



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, ERP, LRE, MNDCT, OLC, PSF

### Introduction

This decision pertains to the Tenants' application for dispute resolution made May 10, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenants seek the following:

1. an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice");
2. an order requiring the Landlord to make emergency repairs;
3. an order suspending or setting conditions on the Landlord's right to enter the rental unit;
4. an order requiring the Landlord to comply with the Act, regulation, and/or tenancy agreement;
5. an order requiring the Landlord to provide services or facilities required by the tenancy agreement or law; and,
6. an order for compensation for monetary loss or other money owed.

The Tenants (P.B. and M.J.) and the Landlord's three agents (collectively referred to as the "Landlord" in this Decision) attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties confirmed service of the Notice of Dispute Resolution Proceeding package and did not raise any issues of service.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issues to be Decided

1. Are the Tenants entitled to an order cancelling the Notice?
2. Are the Tenants entitled to an order requiring the Landlord to make emergency repairs?
3. Are the Tenants entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?
4. Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation, and/or tenancy agreement?
5. Are the Tenants entitled to an order requiring the Landlord to provide services or facilities required by the tenancy agreement or law?
6. Are the Tenants entitled to an order for compensation for monetary loss or other money owed?
7. If the tenants are not successful in the portion of their Application seeking to cancel the Notice is the landlord entitled to an Order of Possession?

### Background and Evidence

#### **1. Regarding an Order Cancelling the Notice**

The Landlord testified that they issued the Notice because the Tenants (1) have seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, and (2) have put the Landlord's property at serious risk. The Landlord served the Tenants with the Notice (by posting on their door) on May 5, 2018, with an effective date of June 30, 2018. The Landlord submitted into evidence a copy of the Notice.

The Landlord testified that the Tenants have not cooperated with the Landlord in their attempts to treat bed bugs by not properly preparing the rental unit for treatment, and by constant rescheduling of the treatments. The rental unit still has bed bugs, and the bed bugs have infested other rental units in the 64-rental unit, 3-story building. According to the Landlord, the Tenants moved into the rental unit in 2011 and have had bed bugs since 2013.

The Landlord have attempted several treatments (the certified pest control technicians are employees of the Landlord) since April 2018, and the Tenants have refused to properly prepare their rental unit on all occasions, or, did not want the treatment. There have been previous, extensive treatments in the rental unit since 2013. The Landlord has provided bed bug treatments in other rental units in the building as well, and submitted several reports regarding those rental units' treatments.

The Landlord testified to each of the occasions and submitted into evidence multiple "Work Order/Resident Service Request" and "Pest Control Service Report" documents ("Reports"). The Reports may be summarized as follows, with the headings and descriptions copied exactly as written in the Reports:

<b>Date Reported</b>	<b>Work Requested</b>	<b>Action Taken/Materials Used</b>
10/12/2017	preventative spray for bedbugs	Tenant did not want to be treated
10/27/2017	preventative spray	DONE. TENANT NOT PREPARED FOR BED BUG SPRAY. TENANT ALSO SAID THERE IS NO BB IN THE SUITE.
2/22/2018	CR INSPECTION + GEL	No Activity Suite properly prepared
4/23/2018	INSPECT FOR BEDBUGS	Visual inspection on April 23, 2018 – found heavy activity Suite properly prepared – Fair sanitation Tenants are advised to throw 1 mattress and boxspring – highly infested- schedule for treatment asap.
4/27/2018	BEDBUGS	Medium Activity – for follow up treatment in 2 weeks closet not prepared, set up sticky traps for monitoring, sprayed with dragnet tenant need to remove plastic covers and buy proper bedbug cover protection for mattress and box springs
5/11/2018	BEDBUGS	Medium Activity – for follow up treatment in 2 weeks Suite partially prepared – 1 closet and 2 storages are not prepared – tenants didn't bag all clothes Fair sanitation Please advise tenants to remove plastic covers on mattresses and buy proper bedbug protection covers
5/18/2018	BB SPRAY	MAY 25- DID NOT TREAT – TENANT NOT PREPARED

