



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNDCT, RP

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on October 31, 2019 (the “Application”). The Tenants applied as follows:

- For a repair order;
- For compensation for monetary loss or other money owed; and
- For reimbursement for the filing fee.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. The Tenant advised at the outset that the Tenants vacated the rental unit January 01, 2020. The Tenant withdrew the request for a repair order given this.

I explained the hearing process to the Tenant. The Tenant provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenants’ evidence.

The Tenant testified that the hearing package and evidence were sent to the Landlord at the address on the tenancy agreement by registered mail November 18, 2019. The Tenant provided Tracking Number 1. I looked this up on the Canada Post website which shows a notice card was left November 19, 2019. The website shows the package was unclaimed and returned to the sender.

The Tenant testified that the rental unit was sold, and the Tenants had a new landlord as of November 01, 2019.

Based on the undisputed testimony of the Tenant, and Canada Post website information, I accept that the hearing package and evidence were served on the Landlord in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “*Act*”). I am satisfied the package was sent to the Landlord’s residence or place of business as shown on the tenancy agreement. I am satisfied the address continued to be the Landlord’s residence or place of business at the time the notice card was left as this occurred only 18 days after the Landlord ceased being the landlord in this matter. The Landlord cannot avoid service by failing to pick up registered mail packages. The Landlord is deemed to have received the package November 23, 2019 pursuant to section 90(a) of the *Act*. I am satisfied the package was sent in sufficient time to allow the Landlord to prepare for, and appear at, the hearing.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered the oral testimony of the Tenant as well as the documentary evidence. I have only referred to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?
2. Are the Tenants entitled to reimbursement for the filing fee?

#### Background and Evidence

The Tenants sought \$2,500.00 in compensation for 4.5 months of dealing with a mouse infestation in the rental unit.

The Tenants submitted a written tenancy agreement. The tenancy started September 01, 2018 and was a month-to-month tenancy. Rent was \$2,000.00 per month. The agreement is signed by the Landlord but not the Tenants. The Tenant confirmed the agreement is accurate.

The Tenant testified as follows.

The Tenants are seeking compensation for June to October of 2019.

There was a serious mouse problem in the rental unit. It started around June. It got to a point where there were mice feces everywhere in the rental unit including on the bed and couch. The mice chewed through baskets. The mice got into food and sealed supplements. The mice were loud. The mice would run through the rental unit and cause their dog to bark during the night which woke them up.

The Tenants discussed the mouse problem with the Landlord starting in April. The Tenants sent the Landlord text messages about the problem in April, June, July and August. The Tenants sent an email to the Landlord about the problem in August. The Tenants set the Landlord photos which showed what they were dealing with in relation to damage and cleaning.

The Landlord did not always respond to the Tenants when they contacted her about the mouse problem. Eventually, the Landlord sent the Tenants poison and traps. The Tenants could not use the poison because they had a dog. The Tenants did use the traps and purchased further traps in late June and July. The traps did not solve the problem.

The Tenants sent the Landlord an email letting her know the traps were not working and asking the Landlord to have pest control attend. The Landlord did not do so at first but then did August 30, 2019. Someone from a pest control company attended and assessed the situation. The person told the Tenants what needed to be done and said pest control would need to continue attending. The person said they would provide a report to the Landlord. The Tenant does not know what discussions were had between the person and the Landlord. The Tenants followed up with the Landlord in late September. Nobody from the pest control company attended again until after the rental unit was sold to the new landlord.

The Landlord breached the tenancy agreement by not maintaining the rental unit in a sanitary condition.

The loss or damage experienced included time spent constantly cleaning, having mice feces everywhere, loss of food and being woken up at night by their dog chasing the mice.

The Tenants are seeking \$500.00 per month, being 25% of rent, which is reasonable given the disturbance the mouse problem caused and given the time spent cleaning.

The Tenants submitted an outline of compensation sought indicating it is for:

- Loss of sleep
- Unhealthy living conditions
- Disturbance to pet
- Time taken to deal with issue
- Loss of food/supplements

The Tenants submitted the following relevant evidence:

- Email to the Landlord July 6<sup>th</sup> about the mouse problem
- Email from the Landlord July 6<sup>th</sup> about contacting the property management company for an exterminator to attend
- Photos of mice feces around the rental unit

### Analysis

Section 7 of the *Act* states:

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

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

The Landlord's obligations in relation to maintaining the rental unit are set out in section 32 of the *Act* which 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.

I accept the testimony of the Tenant. It was undisputed testimony. Further, there was nothing about the Tenant's testimony that caused me to question the reliability or credibility of it.

Based on the undisputed testimony of the Tenant, emails submitted and photos submitted, I accept that there was a mouse problem in the rental unit from around June to October of 2019.

Based on the undisputed testimony of the Tenant and photos submitted, I accept that the mouse problem was significant.

Based on the undisputed testimony of the Tenant and emails submitted, I accept that the Landlord was aware of the problem as of July.

Based on the undisputed testimony of the Tenant, and in part on the emails submitted, I accept that the Landlord did not have an exterminator attend until August 30, 2019 despite the Tenants asking that an exterminator attend July 6<sup>th</sup>.

Based on the undisputed testimony of the Tenant, I accept that someone from a pest control company attended the rental unit once but not again until after November. I also accept that the problem was not resolved with the one visit.

I am satisfied the Landlord did not take sufficient steps to address the mouse problem. I am satisfied the Landlord breached section 32 of the *Act* by failing to maintain the rental unit such that it complied with health, safety and housing standards required by law and was suitable for occupation by the Tenants.

Based on the undisputed testimony of the Tenant and photos submitted, I am satisfied the Tenants suffered the loss and damage described including: time spent cleaning; having mice feces everywhere; loss of food; being woken up at night by their dog chasing the mice; and having to deal with unhealthy living conditions.

Based on the undisputed testimony of the Tenant and emails submitted, I accept that the Tenants mitigated their loss by notifying the Landlord of the issue and seeking assistance with the issue. I also note the comment in the Landlord's email stating that the Tenants had adhered to all suggestions listed in a building notice about this issue.

I am satisfied the Tenants are entitled to compensation for July to October. I decline to award the Tenants compensation for June as the Tenants did not submit their communications with the Landlord about the mouse problem prior to July and therefore I cannot confirm the nature of these communications. Further, I find it reasonable that other solutions were attempted, such as poison and traps, prior to having an exterminator attend.

In relation to the amount sought, I am not satisfied based on the evidence submitted that \$500.00 per month is reasonable. This is a substantial amount and substantial portion of the monthly rent. To justify such an amount, I would expect further evidence such as all communications with the Landlord about the mouse problem, a report from the pest control company about the extent of the problem, further evidence such as photos and videos of the loss and damage suffered.

I am satisfied based on the undisputed testimony of the Tenant and photos submitted that the Tenants are entitled to compensation in the amount of \$250.00 for July to October for a total of \$1,000.00.

Given the Tenants were successful, I award the Tenants reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord must pay the Tenants \$1,100.00. I issue the Tenants a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Application is granted. The Tenants are entitled to \$1,100.00. I issue the Tenants a Monetary Order in this amount. This order must be served on the Landlord as soon as possible. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: January 07, 2020

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Residential Tenancy Branch