



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, RP, LRE, LAT, RR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Landlord DV (the landlord) gave sworn testimony that they represented the interests of the other landlord in this matter.

As the landlord confirmed that on October 22, 2018, they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on or about October 18, 2018, I find that the landlords were duly served with these packages in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should orders be issued to the landlords to repair various items in the tenant's rental unit? Should an order be issued to reduce the tenant's rent for this rental unit? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The tenant gave undisputed sworn testimony that this tenancy for a suite in a multi-level rental building began as a month-to-month tenancy on July 1, 2003. The initial monthly rent was set at \$480.00, payable in advance on the first of each month. The parties agreed that the tenant's monthly rent has increased to \$660.00 at present. The landlord continues to hold the tenant's \$240.00 security deposit paid in 2003.

The tenant's application identified a monetary award of \$1,437.82 that the tenant was seeking, plus the recovery of the tenant's \$100.00 filing fee. The tenant's application for dispute resolution indicated that \$942.82 of the requested \$1,437.82 was to compensate the tenant for expenses the tenant incurred as a result of a bedbug infestation in the tenant's rental unit. The remaining \$495.00 of the amount claimed in the tenant's application was for a 75% rent reduction the tenant was seeking for the month of September 2018.

The tenant did not amend the original application in which the tenant advised the landlords that the tenant was seeking a monetary award of \$1,437.82 plus the filing fee. The tenant entered into written evidence the following breakdown and, where relevant, receipts for the expenses incurred and amounts the tenant was seeking. As noted, these items far exceeded the total identified in the original claim for dispute resolution.

Item	Amount
Receipt for 1 Night's Hotel Accommodation - October 1, 2018	\$166.75
Rental of Storage Locker September 2018	175.64
Rental of Storage Locker October 2018	121.80
Rental of Storage Locker November 2018	152.25
Purchase of Mattress and Pillow Covers	100.76
Storage Vehicle Rental	45.82
Gas	32.00
Bedbug Spray and Trap	20.12

Minutemen Boxes	258.04
Registered Mail Costs	38.21
Photocopying Expenses	20.27
Requested Rent Reductions (September, October and November 2018 - \$495.00 x 3 = \$1,485.00)	1,485.00
50 hours of Applicant's Time	1,000.00
Recovery of Filing Fee for this Application	100.00
Total of Above Items	\$3,716.66

While I have given these additional amounts consideration, including requests for rent reductions of \$495.00 for both October and November 2018, and compensation of \$1,000.00 for 50 hours of time the tenant has devoted to attending to the bedbug problem, I advised the tenant that I could not consider issuing a monetary award in excess of the amount claimed in the tenant's application. To do otherwise, would be to deny the landlords the right to know the case against them, which clearly identified \$1,437.82 as the amount the tenant was seeking from the landlords, plus the recovery of the tenant's \$100.00 filing fee.

The tenant entered into written evidence a copy of a September 6, 2018 letter to the landlord in which the tenant noted that they had been searching for bedbugs and taking measures to spray for bedbugs for the previous four nights since discovering bedbugs in the tenant's rental unit. In that letter, the tenant noted that they had contacted the landlord about this matter, presumably on September 2 or 3, 2018, when the bedbug(s) were first discovered by the tenant. In the letter, the tenant advised that they had become "paranoid of being bitten by bedbugs" and that they were worried that their belongings were becoming infested with bedbugs. The tenant noted that they planned to take drastic emergency actions to address this situation and would hold the landlords responsible for all costs incurred in doing so.

The tenant continued with spraying the rental unit, laying bedbug traps, and purchased a mattress cover and pillow case covers to act as shields to protect them from bedbugs. The tenant took some of their belongings to a storage facility they secured and rented a vehicle to transport these materials to that facility.

The landlord provided written evidence and sworn testimony that after the tenant notified the landlord of the bedbug problem that the landlord got in contact with their pest control specialist, providing the name and phone number for that specialist to the

tenant. The landlord advised the tenant that since the next door neighbour to the tenant had just received a notice to end tenancy from the landlord and a hearing to consider that notice had been scheduled with an arbitrator appointed pursuant to the *Act*, the landlord expected that tenancy to be ending shortly. The landlord informed the tenant that once that dispute resolution hearing had been completed and the next door neighbour was evicted that the landlord would have the pest control company attend both suites for pest control treatment. The landlord advised the tenant at that time that they anticipated that they would have possession of the adjoining rental suite early in October.