<b>Date of Service</b>	<b>Precaution Advice Given</b>	<b>Recommendations/Comments</b>
April 23, 2018	PLEASE ADVISE TENANT TO THROW IT OUT 1 MATTRESS & BOX SPRING (HIGHLY	[ILLEGIBLE], PLEASE BOOK THIS UNIT FOR BEDBUG TREATMENT

	INFESTED)	
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The Landlord also issued Notices of Entry for each treatment, giving the Tenants anywhere between 3 days to 8 days of notice that the Landlord would be entering the rental unit to provide treatment. Attached to the various Notices of Entry were preparation sheets, which provided instructions on how to prepare for the treatment. The Tenants testified they have had bed bugs since moving into the rental unit in 2011. They also found out that other rental units in the building had bed bugs. The Tenants further testified that the building has old carpets and that the Landlord has refused to clean or replace them. Regarding the preparation of the rental unit, Tenant P.B. testified that the pest control technician said what the Tenants were doing was sufficient and that “we’ve done everything they’ve asked” them to do.

### ***2. Regarding an Order Requiring the Landlord to Make Emergency Repairs***

The Tenants testified that the Landlord replaced a broken refrigerator approximately two years ago, but that it was a poor-quality fridge and that it constantly leaks, thereby causing food spoilage. Indeed, during the hearing, Tenant M.J. had to briefly exit the hearing to “mop up a big puddle of the floor.” Tenant P.B. testified that they spoke to a representative of the Landlord about two years ago about the fridge, but have not heard back. The Tenants did not submit any evidence regarding the leaking or the puddle.

The recent issue with the leaking fridge was not brought to the Landlord’s attention until this application, the Landlord submits. They testified that the Tenants initially brought the issue forward on January 19, 2017, and the Landlord sent a repair person. They had not heard back from the Tenants until now. If the Tenants need their fridge repaired, the Landlord testified that they have 2 in-house appliance repair people, and that the Landlord has spare fridges if a tenant needed one.

### ***3. Regarding an Order Suspending/Setting Conditions on the Landlord’s Right to Enter Rental Unit***

Tenant M.J. testified that they are “constantly being put out of the apartment” and that the Landlord is in the rental unit “24/7”. Upon questioning the Tenant regarding the frequency of the Landlord being in the unit and why, the Tenant testified that the Landlord has been in 6, 7, maybe 8 times to do bed bug treatments. The Tenants further testified that the treatments are always scheduled for Fridays, which do not work for them because of medical appointments and not wanting to be absent from the rental unit when the pest control technicians enter.

The Landlord testified that the Tenants never told them that Fridays do not work. They are flexible and can have treatments done on other days of the week, and are willing to work with the Tenants in finding a mutually agreeable day of the week.

***4. Regarding an Order that the Landlord Comply with the Act, Regulation or Tenancy Agreement***

The Tenants did not testify or provide any evidence regarding this aspect of their application.

***5. Regarding an Order that the Landlord Provide Services/Facilities Required by the Tenancy Agreement or Law***

The Tenants want the Landlord to fix the balcony, to fix or repair a faulty refrigerator, to repair leaky pipes in the ceiling, and to provide bedbug treatment. I have included the Tenants' claim as it pertains to the faulty refrigerator in the above-noted section "Re Order Requiring Landlord to Make Emergency Repairs," though the Tenants have requested two orders as it relates to the fridge.

The Tenant P.B. testified that the Landlords have recently repaired and replaced all the balconies, and that due to faulty construction of both the balconies and the roof, that water is leaking into the rental unit causing black mold. In addition, the Tenants testified that there are leaky pipes in the ceiling (in the living room) and in the bathroom, causing mold. The Tenants did not submit any photographs of the mold.

The Landlord testified that the Tenants have not provided any evidence of water leaking into the rental unit due to the balconies being replaced, and that their submission does not make sense. Further, the Landlord testified that until this application, the Tenants did not report any issues regarding mold to them, nor any issues regarding leaking pipes or plumbing. The Landlord submitted that "there are no plumbing issues."

Regarding the Tenants' application for bed bug treatment as it pertains to this aspect of an order sought, both parties provided testimony and evidence, which is covered in the above-noted section "Re Order Cancelling the Notice."

