



# 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 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 and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other, and all testimony and evidence provided has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

### 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 costs incurred and general damages due to bed bugs?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on September 1, 2013, and the tenant still resides in the rental unit. Rent in the amount of \$1,200.00 per month was originally payable, but was reduced to \$1,000.00 per month when the current landlord entered into a new tenancy agreement with the tenant. A copy of that tenancy agreement has been provided which is signed by the parties on January 23, 2016. Rent is due on the 1<sup>st</sup> day of each month and there are no rental arrears. The tenant testified that a security deposit of \$600.00 was paid to the landlord at the commencement of the tenancy in September, 2013, which is still held in trust, and no pet damage deposit was paid. The rental unit is a townhouse in a complex containing 4 units, and the landlord does not reside on the property.

The tenant further testified that she told the landlord of bed bugs in March, 2016 and the landlord hired an exterminator. The tenant thought it was all taken care of until the summer when her child was getting bitten, and then the tenant realized bugs were still there. The tenant has provided a copy of a note to the landlord dated October 22, 2016 asking the landlord to clean the unit from the bugs and an exchange of text messages between the parties on October 26, 2016. The text messages show that the landlord replied to the tenant that he had received information from the pest control company that the tenant didn't clean the unit as required, it keeps happening, and the tenant can pay for it.

On November 9, 2016 the tenant hired an exterminator after contacting the landlord who refused to pay for any more treatments. The exterminator returned for a second treatment 2 weeks later, and now the bugs are gone. A copy of an invoice for the treatments has been provided in the amount of \$1,023.75.

The tenant learned from speaking with the exterminator that the landlord had only wanted one bedroom sprayed when it was done in March, 2016, and has provided a note in that regard. The tenant wrote the note and testified that the exterminator signed it, but a signature does not appear on the copy provided as evidence for this hearing.

The tenant also testified that she took all of her clothing to a laundromat and cleaned and vacuumed. The tenant had to throw out 2 beds and most of her clothing because they were too much to wash and dry at a laundromat. The tenant also threw things out for the second time not knowing at the time that only 1 bedroom had been treated. The tenant's older 2 daughters vacuumed every second day. The tenant has provided a copy of a receipt in the amount of \$199.00 for replacement of one of the mattresses dated July 20, 2016.

The tenant further testified that her friend repaired the bannister in the rental unit and a copy of a receipt in the amount of \$150.00 has been provided. The tenant didn't ask the landlord to repair it, but the landlord should pay for it.

The tenant also claims damages of 8 months rent for living with the untreated bugs.

**The landlord** testified that he took possession of the rental unit on February 1, 2016 and a security deposit was \$500.00 that was transferred from the previous owner.

The landlord further testified that he had the treatments done in March and June, 2016. The landlord emailed the preparation sheet to the tenant before the first treatment for what was required before and after treatments. The landlord is not sure how many rooms were treated at the first visit, but the exterminator told the landlord that all 3

bedrooms in the upper level were treated the second time he attended. The exterminator also told the landlord that the tenant had not done any preparation before either treatment; leaving cat urine and clothing everywhere.

The landlord noticed mattresses sitting outside stacked up when he first looked at the rental unit prior to purchasing and questions the tenant's \$199.00 claim. The tenant also had sub-tenants. The bed bug issue has been an on-going repeated issue, and the tenant needs to at least meet the landlord half way to address the problem.

The tenant never mentioned to the landlord about the bannister needing repair.

### Analysis

In order to be successful in a claim for damages, the onus is on the applicant to establish the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate any damage or loss suffered.

The tenant has provided receipts of \$1,023.75 for bed bug treatments, \$199.00 for a mattress and \$150.00 for the bannister repair, and therefore I am satisfied that element 3 has been met. I am also satisfied that element 1 has been met, considering that it's clear the tenant incurred those costs.

With respect to element 2, a landlord is required to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant, and a tenant must maintain reasonable health and cleanliness.

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) 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.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Further, with respect to element 4, the *Act* specifies:

**7** (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.

In this case, the landlord has not provided any evidentiary material of what preparation instructions were sent to the tenant and the tenant testified that she did what was required. She also testified that numerous clothing items were thrown away to prevent having to take them to the laundromat and that her daughters vacuumed every other day. The only testimony or evidence from the landlord is third hand information that the exterminator told him the tenant didn't do what was required. In the circumstances, I find it very possible that the treatments done in March and June didn't completely eradicate the bugs, and the tenant is entitled to reimbursement of the exterminator costs of \$1,023.75 and replacement of the mattress for \$199.00.

The *Residential Tenancy Act* does not permit a tenant to make repairs to a rental unit and claim the cost back from the landlord unless the repairs are urgent and necessary to prevent injury or damage to property. The parties agree that the tenant didn't ask the landlord to repair the bannister, and therefore, I am not satisfied that the tenant has established elements 2 or 4 in the test for damages.

The tenant also claims aggravated damages of the entire rent paid for 8 months of the tenancy. That is certainly excessive considering that the tenant didn't report the return of bed bugs to the landlord until October, 2016 and the tenant had the treatments done in November which eradicated the bugs. Aggravated damages are meant, not to punish a person for a wrong-doing, but are measured by the suffering caused to a person. In the circumstances, I find that the tenant has failed to establish that during that month the tenant or her family suffered aggravated damages, and the tenant's application in that regard is dismissed.

In summary, I find that the tenant has established a claim for the bed bug treatments of \$1,023.75 and the mattress for \$199.00. The balance of the tenant's application is dismissed.

The *Act* also states that I make any orders necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order that a party comply with the *Act*, regulations or the tenancy agreement. I find it just in the circumstances to order the tenant to comply with the *Act* by ensuring that any instructions given by the landlord or by an exterminator be followed entirely in the future.

### Conclusion

For the reasons set out above, I hereby 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 \$1,222.75 and I order that the tenant be permitted to reduce rent by that amount for future months until recovered, or may otherwise recover it.

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: February 07, 2017

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Residential Tenancy Branch