



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SOMA APARTMENTS LTD. / TERRA CREST PROPERTY MGT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL FFL  
                             MNDCT OLC FFT

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant, both seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee for the cost of the applications. The tenant has also applied for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The hearing did not conclude during the first scheduled date and was adjourned by consent. My Interim Decision was provided to the parties.

On the second scheduled date the landlord was represented at the hearing by an agent who did not testify or take part in the hearing, but observed only. Legal Counsel for the landlord attended on both scheduled dates and called one witness who gave affirmed testimony. The tenant also attended, accompanied by his daughter to assist, who is a lawyer but not acting in that capacity for this hearing, but assisting the tenant. The tenant also gave affirmed testimony, and parties, or counsel, were given the opportunity to question each other and give submissions.

At the commencement of the hearing the landlord's counsel advised that the landlord has not received any of the tenant's evidentiary material. The tenant's assistant offered to provide a copy, however the Rules of Procedure require an applicant to submit evidence with their Application for Dispute Resolution and provide a copy to the respondent. An applicant and a respondent must provide any evidence they wish to rely on to the other party. Since the tenant has not done so, I decline to consider any of the tenant's evidence.

No further issues with respect to service or delivery of documents or evidence were raised, and all evidence of the landlord has been reviewed and is considered in this Decision.

Further, during the course of the hearing, the parties advised that the tenant has vacated the rental unit. Since the tenant is no longer a tenant of the landlord, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

#### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for costs to treat bed-bugs and disposal of the tenant's belongings?
- 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 replacement costs of clothing, household items, bed-bug spray and tools?

#### Background and Evidence

The landlord has provided a copy of a tenancy agreement made between the parties for a month-to-month tenancy to commence on July 1, 2005, for rent in the amount of \$516.00 per month and a security deposit in the amount of \$258.00.

The parties agree that the tenant disputed a One Month Notice to End Tenancy for Cause given by the landlord and a hearing was held on October 1, 2018 which found in favour of the landlord, and the landlord was granted an Order of Possession. The tenant moved out of the rental unit on November 7, 2018.

**The landlord's witness** is a building manager of the rental complex and testified that on December 16, 2017 the landlord was notified of a box spring and mattress highly infested with bed-bugs in the common hallway on the 4<sup>th</sup> floor, and subsequently found out that they belonged to the tenant. The landlord's maintenance person pushed them back into the tenant's rental unit and sprayed the hallway with pesticide and contacted ORKIN, a bed-bug and pest exterminator, and a treatment was completed on December 21, 2017. A second treatment is included in the contract, and the resulting Invoice totalling \$204.75 has been provided as evidence for this hearing. The landlord organized a trailer for disposal of the box spring and mattress, and an Invoice in the amount of \$326.49 has also been provided.

A neighbour, on the same floor of the complex as this tenant, found a bed-bug and a K-9 unit inspected all suites on January 16, 2018. An invoice for that service has been provided in the amount of \$210.00.

Another invoice dated May 4, 2018 in the amount of \$204.75 has been provided, and the landlord's witness testified that ORKIN attended to treat the rental unit on May 2, 2018, but the tenant's suite was not ready. All ages of the bugs were present, and had spread to the other suite. CO2 detectors show that the infestation had been there for some time. The landlord was not notified until a neighbouring tenant made the landlord aware.

On May 23, 2018 the tenant's rental unit was finally ready to be chemically treated, and a resulting invoice dated May 24, 2018 in the amount of \$204.75 has also been provided.

The tenant was served with a notice to end the tenancy on May 31, 2018 which was effective June 30, 2018, and another k9 unit was scheduled for June 5 for units surrounding the tenant's rental unit, the parkade and parking spots. Bugs had been found in the parking spot where the tenant had taken his items. The elevator in the building does not go to the parkade, and the landlord was concerned about the tenant taking items to the parking spot through the stairwells. No activity was found in the rental unit, but the tenant had removed his mattress and then the bugs were back.

The tenant had moved some items to a storage locker area and left the door open. The building manager saw items that had been previously seen in the rental unit and the parking spot, and had to schedule another inspection for fear that the bugs had spread to the storage locker area. Another invoice for \$210.00 has been provided for this hearing.

Another inspection was scheduled for July 6, 2018, and the landlord was present. The resulting invoice is \$131.25. The tenant had used over-the-counter chemicals, and the ORKIN inspector had advised not to do that. It's regular practice to explain to a tenant how to bag and clear away items, and that it's not good for a tenant's health to mix chemicals.

Another k9 inspection was completed after the tenant moved out and bedbugs were found on the 7<sup>th</sup> and 8<sup>th</sup> floors; isolated incidents. Prior to 2017 there were bedbugs on the 6<sup>th</sup> floor due to a tenant getting prostitutes in, and those issues were resolved.

The landlord seeks damages in the amount of \$1,701.99, which is the direct result of the tenant's negligence by pulling infested items through the common areas in an

attempt to dispose of infested items without bagging and failing to cooperate with the landlord's efforts to treat. The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$204.75 for pest control;
- \$326.49 for removal of mattress;
- \$204.75 for pest control
- \$204.75 for pest control;
- \$210.00 for K-9 Inspection;
- \$131.25 for pest control;
- \$210.00 for pest control;
- \$210.00 for pest control;

For a total claim of \$1,701.99.

**The tenant** testified that he went to a pest supply store that distributes bed bug chemicals to hotels and such. It was not over-the-counter chemicals that the tenant used, but Bedlam spray sometime in April or May that he got from the pest supply. He also used a heat gun and a steamer, and believes the k9 found dead bugs.

