



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDCT

### Introduction

This hearing was scheduled to deal with a tenant's application for orders for compliance with respect to providing fumigation services and monetary compensation. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The landlord appeared along with a person who has been acting on the landlord's behalf during the tenancy, herein referred to as the landlord's assistant. The landlord also appeared with a person who is pest control technician, referred to by initials DG. I indicated that I would exclude DG until called to testify. The landlord stated that DG was her representative; however, the DG stated he was not acting as a landlord's agent throughout the tenancy and had only had communication with the landlord and the tenant regarding bed bugs in early to mid-September 2019. I informed the parties that I considered DG to be an expert witness but not an agent for the landlord with respect to tenancy matters outside of pest control. Therefore, I instructed DG to wait outside of the landlord's office until called to testify.

During the hearing, I determined that DG had not attended the rental unit or residential property to render pest control services. Rather, other pest control companies had been to the property to treat for bed bugs. I requested the pest control person who actually inspected and performed pest control services at the property be called as a witness. The landlord was able to get that person, referred to by initials SB, on the telephone during the hearing and I was able to ask questions of him, as were the parties.

Issue(s) to be Decided

1. Is it necessary to issue orders for compliance to the landlord?
2. Is the tenant entitled to monetary compensation against the landlord for damages or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy started on August 16, 2019 and the tenant paid a security deposit of \$550.00. The tenant is required to pay rent of \$1,100.00 on the first day of every month. The rental unit is one of four rental units in four-plex operated by the landlord. The rental unit is identified as unit "C" in this decision and the other rental units are identified as either A, B and/or D.

**Orders for compliance**

In making the application, the tenant indicated that she sought to be released from her "lease".

As for the term of the tenancy, the tenant was of the position she is in a one-year fixed term tenancy agreement and she seeks authorization to end the tenancy early.

When I turned to the tenancy agreement, I saw the following as being the term of the tenancy agreement:

<b>2. BEGINNING AND TERM OF THE AGREEMENT</b> <i>(please fill in the dates and times in the spaces provided)</i>		
This tenancy created by this agreement starts on:		
16	August	2020
day	month	year
Check <input checked="" type="checkbox"/> A) and continues on a month-to-month basis until ended in accordance with the Act.		
A, B or C <input type="checkbox"/> B) and continues on another periodic basis, as specified below, until ended in accordance with the Act.		
<input type="checkbox"/> weekly <input type="checkbox"/> bi-weekly <input type="checkbox"/> other: <input type="text"/>		
<input type="checkbox"/> C) and is for a fixed term ending on		
16	August	2020
day	month	year

It is apparent to me the date(s) are incorrect since the parties both confirmed the tenancy started in mid-August 2019.

The landlord confirmed that she considered the tenancy to be on a month to month tenancy and that the dates were recorded incorrectly.

The requirements for ending a month to month tenancy were discussed in brief and the tenant was satisfied that she may bring the tenancy to an end with one full month of notice. The tenant stated that she wants to bring the tenancy to an end effective December 31, 2019 and asked that I record it by way of this decision in lieu of her giving written notice to the landlord. The landlord was agreeable to having the tenancy end on December 31, 2019 and was accepted the tenant's notice to end tenancy that was given during the hearing and recorded in this decision.

In making this application, the tenant had also requested the landlord fumigate the all of the rental unit in the residential property for bed bugs. The tenant stated that since filing the landlord had the services of a pest control company at the residential property on two occasions and she withdrew her request for a pest control order.

### **Monetary compensation**

The tenant seeks compensation equivalent to the amount of rent she paid for the rental unit in August 2019 and September 2019. Very shortly after moving in, the shower head fell off the wall, and then the ceiling over the shower collapsed despite the landlord representing the rental unit as being renovated. The landlord had the plumbing and ceiling repairs made but then bed bugs were found in the rental unit and in other units in the building.