The landlord gave sworn testimony to support their assertion made in their written evidence that the tenant did not follow the advice provided by the landlord or the landlord's pest control specialist the tenant contacted. Rather than leaving any potentially bedbug infested items isolated in the tenant's rental unit, the tenant chose to do what the landlord characterized as "everything they told them not to do", the exact opposite of the advice provided to them by taking these items down the hallways of the rental building and removing them to a storage facility offsite. The landlord expressed concern that if these items were infested that they would be returned to the rental unit at some point in time after the rental unit had undergone heat treatments by the pest control specialist. The landlord also testified that the tenant was advised to not use any sprays as these would again only distribute the bedbugs more widely.

Both parties confirmed that the pest control specialist attended the rental building on October 4, 2018, at which time the tenant's rental unit was given a heat treatment. The landlord said that a similar treatment was undertaken on the suite next to the tenant, as that tenant had vacated the premises by that time. The landlord also noted that a suite in another part of the building and on another floor was also given a heat treatment for bedbugs by the pest control specialist on that date. The landlord said that they were unaware of any bedbug problem in that adjacent suite until the landlord began assisting the tenant in moving items out of that rental suite. The tenant observed that the landlord participated in moving bedbug infested items out of their neighbour's rental suite down the hallway. The tenant questioned whether the landlord was taking the same action that the landlord found objectionable when the tenant moved some of their belongings out of the rental unit that the tenant's independent research revealed could be damaged in the heat treatment.

The landlord also gave undisputed sworn testimony that the pest control specialist advised the tenant that there was no need for the tenant to be out of the rental unit beyond 6:00 p.m. on the night(s) when the rental unit was treated. The landlord asserted that there was no need for the tenant to take items into storage, and no need

for the tenant to incur hotel room costs, as the matter was being addressed by the landlords in a way that would lead to successful treatment of the problem. The tenant testified that the one night's hotel accommodation claimed was on a night when they were bitten by bedbugs, a few nights before the first treatment was undertaken.

Although the landlord and the landlord's pest control specialist believed that the initial heat treatment had been successful, the tenant continued to raise concerns about bedbugs that the tenant maintained were still present in the rental suite. Even though the tenant produced no live bedbugs for inspection by the landlord or the landlord's pest control specialist, the landlord agreed to have the pest control specialist return to the rental suite on November 13, 2018 to undertake a second heat treatment. It would appear that the tenant is satisfied that this second heat treatment has accomplished the purpose intended. The tenant has not yet returned items from storage to the rental unit.

The tenant's application also cited a host of repair problems, which the tenant has asked the landlord to address. The parties agreed that the landlord has commenced some of these repairs and has plans to undertake more repairs once arrangements can be made whereby the tenant is available when these repairs happen.

The tenant said that some of the caulking in the bathroom area has been fixed, but caulking that extends below the bathtub has not been repaired and is beginning to display black mould. The landlord agreed to undertake these additional caulking repairs.

The tenant testified that the landlord has also performed some repairs on holes and cracks in one of the walls, but has not repainted the premises since this tenancy began. The tenant requested that the entire suite be repainted, noting that there are small staple gun holes in many of the walls and on the ceiling, which occurred during the heat treatments by the landlord's pest control specialist. The landlord provided undisputed sworn testimony and written evidence that the walls have been discoloured by the tenant's smoking in the suite for the past 15 years. The landlord agreed to repaint the one wall that had been repaired for cracks and holes, and to fill in any existing holes in the walls and ceilings caused by the pest control treatment.

The tenant maintained that there were water stains on the ceiling and maintained that this required a full repainting of the ceiling in the rental unit.

The tenant testified that a piece of the linoleum flooring was gradually lifting and needed to be repaired with a sealer to be applied using an adhesive syringe to avoid further

damage and a potential tripping hazard. At the hearing, the landlord agreed to undertake these repairs.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that they are entitled to the losses claimed for which the landlords were responsible.

Section 32 of the *Act* outlines the obligations for landlords and tenants to repair and maintain rental premises in a residential tenancy in part as follows:

Landlord and tenant obligations to repair and maintain

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...