The tenant only saw the manager once or twice a month who wouldn't answer questions. The tenant wanted some things repaired in the rental unit, but the manager would never show up.

The tenant saw a sign in the garage that mentioned bed bugs and pushed his mattress outside his door, and then the box spring. He noticed a couple of bugs in the box spring and killed them. Meanwhile, another tenant told the manager that there were bugs in the box spring outside her door, and the manager told the tenant to pull the bed back into the rental unit and the manager put white powder on the floor. A couple of days later another tenant vacuumed.

The bugs were killed in May, and no one told the tenant any more were found. To say that the tenant didn't let them into the rental unit is totally wrong. The tenant hired someone to remove rubbish from the parking stall. The tenant called them on June 7, 2018 and they never found any bugs.

The tenant found a notice on the door of the rental unit saying that ORKIN would be attending, which they did on September 25. The tenant was never negligent.

The landlord told the tenant to declutter, and ORKIN did not say that the tenant should put clothing or items in bags, but said to get rid of items.

The tenant claims:

- 53 shirts \$1,400.00 estimated;
- 17 slacks (pants) \$510.00;
- 200 books \$3,000.00 which is a low estimate;
- 3 slow cookers \$160.00;
- Electric fry pan \$40.00;
- Tatun pressure cooker \$190.00;
- 2 roaster ovens \$70.00;
- cheese shaver \$50.00;
- large George grill \$200.00;
- Dehydrator and sheet to dry \$500.00;
- 210 litre black tub on wheels \$41.00;
- 3 72 litre tubs \$36.00;
- 3 black tubs 121 litre \$45.00;
- Bedlam spray \$160.00 (3);
- 120 to 1100 degree heat gun \$120.00;
- Con air steamer \$57.00;
- Steamer \$130.00;
- Rubbish removal \$157.00;

For a total of \$6,866.00.

### **Closing Submissions of the Landlord:**

The landlord claims compensation of the invoices that can be connected to bed-bugs in this rental unit. The tenant failed to cooperate with directions for treating the suite, which put the landlord's property at risk, as well as other tenants. That claim was upheld in the previous Decision.

The landlord further submits that tenants are told to declutter, not destroy items for treatments, and nothing in the flyer suggests that either.

### **Closing Submissions of the Tenant:**

The tenant questions the validity and dates of the invoices provided by the landlord, and the tenant submits that bed-bugs are an issue in the City. There were ongoing inspections in September and October. The landlord's witness testified that the tenant was negligent, along with a prostitute in the building. One of the invoices is based on the landlord's theory that the tenant caused bed-bugs to travel to another unit, but there was no such finding by the Arbitrator in the previous hearing, and no finding that the tenant caused the spread.

The landlord also provided hearsay testimony about what was said to the tenant about using other products.

At the conclusion of the hearing I advised the parties that I would be reviewing the Decision of the director made in October, 2018 to ensure that I do not make any findings or orders that are contrary. However, the only evidence that I can consider is the evidence provided for this hearing that has been exchanged between the parties.

### Analysis

Where a party makes a monetary claim against another party for damage or loss, the onus is on the claiming party to satisfy 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.

I have reviewed all of the landlord's evidentiary material, particularly the ORKIN invoices and the Decision of the director dated October 22, 2018.

Dealing firstly with the landlord's monetary claim, the landlord's witness testified that it's regular practice to explain to a tenant how to bag and clear away items, and that it's not good for a tenant's health to mix chemicals, which he did. That is confirmed in the July 3, 2018 email from ORKIN. The landlord seeks damages for the tenant's negligence by pulling infested items through the common areas in an attempt to dispose of them without bagging, and failing to cooperate with the landlord's efforts to treat. However, there is no evidence at all about what instructions were given to the tenant. I accept that written instructions are normally given to clients of exterminators and to tenants, but what those instructions were in this case is totally unknown.

The Decision of the director dated October 22, 2018 states, in part:

"The landlord has provided a series of cautions and warnings provided to the tenant regarding the identification of bed bugs, which was disputed by the tenant. The landlord provided instructions and scheduled pest control services to resolve the bed bug issue. The landlord provided undisputed affirmed testimony that on at least one occasion the tenant refused entry to the landlord's pest control

service provider to perform treatment. On this basis, I find that the landlord has provided sufficient evidence that the tenant after being notified of the bed bug issue by the landlord failed to act reasonably in assisting for the treatment of bed bugs by the landlord's pest control service."

There was clearly a finding that the landlord had provided sufficient evidence that on at least one occasion the tenant refused entry for treatment after the tenant had been notified of a bed bug issue, which was sufficient for ending the tenancy. However, there was no finding by the Arbitrator of what cautions or warnings were provided to the tenant, and the Decision states that the tenant disputed that. In the circumstances, I am not satisfied that the landlord has established that any damage or loss suffered was a result of the tenant's failure to comply with the tenancy agreement or the *Act*.

Garbage collection is included in the rent according to the tenancy agreement, and there is no limitation. However, the tenancy agreement does specify that the tenant agreed that such services and utilities shall be used prudently and carefully maintained. I do not accept that the tenant was justified in disposing of a box spring and mattress at the landlord's expense. I find that the landlord has established the claim of \$326.49.

With respect to the tenant's claim, there is absolutely no evidence before me to justify the amounts claimed, nor is there any evidence, other than the disputed testimony of the tenant that the landlord and the ORKIN technician told the tenant that he had to destroy all of the items, even household and cooking items. I find that the tenant has failed to establish elements 2 and 3 in the test for damages, and I dismiss the tenant's monetary claim.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$426.49.

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: December 04, 2018

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Residential Tenancy Branch