



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord attended the call. The tenant testified that the landlord was served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on December 1, 2016 and the amended documents on December 2, 2016. The tenant has provided 2 Canada Post cash register receipts bearing those dates as well as the Registered Domestic Customer Receipts, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damages caused by bed-bugs, lack of hot water, lack of heat, and emotional abuse?

### Background and Evidence

The tenant testified that this month-to-month tenancy began on February 1, 2011 and the tenant still lives in the rental unit. Rent in the amount of \$700.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$350.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and no written tenancy agreement exists.

The tenant further testified that he suffers from sleep apnea and sleep deprivation and noticed bed-bugs in mid-September, 2016 and asked the landlord to deal with them. The landlord said he would but never did. On December 10, 2016 the landlord placed some powder on the tenant's mattress saying it would eliminate the bugs, but it didn't. The landlord did not have the building treated, and advised the tenant to put plastic over the mattress, and also blamed the tenant for the infestation. The tenant disagreed and slept on the coffee table, but has been staying with friends lately. There is blood on the linen from bites, and the tenant talked to the landlord 3 or 4 times, but without success.

Two years prior, there were bed-bugs in the rental unit and the landlord brought a guy in who said that they didn't spread. The tenant thought the landlord would deal with it this time but hasn't.

The landlord has also failed to deal with heating issues and hot water in the rental building. The boiler services 3 buildings, which is not properly maintained. The landlord doesn't always leave the heat on and when it gets cold the tenant's apartment is 50 degrees so he has to use a secondary heater. The shower is not warm enough and to run a bath the water is cold by the time the tub is filled. The Pastor of the tenant's church told the tenant that he is surprised the landlord gets away with such low maintenance in the rental building.

The tenant has provided a copy of an invoice/estimate for replacement of the box spring, mattress and frame totalling \$2,774.24. The tenant testified that someone gave him the bed, and the bed is the same size and description as that on the invoice/estimate.

The tenant also claims \$25,000.00 for emotional abuse by the landlord and for failing to deal with marijuana smoking in the rental building.

### Analysis

The *Residential Tenancy Act* requires a landlord to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. A landlord is responsible for treating bed-bugs and for ensuring that heat and hot water are accessible by each tenant.

I accept the undisputed testimony of the tenant that there are bed-bugs in the rental unit, and the landlord has failed to properly deal with it. Pursuant to the *Act*, I order the landlord to retain the services of a professional exterminator to treat the building. If the landlord fails to do so by the end of January, 2017, the tenant will be at liberty to make

further application for monetary compensation for the landlord's failure to comply with this order.

I also accept the undisputed testimony of the tenant that hot water is not available, and I order the landlord to repair the hot water system immediately. If the landlord fails to do so by the end of January, 2017, the tenant will be at liberty to make further application for monetary compensation for the landlord's failure to comply with this order.

I also accept the undisputed testimony of the tenant that the heat isn't always on and the tenant's rental unit is cold. I order the landlord to provide heat to the rental unit sufficient to allow the tenant to keep warm in his home immediately. If the landlord fails to do so by the end of January, 2017, the tenant will be at liberty to make further application for monetary compensation for the landlord's failure to comply with this order.

Where a party makes a monetary claim against another party, the onus is on the claiming party to establish that that the claiming party has suffered damages, that the damages suffered are a result of the other party's failure to comply with the *Act* or the tenancy agreement, and what efforts the claiming party made to mitigate any damage or loss suffered. Any monetary award cannot be made to punish the landlord, but to reasonably compensate the tenant for damages suffered by the wrong-doing of the landlord.

In this case, I find that the \$25,000.00 claim is extreme, however I accept the undisputed testimony of the tenant that the landlord has failed to maintain the rental building sufficient to provide heat and hot water. The tenant has resided in the rental unit since 2011, and the landlord has collected rent. The tenant told the landlord about bed bugs it in mid-September, and is well aware of the lack of hot water and heat in the rental unit. In the circumstances, I find that the landlord is liable to compensate the tenant for half of the rent paid for half of the month of September, 2016 and half of the rent paid for October, 2016 through January, 2017, or \$1,575.00 ( $\$175.00 + 4 \times \$350.00 = \$1,575.00$ ).

The tenant also claims the replacement cost to replace his bed in the amount of \$2,774.24. Any monetary compensation must not put the tenant in a better financial position than the tenant would be had the landlord complied with the *Act*. The tenant testified that it was a used bed when the tenant received it, and it needs to be disposed of. To order the landlord to pay for a new bed would mean that the tenant has a new bed, which he didn't have prior to any breach by the landlord. I find that the tenant is entitled to compensation for replacing the bed in the amount of \$1,000.00.

I further order that the tenant be permitted to reduce rent for future months until the sum of \$2,575.00 has been realized, or may otherwise recover that amount from the landlord.

### Conclusion

For the reasons set out above, I hereby order the landlord to retain the services of a professional exterminator to eradicate the bed-bug issue immediately. If the landlord fails to do so by the end of January, 2017, the tenant will be at liberty to apply for further compensation for the landlord's breach of this order.

I further order the landlord to repair the hot water system and the heating system sufficient to allow heat in the rental unit and hot water immediately. If the landlord fails to have the systems repaired by the end of January, 2017, the tenant will be at liberty to apply for further compensation for the landlord's breach of this order.

I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,575.00, and I order that the tenant be permitted to reduce rent for future months until that sum is realized, or may otherwise recover it from the landlord.

This order is final and binding and may be enforced.

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: January 05, 2017

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Residential Tenancy Branch