Paragraphs 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

I can assure the parties that I understand that situations such as this one, where it is very difficult to ascertain how a pest infestation has developed, present significant

difficulties and challenges for both landlords and tenants in multi-unit, multi-level rental buildings. While I have little doubt that the tenant has found the bedbug problem disruptive and troubling, the tenant can only hold the landlord responsible for matters within the landlord's control and for which the landlord bears responsibility under the *Act*. In a multi-unit rental building such as the one where the tenant resides, it is often very difficult to determine with certainty the initial source of a bedbug infestation. A tenant cannot hold a landlord fully responsible for any and all costs associated with a pest infestation. What a tenant can expect is that a landlord will have a proper pest control program in place if there is a demonstrated history of pest problems and take appropriate action to address a specific problem once it is brought to a landlord's attention.

On many occasions it becomes necessary for pest control specialists to treat a number of adjacent rental units or rental units above or below one another at the same time. To do otherwise simply allows the pests to move around to an untreated rental unit. The landlord provided compelling sworn testimony and written evidence that the tenant's decision to remove potentially bedbug infested items from the rental unit to an offsite storage facility to be returned presumably to the rental suite after the heat treatments had been successful undermines the very purpose of providing these treatments. While the tenant has obviously been troubled by this problem, admitting in the October 6, 2018 letter to the landlord that they had become "paranoid" about the situation, the tenant bears some responsibility in following professional advice provided by the landlord's pest control specialist and the landlord who had apparently been dealing with such issues more frequently than had the tenant. A landlord cannot guarantee that the pest control specialists brought in to address a pest control problem will eradicate the problem; it is often necessary for these specialists to return to treat a rental unit or rental units in a building a number of times.

In this case, there is undisputed evidence that the tenant first raised the bedbug problem with the landlord as soon as they became aware of the problem during the first few days of September 2018. At that time, the landlord advised the tenant that the landlord would bring pest control specialists into the building to attend to this matter, likely in early October. The landlord testified that they were waiting until the outcome of a dispute resolution hearing to consider an eviction notice issued to the tenant in the rental unit beside the tenant before they could take pest control action.

The landlord testified that the reason for the eviction of the neighbouring tenant was not related to any pest control problem, but was for that tenant's non-payment of rent. Had the landlord been concerned at that time that bedbugs were also infesting the

neighbouring rental suite, the landlord may have had a legitimate reason for delaying taking action until the dispute resolution hearing or until the neighbouring tenant vacated their rental unit.

In this case, I find no logical connection between the tenant's request for attention to their bedbug problem and the landlords' ongoing action to evict the tenant's next door neighbour, other than a possible cost saving to the landlords in the event that both rental units ended up requiring pest control treatment. Rather, I find that the landlord unnecessarily delayed obtaining pest control services until a decision was made that the tenant's rental unit would be given a heat treatment to address this problem. In the interim, almost a month passed, with little tangible action taken by the landlord to address the tenant's concerns.

I accept that it would take some time for the landlords:

- to schedule an inspection by a pest control specialist;
- to determine how widespread the infestation was, which might require inspections of other adjacent rental units or those above and below the tenant's rental suite;
- to decide which treatment would be appropriate under the circumstances;
- to consider the options and approve the treatment plan; and
- to schedule the necessary treatments and notify the affected tenants, allowing them a proper opportunity to make the necessary preparations for treatment.

This process might take as many as 10 days, during which time the tenant would have needed to cope with the situation as best they could. However, by the end of the 10th day, the landlord ought to have been able to have taken the action, eventually taken on October 4, 2018, when the first heat treatment was undertaken at the rental suite.

I find that the landlords' delay in taking action did not meet the landlord's responsibility pursuant to section 32(1) of the *Act* to take timely action to address the bedbug problem in the tenant's rental suite. For that reason and in accordance with section 65(1) of the *Act* because I find that the value of this tenancy was reduced for a three-week period by the landlords' inaction, I am issuing a monetary award in the amount of \$300.00 in the tenant's favour. This amount provides an award of \$100.00 for each week from September 13, 2018 until October 4, 2018, when the first of the heat treatments were undertaken in the tenant's rental suite.

Over this period, the tenant also incurred the cost of one night's accommodation in a local hotel on October 1, 2018, by which time I find the landlord should have taken

measures that would have made such a hotel stay unnecessary. I allow this portion of the tenant's application and issue a monetary award in the amount of \$166.75 to compensate the tenant for losses they incurred as a result of the landlords' delays in taking effective action.