***6. Regarding Claim for Compensation for Monetary Loss or Other Money Owed***

The Tenants claim compensation in the amount of \$3,500.00 for replacing four

mattresses, which had to be replaced due to the Landlord's inaction regarding bed bug treatment. They testified that they have lost a lot of bedding and mattresses due to the Landlord not providing sufficient bed bug treatment. The Tenants did not provide any documentary evidence, such as receipts, in support of their claim for compensation.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the party making the claim.

#### ***1. Are the Tenants entitled to an order cancelling the Notice?***

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

The Landlord testified that the grounds on which they issued the Notice were that the Tenants have (1) seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, and (2) put the Landlord's property at serious risk.

While the Landlord provided extensive testimony and documentary evidence that showed the Tenants to be less than fully cooperative in bed bug treatments, there is insufficient evidence to demonstrate or establish how their lack of cooperation "seriously jeopardized the health or safety or lawful right of another occupant or the Landlord."

The Landlord did not submit any evidence regarding any health, safety or lawful right issues of other occupants or the Landlord. Nor did the Landlord provide evidence demonstrating that the actions or inaction of the Tenants have put the Landlord's property at serious risk.

Taking into consideration all of the evidence and the testimony of the parties presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has not met the onus of proving that there are sufficient grounds on which the Notice is based.

Therefore, the Tenants are entitled to an order cancelling the Notice. The Landlord's Notice, dated May 5, 2018, is cancelled and of no force or effect. The Landlord is not entitled to an order of possession under section 55 of the Act.

This tenancy will continue until it is ended in accordance with the Act.

That having been said, the Tenants are now put on notice that should they continue to be less than fully cooperative in assisting the Landlord with bedbug treatments of the rental unit, that continued non-cooperation may give rise to a ground on which the tenancy may end.

The bedbug infestation in the building appears to be rather severe, and for the Landlord to effectively exterminate them, all occupants—including the Tenants—must *fully* cooperate in not only permitting access to the rental unit, but must also prepare their rental unit as set out in any instructions provided to the Tenants by the Landlord. That the Tenants prefer to be home during any treatments is understandable but not a requirement, but they must also work with the Landlord in treating the bed bugs. The bed bugs affect not only the Tenants, but everyone else in the building.

***2. Are the Tenants entitled to an order requiring the Landlord to make emergency repairs?***

Subsection 33 (1) of the Act outlines and describes what “emergency repairs” means:

In this section, "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

The Tenants testified that the refrigerator is broken, and that they must buy food more frequently due to a leak in the top compartment. While this is no doubt a major inconvenience, the Tenants did not make any submissions or provide sufficient evidence establishing that “emergency repairs” are required pursuant to subsection 33 (1), and in particular, subsection 33 (1) (c) of the Act.

Taking into consideration all of the evidence and testimony of the parties, and applying the law to the facts, I find on a balance of probabilities that the Tenants have not met the onus of proving their claim that emergency repairs are required under the Act. As such, I dismiss this aspect of the Tenants' claim without leave to reapply.

***3. Are the Tenants entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?***

Subsection 70 (1) of the Act states that an arbitrator may suspend or set conditions on a landlord's right to enter a rental unit under section 29 of the Act.

The Tenants testified that the Landlord is "constantly [putting them] out of the apartment" in their attempts to conduct bed bug treatment. The Landlord has attempted on several occasions to provide bed bug treatment, but are met with uncooperative Tenants who either refuse to allow the treatment to occur, or refuse to properly prepare the rental unit for the treatment. The numerous reports submitted by the Landlord demonstrate ongoing, uncooperative responses by the Tenants. The Landlord provided sufficient notice, in compliance with section 29 of the Act, for each attempted treatment. The Landlord submitted into evidence copies of the notices to enter.

Taking into consideration all of the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Tenants have not met the onus of demonstrating why they are entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit. As such, I dismiss that aspect of the Tenants' claim without leave to reapply.

***4. Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation, and/or tenancy agreement?***

The Tenants did not provide any testimony or documentary evidence, or make any submissions, regarding this aspect of their application. As such, I dismiss this aspect of the Tenants' claim without leave to reapply.

