



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Preliminary matter

At the start of the conference call the Landlord's Advocate said that the Landlord has made a cross application and the Landlord would like it heard at this hearing with the Tenants' application. The Advocate said it was sent to the Tenant by registered mail on September 1, 2018 and was dropped off on the Tenants' door step on August 31, 2018. The Tenants said they were out of town so they did not receive the Landlord's application in time for this hearing. Given the deeming provisions of section 90 of the Act, when documents are received, I find the Landlord's Hearing package was not received by the Tenants 14 days prior to the hearing. Consequently I dismiss the Landlord's request to hear his application with the Tenant's application. The Landlord has a hearing date scheduled for December, 2018 and the Landlord's application will be heard on that date by the Arbitrator that is assigned to the hearing.

### Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, regulations and the tenancy agreement and to recover the filing fee.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on or about April 10, 2018. The Landlord's Advocate she they are not disputing service. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Have the Tenants experienced a loss or damage and if so how much?
2. Are the Tenants entitled to compensation and if so how much?

### Background and Evidence

This tenancy started on February 14, 2018 as a one year fixed term tenancy with an expiry date of February 15, 2019. Rent is \$2,600.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$1,300.00 at the start of the tenancy. The Tenant said no move condition inspection reports were completed for this tenancy.

The Tenant said they moved into the rental unit on February 14, 2018 and she saw some silver fish in the master bedroom. As the month when by the insect infestation got worse and so on March 1, 2018 the Tenant phoned the Landlord and told him about the insect issue. The Tenant said the Landlord acted immediately and the Pest Control company came to the rental unit on March 2, 2018. The Pest Control company said the insects were silverfish and the agent sprayed the rental unit. As well the Pest Control agent said the unit should be empty as a result of the spray for at least 7 hours for adults and 24 hours for children and nursing mothers. Further the Tenant said the Pest Control agent said they could come back in 10 days if the insect problem was not resolved. The Tenant said she was very concerned about the insect problem and the pesticide spray for herself and her family. As a result she decided to look for a new place to rent and she emailed the Landlord that she would be moving out because of the insect problem. The Tenant added that the Landlord did offer the Tenants \$200.00 for alternative accommodations for the night of March 2, 2018 because of the spray. The Tenant said they stayed with family so they did not accept the Landlord's offer.

The Tenant said she believed the house was uninhabitable from March 2, 2018 to when they moved out on March 21, 2018. The Tenant said they stayed in the rental unit 4 nights in March while they packed up their belongings. The Tenant continued to say they prepared a Mutual Agreement to End Tenancy for the Landlord to sign but the Landlord did not sign it. The Tenant said this was an oversight because the situation was very stressful for her.

The Tenant continued to say that they moved out on March 21, 2018, she gave the Landlord her forwarding address in writing that day and the Landlord returned their security deposit.

The Tenant said she has now applied for the return of her February, 2018 rent in the amount of \$1,300.00 and the March, 2018 rent in the amount of \$2,600.00 for a total amount of \$3,900.00. The Tenant said she should not have to pay the rent as the unit had an insect problem in February and they only lived in the unit for 4 days in March, 2018. The Tenant said she believes the rental unit was uninhabitable and she said she originally believed the Landlord knew the rental unit had an insect infestation prior to the start of their tenancy. The Tenant said she is not sure of that now.

The Landlord's Advocate said that the Tenants application does not have any merit as the Landlord acted quickly and responsibly as soon as the Tenant contacted him. The

Advocate said the Landlord did not know about the insects until the Tenant called him and he had the Pest Control company booked within 2 hours of the Tenant's phone call. The Pest Control company was booked for the next day. Further the Landlord offered the Tenants \$200.00 for alternative accommodations while the Pest Control company did their work. The Landlord's Advocate said the insect spray treatment worked and the problem was resolved.

Further the Advocate said the Landlord did not dispute the Tenants breaking the fixed term tenancy agreement and the Landlord returned the Tenants' security deposit in full. The Advocate continued to say the Tenant gave less than a months notice to end the tenancy and the Landlord got a new tenant in the unit as of April 15, 2018. The Advocate said the Landlord has mitigated his losses the best he could given the situation.

The Advocate continued to say the Landlord has complied with the Act and has acted in a responsive and reasonable manner to all of the Tenants' requests. The Advocate said the Tenants had control and occupancy of the rental unit for February and March, 2018, therefore they are responsible for the rent. As well the Tenants have not proven the rental unit was uninhabitable and the Landlord believes that the Tenants may have brought the insects into the unit when they moved in. the Advocate said the Tenants brought their belongings boxed into the master bedroom at the start of the tenancy and that is where the insect problem began. Further the Advocate said she the Landlord will seek his damages at the next hearing.

The Tenant said in closing that there is no way they brought the insects into the rental unit. The Tenant continued to say that she has tried to be fair and reasonable through this ordeal, but the fact remains the unit was uninhabitable because of the insect problem and then the pesticide spray issue. The Tenant said they did not have use of the rental unit in March, 2018 and the unit had an insect infestation in February, 2018, therefore the Tenant believes they should get their rent returned.

### Analysis

Based on the documented evidence and the oral testimony of both the parties, and on the balance of probabilities, I find the following.

### Test for damages or loss

1. That the other party violated the Act, regulations or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The loss must be proven and actually exist;
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage or loss and that it stemmed directly from actions of the Landlord in violation of the Act, regulations or tenancy agreement. Following this the Tenant must prove the value of the loss or damage and that the Tenant did everything to minimize the damage or loss.

In all tenancies things happen and it is the responsibility of both the Tenant and the Landlord to communicate and work together to resolve the issues. The insect issue in this tenancy is regrettable but it has not been proven to be either the Landlord or the Tenants fault. Therefore both parties have a responsibility to mitigate the issue.

Based on the testimony and submitted evidence I find the Landlord acted appropriately and responsibility to the Tenants concerns. Further there is no evidence the Landlord knew about the insect issue prior to the tenancy. In fact it is possible that the insects came with the Tenants. Consequently I find the Tenant has not proven the Landlord has violated the Act, regulations or tenancy agreement in any way. I find the Landlord has complied with the Act, regulations and tenancy agreement.

Secondly the Tenants have not provided any corroborative evidence that the rental unit was uninhabitable after the Pest Control company completed the work. Consequently I find the Tenant have not proven a loss or damage to them.

Further the Tenants have not shown any action to mitigate their loss. For example working with the Landlord to resolve the insect issue so the tenancy could continue as stated in the fixed term tenancy agreement.

For these reasons the Tenants' application does not have merit, I dismiss the Tenants application with out leave to reapply due to a lack of evidence to prove the Landlord violated the Act, regulations or tenancy agreement and that the Tenants had a loss or damage that requires compensation.

As the Tenants were not successful in this matter I order the Tenants to bear the cost of the filing fee which is already paid.

Conclusion

The Tenants application is dismissed without leave to reapply.

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: September 17, 2018

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Residential Tenancy Branch