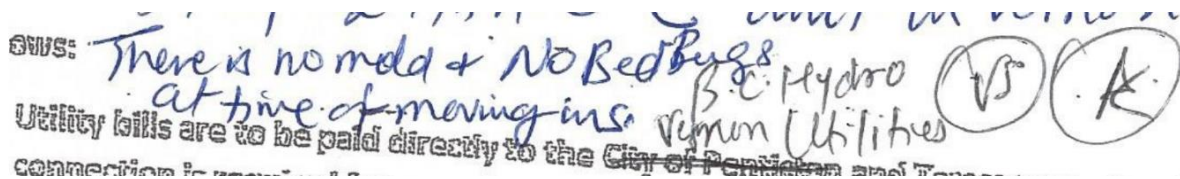
The tenant submitted that she has suffered losses associated to anxiety that resulted from having bed bugs and she has to end the tenancy due to the landlord's false assurance that the rental unit did not have bed bugs. The tenant submitted that she needs compensation in order to afford a move to a new living accommodation for her and her children; however, the tenant did not provide any estimated costs to relocate.

The tenant submitted that in deciding to enter into the tenancy agreement the landlord assured her that the property did not have bed bugs and this was very important to the tenant. On September 10, 2019 the tenant observed a pest control company at the residential property and determined another unit in the building was being treated for bed bugs. The tenant talked to the tenants in units B and D and they told her that they have had bed bugs at the property for many months. The tenant communicated to the landlord via text message and the landlord was in denial that there were bed bugs in the

building and stated the tenant would have to prove it to her because she had just had the rental unit painted.

As for the pest control company being at the property on September 10, 2019 the landlord testified that she had no prior knowledge of bed bugs at the residential property and that the tenant of unit B took it upon himself to call in a pest control company to treat for bed bugs.

The landlord acknowledged that she made assurances to the tenant that there were no bed bugs in the rental unit when the tenancy started. The landlord pointed to the addendum to the tenancy agreement as evidence the landlord assured the tenant there were no bed bugs in the rental unit at the start of the tenancy and suggested the tenant may have brought in the bed bugs. The tenant stated the statement referred to by the landlord was added after signing the tenancy agreement and pointed to the difference in the pen colour. Below, I provide an excerpt from the relevant section of the addendum:



There is no mold + NO Bed Bugs  
at time of moving in. B.C. Hydro VS  
Vermont Utilities A.  
Utility bills are to be paid directly to the City of Port Huron and the

The landlord acknowledged that she had not had the property inspected by a professional pest control company prior to entering into the tenancy agreement and making assurances to the tenant that there were no bed bugs. Rather, the landlord claims that she determined there were no bed bugs in the rental unit after telephoning the tenants of units A, B and D and they told her that they did not have bed bugs.

After the tenant complained to the landlord that there were bed bugs in the building, the landlord instructed the tenant to deal with DG. The tenant did and sent that person a picture of a bug. In the messages sent by DG to the tenant, DG informed her that he did not perform services in the area of the rental unit.

The landlord's assistant arranged for another pest control company to inspect and provide a quotation for bed bug treatment. The landlord's assistant testified that after inspection of the property by that company's technician SB, it was confirmed that there was bed bug activity in the rental unit and a quotation of \$1,417.50 was provided to treat the rental unit.

The landlord testified that she then negotiated with the pest control company to spray the other three units in the building for bed bugs and spray the exterior of the building. The landlord pointed to an invoice provided by the pest control company in support that the rental unit was heat treated and the other three units were spray treated, along with the exterior of the building, for a total cost of \$1,417.50.

The tenant testified that on October 24, 2019 she found another bed bug in her unit and she complained to the landlord that the pest control company had recommended two treatments, 14 days apart, to effectively eradicate the bed bugs and that the landlord had not done so.

All parties provided consistent testimony that SB returned to the property in early November 2019. Bed bugs were found in unit D and spray was applied, unit B was not ready for re-treatment, but no bed bugs were found in the rental unit.

The pest control technician SB, who treated the property in September 2019 and November 2019, was called to testify. He confirmed that the rental unit had bed bugs in September 2019 but there were no signs of bed bugs in the rental unit in November 2019. SB confirmed there were bed bugs in other rental units in September 2019 and in November 2019. SB confirmed that bed bugs can and do migrate between units.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

### **End of tenancy**

Upon review of the tenancy agreement and upon confirmation with the landlord, I find the tenancy is a periodic tenancy (i.e.: month to month) and is not a fixed term tenancy. As such, the tenancy may be ended with one full month of notice by the tenant. The tenant gave her notice to end tenancy effective December 31, 2019 during the hearing, which the landlord accepted. By way of this decision, the landlord is considered in receipt of the tenant's notice on November 21, 2019 and I authorize and order the end of this tenancy effective on December 31, 2019. Based on the parties agreement to end the tenancy, I provide the landlord with an Order of Possession effective at 1:00 p.m. on December 31, 2019.

