I accept the Landlord's testimony that the Tenant was advised to keep his unit clean.

I find that the Landlord has been responsive to treating the Tenant's unit for cockroaches. The Landlord arranged for five treatments in the Tenant's unit in a five month period of time.

I find that the Landlords' photographic evidence supports the Landlord's testimony that the Tenant's rental unit is extremely unclean. The photographs show the kitchen sink stacked full of dishes and cans. The stove top is very unclean with egg shells sitting on top of what appears to be dirty cookware. The living room is untidy with what appears to be bowls and a plate on a coffee table. In addition, the Tenant testified about leaving pet food on the floor for six months.

Pictures of the rental unit were taken on November 10, 2015, and December 9, 2015. I do not accept the Tenant's testimony that the unit was temporarily dirty because his hydro had been temporarily cut off for a few days.

Despite the Tenant's testimony that he was bit by spiders, and suffered serious medical issues, there is insufficient evidence from the Tenant to support his claim for monetary compensation.

I prefer the testimony and photographic evidence from the Landlord that the rental unit was not in a clean state. I find that the Tenant did not take reasonable steps to minimize the loss pursuant to section 7 of the Act.

I find that the Tenant failed to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and I dismiss the Tenant's claim to be compensated in the amount of \$5,640.00.

### Conclusion

I find that the Tenant did not take reasonable steps to minimize the loss pursuant to section 7 of the Act.

The Tenant's Application is dismissed.

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: December 23, 2016

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Residential Tenancy Branch