I dismiss the remainder of the tenant's application for a monetary award. I do so as I find that the only losses the tenant incurred that were the responsibility of the landlords were those associated with the delays in having a pest control specialist take action to resolve this problem. Landlords cannot guarantee that tenants will reside in pest free accommodations; they only need to take corrective action in a timely manner given the circumstances when problems arise and have pest control specialists monitoring any problems that arise over time. The tenant did not produce any evidence other than those associated with the tenant's own claim as to any ongoing failure of the landlords to have in place a pest control management plan. While the tenant's costs to reduce the effect of the presence of bedbugs in the tenant's rental suite were no doubt incurred with the best of intentions, there is undisputed evidence that actions such as the tenant's removal of items from the rental unit to be placed in storage were at odds with the advice provided by the landlord and the landlord's pest control specialist. I find that the landlord bears no responsibility under the *Act* for any of these costs.

As noted at the hearing, the only hearing related costs that a party may claim under the *Act* is for the return of the filing fee. As the tenant has been partially successful in this application, I allow the tenant to recover the \$100.00 filing fee from the landlords. As there is no provision in the *Act* for parties to recover the mailing and photocopying costs associated with their application for dispute resolution and provision of evidence to the other party, I dismiss this portion of the tenant's application.

Turning to the tenant's request for repairs, I find that the landlords are already taking some measures to address the issues identified as requiring repair in the tenant's application. In addition to the items already repaired, I order the landlords to undertake the following repairs by December 31, 2018, after obtaining authorization to enter the rental suite to undertake such repairs from the tenant:

1. I order the landlords to undertake additional caulking repairs to the area below the tenant's bathtub and to remove black mould in this area as required.
2. I order the landlords to paint the wall that has been repaired by the landlord.
3. I order the landlords to conduct repairs to any holes in the walls and ceiling that have been caused by the pest control treatment of the rental suite.

4. I order the landlords to use an adhesive syringe to repair the section of linoleum flooring in the tenant's rental suite so as to properly seal this flooring, avoid further damage and to remove a potential tripping hazard in the rental unit.

I dismiss the remainder of the tenant's repair requests and, in particular, the tenant's request to have the entire rental suite repainted. In this regard, the landlord provided compelling undisputed sworn testimony that the existing paint job has been affected by the tenant's smoking in the rental unit. No doubt, the landlords will wish to repaint this rental unit at the end of this tenancy or in accordance with any regular maintenance schedule established by the landlords for this rental building.

Based on the evidence presented, the parties appear to have established an arrangement whereby the landlord only accesses the tenant's rental unit with the tenant's express permission to do so and when the tenant is present, or after the landlord issues a written 24-hour notice to conduct an inspection of the premises in accordance with the *Act*, again while the tenant is present. For this reason, I make no orders with respect to concerns initially raised by the tenant with respect to the landlords' access to the rental unit.

Conclusion

I issue a monetary award in the tenant's favour under the following terms, which allows the tenant a monetary award for losses arising out of this tenancy, including a retroactive reduction in rent paid, and recovery of the tenant's filing fee for this application:

Item	Amount
Reduction in Rent for the period from September 13, 2018- October 4, 2018	\$300.00
One Night's Hotel Accommodation - October 1, 2018	166.75
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$566.75

Although I am issuing monetary Orders with respect to this award, the tenant may also choose to implement this monetary award by way of reducing a future monthly rent payment by that amount. In the event that this is not a suitable method of obtaining this monetary award, the tenant is provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

By December 31, 2018,

1. I order the landlords to undertake additional caulking repairs to the area below the tenant's bathtub and to remove black mould in this area as required.
2. I order the landlords to paint the wall that has been repaired by the landlord.
3. I order the landlords to conduct repairs to any holes in the walls and ceiling that have been caused by the pest control treatment of the rental suite.
4. I order the landlords to use an adhesive syringe to repair the section of linoleum flooring in the tenant's rental suite so as to properly seal this flooring, avoid further damage and to remove a potential tripping hazard in the rental unit.

I dismiss the remainder of the tenant's application.

This final and binding 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: November 24, 2018

Residential Tenancy Branch