



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OLC, FFT

### Introduction

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

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and two interpreters attended the hearing. The tenants attended the hearing. The landlord and the tenants and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants were granted an Order for Substituted Service allowing them to serve the landlord with their application for dispute resolution via WhatsApp. The tenants testified that they served the landlord with their application for dispute resolution via WhatsApp on August 7, 2019. The landlord testified that she received the tenants' application for dispute resolution on August 7, 2019. I find that the tenants' application was served on the landlord in accordance with section 89(1)(e) of the *Act*.

### Preliminary Issue- Amendment

Section 4.2 of the Rules of Procedure state that in circumstances that can reasonably be anticipated, the application may be amended at the hearing. If an amendment to an application is made at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Both parties agreed that the tenants' evidence package was served on the landlord via WhatsApp, as permitted in the tenants' Order for Substituted Service, on August 7, 2019. The landlord testified that she received the tenants' evidence package on August 7, 2019. The tenants' evidence package clearly sets out that the tenants are seeking the following damages:

- A. \$105.00 for the initial bedbug inspection.
  - B. \$100.00 for the filing fee of this application.
  - C. \$367.50 for the bed bug treatment service for [tenant L.F.'s] room.
- Total: \$572.50

The tenants' application did not make a claim for a Monetary Order for damage or compensation under section 67 of the *Act*.

I find that the fact that the tenant is seeking compensation for costs incurred from the landlord's alleged breach of the *Act*, should have been reasonably anticipated by the landlord because the tenants' evidence package explicitly states the damages the tenants are seeking

Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the *Act*, I amend the tenants' application to include a monetary claim for damage and compensation in the amount of \$572.50, pursuant to section 67 of the *Act*.

#### Issues to be Decided

1. Are the tenants entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
2. Are the tenants entitled to a Monetary Order for damage and compensation, pursuant to section 67 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2017 and is currently ongoing. Monthly rent in the amount of \$4,370.00 is payable on the first day of each month. A security deposit of \$2,050.00 was paid by the tenants to the landlord. The subject rental property is a house and six tenants reside in it in total.

The tenants submitted the following facts. Tenant L.F. first noticed bed bug bites in mid June 2019 after sleeping in her room on the second floor. Tenant L.F. purchased a mattress protector and bed bug spray but the bed bugs persisted. Tenant Q.C. returned from traveling on July 9, 2019 to his basement room and was bitten by bedbugs on the first two nights he returned.

The tenants submitted the following facts. On July 12, 2019 tenant Q.C. contacted the landlord via WhatsApp and requested that an exterminator be hired by the landlord. WhatsApp messages confirming same were entered into evidence. The landlord refused to hire an exterminator and informed the tenant that bedbug treatment was the responsibility of the tenants. WhatsApp messages confirming same were entered into evidence.

The tenants submitted the following facts. On July 16, 2019 the tenants hired an inspector from a pest control company to inspect the subject rental property. At that time no live bed bugs were found. The inspection cost \$105.00. A receipt for same was entered into evidence. On August 1, 2019 tenant L.F. found bedbugs in her room. The tenants contacted the pest control company who treated tenant L.F.'s room for bedbugs on August 2, 2019. The pest control company treated tenant L.F.'s room again on August 24, 2019. The pest control invoice for the treatments in the amount of \$367.50 were entered into evidence.

The landlord testified that the subject rental property was clean and unfurnished when the tenants moved in and that the tenants brought the bed bugs in and so are responsible for the costs of removing them. The landlords testified that the tenants failed to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit, contrary to section 32 of the *Act*. The landlord entered into evidence photographs of the subject rental property showing dirty living conditions.

The tenants testified that the cleanliness of the subject rental property has nothing to do with the presence of bedbugs which can easily be carried on people from one place to another. The landlord testified that she did not respond immediately to the tenant's request for bedbug treatment because the tenants did not furnish her with photographs or video evidence of the bedbugs. The tenants testified that bedbugs are nocturnal and it is very difficult to get videos and photographs of them.

The landlord testified that she questions how bed bugs were found on the second floor and in the basement, but not on the other floors or by the other tenants.

The landlord testified that she believes the bedbugs were brought in by the tenants or perhaps by tenant Q.C.'s subletter and so she is not responsible for the bedbug treatment.

### Analysis

Section 32(1) and (2) of the *Act* states:

**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.

Residential Tenancy Policy Guideline #1 states that the landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

I find neither party proved who or what brought bedbugs to the subject rental property. The landlord provided a number of hypothesis, none of which were supported with evidence. I find that the landlord has not proved that the tenants' level of cleanliness has any impact on the presence of bedbugs. I find that in the absence of proven negligence or intent of the tenants to introduce bedbugs to the subject rental property, the landlord, pursuant to Residential Tenancy Policy Guideline #1, is responsible for insect control which includes bed bug treatment. I find that the tenants provided the landlord with ample opportunity to remedy the bedbug problem and that she elected not to do so, in breach of section 32(1) of the *Act*.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

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

As stated above, I find that the landlord breached section 32(1) of the *Act* by failing to treat the subject rental property for bedbugs.

I find that the tenants suffered a loss in the amount of \$472.50 from the landlord's non-compliance with section 32(1) of the *Act* as they were required to pay for the bed bug inspection and treatments. I find that the tenants have proved the value on their loss with the invoices from the pest control company. I find that the tenants acted reasonably in hiring a pest control company to treat for bedbugs, thus limiting their spread throughout the rest of the subject rental property.

Pursuant to the above I find that the tenants are entitled to recover the cost of the bedbug inspection and treatment from the landlord in the amount of \$472.50.

As the tenants were successful in their application, I find that the tenants are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$572.50.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 01, 2019

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Residential Tenancy Branch