## **Security deposit**

Having found the tenancy is a periodic tenancy, there is no “lease” that is being broken. I make this point as I noted there is a non-compliant term in the addendum, that states:

“17. If tenants break the lease, the tenants allow the landlord to keep the damage deposit + pet deposit.”

[Reproduced as written]

As such, the parties are informed that term 17 in the addendum is not valid or enforceable and the deposits shall remain refundable to the tenant at the end of the tenancy, in keeping with section 38 of the Act.

## **Monetary compensation**

I was provided consistent testimony by both parties that the landlord made assurances to the tenant that there were no bed bugs in the rental unit when the tenancy formed and the tenant relied upon the landlord’s assurances in deciding to enter into the tenancy. However, I find the landlord was negligent and reckless in making such assurances to tenant.

I find the landlord was negligent and reckless in making assurances to the tenant because the landlord did not undertake any reliable method of determining whether the property had bed bugs. The landlord stated she had not had the property inspected for bed bugs and chose to rely upon assurances from the tenants in units A, B and D, if in fact she made any such enquiries with those tenants. I find it peculiar that the landlord would make such enquiries with other tenants right before the tenancy formed unless she had a concern that there were or had been bed bugs at the property. Based on the landlord’s response to the tenant via text message that she had just painted the rental unit before the tenancy started, I find it more likely the landlord did not make enquiries with her other tenants and that she was relying upon the paint job as providing assurance there were no bed bugs, which is actually no assurance since bed bugs can be behind baseboards, in wall cavities or in other nearby units.

Considering there was a bed bug treatment in another unit in the building on September 10, 2019 – less than a month after the tenancy started; bed bugs were found in the

rental unit shortly after September 10, 2019 and having heard from the landlord's pest control technician SB that bed bugs migrate between units, I find it more likely than not that the property had bed bugs when the tenancy formed. As such, I find the landlord provided false assurances to the tenant when the tenancy formed, and the tenant has suffered a loss of enjoyment of the unit as a result of those false assurances.

The tenant seeks compensation equivalent to the amount of rent she has paid for August and September, or \$1,650.00. I find that request is unreasonable since the tenant has had use of the rental unit for ordinary living activities and I am of the view that she did not suffer a loss equivalent to 100% of the value of the tenancy. However, I accept that she is moving due to the landlord's actions and that there are costs and inconveniences associated with having to move so soon after the tenancy started that I find are attributable to the landlord's actions.

I provide an award of compensation to pack and move out equivalent to one month's rent, or \$1,100.00. I make this award based on the compensation provision that is provided to tenants where a landlord ends a tenancy for landlord's use of property [section 51 of the Act]. In those instances, the tenancy is ended due to no fault of the tenant and the landlord must compensate the tenant the equivalent of one month's rent to offset the inconvenience and cost of moving. Therefore, I provide that same amount to the tenant.

Since the tenancy is ending December 31, 2019, I authorize the tenant to withhold rent payable for December 2019 and in doing so the landlord must consider the rent to be paid in full and may not issue a 10 day Notice to End Tenancy for Unpaid Rent or otherwise attempt to end the tenancy any earlier than December 31, 2019.

### Conclusion

The tenancy ends on December 31, 2019 and the landlord is provided an Order of Possession with that effective date.

The security deposit remains in trust for the tenant, to be administered in accordance with section 38 of the Act at the end of the tenancy.

The tenant is awarded compensation of \$1,100.00 and is authorized to withhold rent payable for December 2019 in satisfaction of this award. In withholding rent, as

authorized, the landlord must consider the rent for December 2019 to be paid in full and may not attempt to end the tenancy for unpaid rent.

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: November 26, 2019

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Residential Tenancy Branch