



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LIVING BALANCE  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** MNDC FF

### **Introduction**

This is a reconvened hearing pursuant to an interim decision of the original hearing date of June 03, 2019.

This hearing was convened in response to an application filed by the tenant under the *Residential Tenancy Act* (the Act) seeking money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties were represented in the hearing. The tenant's agent attended for the applicants(s) and the landlord's representative attended for the respondent. The parties acknowledged exchanging evidence as has been provided to this proceeding. Each was given opportunity to present relevant evidence, discuss the dispute, make relevant submissions, and provide testimony. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be determined**

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

The relevant evidence in this matter is as follows. This tenancy started October 15, 2017 of which I have been provided the tenancy agreement. The tenancy ended July 31, 2018. The tenant's agent (the tenant) testified that at the very outset of the tenancy they were notified that some of the residential units of the property would undergo pest control measures on information bed bugs were sighted. The landlord testified the treatment was a "precautionary spraying" as is their practice upon being informed of a pest issue. As a result the tenant delayed their occupation of the rental unit. The tenant

testified the landlord should have informed the tenant prior to entering into a tenancy agreement of a bed bug issue and that the problem was a purportedly a “building-wide issue”. The landlord testified that they are obligated to address any pest issues when notified as required by local government requirements and the Act, and as a result they undertook treatment by a pest control professional, for which they submitted evidence.

The tenant testified that upon eventually occupying the rental unit, on October 31, 2019 the tenant woke up with bug bites and that the tenant effectively periodically dealt with the presence of bed bugs throughout the tenancy despite the landlord’s efforts to abate the problem. The tenant testified knowing from other residents and the landlord of historical and periodic presence of bed bugs on the residential property and further being informed by the landlord’s pest control professionals that it was not a problem easily resolved. The tenant testified knowing or being told that the bed bugs are in the walls of the building and that they become an issue for residents primarily at night, as attracted by the occupants of a unit. The landlord did not deny that periodically the building is challenged by bed bugs and other pests, however, they do not ignore such problems and routinely inspect and treat for pests as they are required, including addressing any reports of pests with treatments out of an abundance of caution.

None the less, the tenant testified that upon raising concerns to the landlord they were told by the landlord to arrange their own treatment for bed bugs. The tenant provided a text exchange with the landlord stating the tenant wanted access by a ‘sniffer dog’ for bed bugs which the landlord obliged. The text exchange further stated the landlord volunteering to call in a pest control professional to address any finding. The landlord denied telling the tenant to deal with any bed bug issues and testified they routinely asked the tenant if they were experiencing bed bugs to which the tenant replied they were not. The tenant testified that in their remediation efforts they included detection, and “steam/heat treating” of the tenant’s unit, at their own cost. In addition, the tenant provided evidence that during the tenancy they acquired a new futon and at the end of the tenancy thermally/ heat treated the tenant’s belongings prior to vacating.

The tenant claims that the landlord is not effectively addressing the presence of bed bugs in the building and as a result is part of the problem. They also claim the landlord actively denies the bed bug problem and instead blames the residents.

The tenant is claiming for the following costs. A replacement futon \$312.48, steam treatment during tenancy \$252.00, thermal treatment of belongings upon vacating \$892.50.

### **Analysis**

*The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

In this matter the burden of proving claims of loss and damage rests on the claimant (tenant) who must establish, on a balance of probabilities that they have suffered a loss due to the landlord's neglect, or failure to comply with the Residential Tenancy Act. And, if so established, did the claimant take reasonable steps to mitigate or minimize the loss? **Section 7** of the Act outlines the foregoing as follows:

**Liability for not complying with this Act or a tenancy agreement**

**7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(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.

Effectively, the tenant must satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent (landlord) in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The tenant bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred.

I find that **Section 32** of the Act effectively states (and includes) that a landlord is responsible to address the presence of pests or any resulting infestation. I find it is further undisputed by the parties that local government law mirrors this responsibility. I accept the evidence of both parties that bed bugs are an issue and a problem which

persists and is not confined to the subject residential property. I find that the landlord does not deny the ongoing periodic presence of bed bugs in the building and the challenges associated with their management or eradication. I find that the landlord has submitted sufficient evidence to establish they did not ignore their due diligence or statutory obligation to address reports of bed bugs when notified by contracting with pest control professionals equipped to deal with bed bugs. In contrast to the tenant's testimony and evidence I have not been presented with evidence the landlord instructed the tenant to deal with any bed bug problem on their own. I find that the landlord *permitted* and accommodated the tenant so as to satisfy their efforts, however I do not find this is evidence which supports the landlord abandoned their willingness or statutory obligation to resolve reports of a pest problem.

As a result of all the above I find the tenant has not established on a balance of probabilities the landlord was negligent, or that the landlord's negligence and non-compliance with the Act resulted in the tenant's loss. Therefore, I find the tenant has not met the test for damage and loss and as a result **I dismiss** the tenant's application without leave to reapply.

### **Conclusion**

The tenant's application **is dismissed**, without leave to reapply.

**This Decision is final and binding.**

*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: July 15, 2019

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Residential Tenancy Branch