***5. Are the Tenants entitled to an order requiring the Landlord to provide services or facilities required by the tenancy agreement or law?***

Subsection 62 (3) of the Act permits me to make any order necessary to give effects to the rights, obligations and prohibitions under the Act, including an order that a landlord



or tenant comply with the Act, the regulations or the tenancy agreement and an order that the Act applies.

The Tenants submitted in their application that they want the Landlord to fix the balcony. During the hearing, both parties testified that the balcony has been replaced with a new balcony. The Tenants testified that due to faulty balcony construction, there is water leakage which has caused black mold. They further testified that there are leaking water pipes in the ceiling above their rental unit, which has resulted in black mold. The Tenants did not provide any photographs of the black mold. The Landlord testified that they were unaware of any mold issues, and the Tenants have not told them about it.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the Tenants have failed to provide any evidence that there is (A) black mold in the rental unit, or that (B) if there is black mold, that it was caused by faulty construction of the balcony. Likewise, the Tenants did not provide any evidence that any repairs to the building's roof caused water leakage resulting in black mold.

Taking into consideration the testimony of the parties and the insufficient evidence regarding leaking pipes or black mold, and applying the law to the facts, I find on a balance of probabilities that the Tenants have not met the onus of proving that they are entitled to an order to repair either the balcony, roof, or leaking pipes. As such, I dismiss this aspect of the Tenants' claim without leave to reapply.

Regarding the faulty refrigerator, the Tenants provided insufficient evidence that they contacted the Landlord to inform them of the problem. No copies of any written communication or otherwise was submitted to suggest that the Landlord was aware of the issue. The Landlord testified that they were unaware of the problem until now.

Taking into consideration the testimony of the parties and the insufficient evidence regarding whether the Tenants contacted the Landlord in regard to the fridge, and applying the law to the facts, I find on a balance of probabilities that the Tenants have not met the onus of proving that they are entitled to an order to repair the fridge. I dismiss this aspect of the Tenants' claim without leave to reapply.

However, the Landlord is now on notice that there may be an issue with the Tenants' refrigerator, and that they are to attend to the rental unit to assess, and repair or replace if necessary, the fridge if it is leaking. I urge the Tenants to be flexible in allowing the

Landlord access to the rental unit to address this issue.

**6. *Are the Tenants entitled to an order for compensation for monetary loss or other money owed?***

The Tenants seek compensation for monetary loss for four mattresses that they threw out and replaced because of bed bugs. Section 67 of the Act empowers me to determine the amount of, and order that a party pay, compensation to another party, if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement.

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, and to establish the value of the loss or damage. In determining whether compensation is due, an arbitrator must determine whether:

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

The testimony of the parties confirms that the Landlord was attempting to fix the bed bug issues by conducting numerous treatments. The Tenants have not provided sufficient evidence that the Landlord has failed to comply with the Act, regulation or the tenancy agreement. Indeed, the Landlord has attempted on several occasions to properly treat the bed bugs, but the Tenants have acted unreasonably in their frustrating the Landlord in their attempt to fully and properly treat the bed bugs. As such, I do not find that any loss or damage has resulted, as the Landlord has not failed to comply with the Act, the regulation or the tenancy agreement.

I further note that the Tenants did not submit any documentary evidence, such as receipts, establishing the amount or value of the mattresses.

Taking into consideration the testimony, submissions, and lack of evidence regarding the Tenants' claim for a monetary order, I do not find that the Tenants have established

that compensation is due, and I dismiss this aspect of the Tenants' claim without leave to reapply.

Conclusion

**The Tenants are entitled to an order cancelling the Notice. The Landlord's Notice, dated May 5, 2018, is cancelled and of no force or effect. The Landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.**

The Tenants are not entitled to (1) an order requiring the Landlord to make emergency repairs, (2) an order suspending or setting conditions on the Landlord's right to enter the rental unit, (3) an order requiring the Landlord to comply with the Act, regulation, and/or tenancy agreement, (4) an order requiring the Landlord to provide services or facilities required by the tenancy agreement or law, and (5) an order for compensation for monetary loss or other money owed and I dismiss this aspect of their claim, all of which are dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1 (1) of the Act.

Dated: July 5, 2018

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Residential Tenancy Branch