



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNRT MNDCT FFT

### **Introduction**

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). The landlord testified that the tenant did not comply with the Rules of Procedure and digital evidence submitted was not accompanied by the proper form and descriptions. Although the landlord did, however, confirm in the hearing that he wished to proceed with the hearing and did not object to the admittance of this evidence. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were received in accordance with section 88 of the *Act*.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on March 1, 2020, and was to end on February 28, 2021. This tenancy ended on May 31, 2020, after the tenant gave notice that he would be ending the tenancy early due to ongoing issues with the tenancy. Monthly rent was set at \$2,000.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,000.00, which was used to offset the monetary award granted to the landlord in a previous decision.

The tenant filed a monetary claim in the amount of \$15,400.00 as set out in the table below:

| <b>Item</b>                                      | <b>Amount</b>      |
|--|--------------------|
| Rat Infestation                                  | \$1,500.00         |
| Cleaning Service-cleaning rat feces for 3 months | 7,500.00           |
| 50 % rent reduction (fiancé won't move in)       | 3,000.00           |
| Moving Fees                                      | 750.00             |
| Loss of Quiet Enjoyment – loud noise             | 1,500.00           |
| Tenant Replacement Search                        | 1,050.00           |
| Filing Fee                                       | 100.00             |
| <b>Total Monetary Order Requested</b>            | <b>\$15,400.00</b> |

The tenant feels that the landlord aware of the extent of the rat infestation, and failed to properly disclose to him before he had agreed to enter into the tenancy agreement. As a result of the rat infestation, the tenant testified that the landlord put his health and safety at risk, as well as any other occupants. The tenant testified that the infestation was so serious that his fiancé would not move in, resulting in him having to find a way to pay the full monthly rent. The tenant reached out to the pest control company, who wrote “there is some exclusion work along the foundation, and based on the rust, it has likely been there for a while, meaning the rodent problem has likely been present for some time”. The tenant testified that for the three months he had to deal with the rat

infestation, including the cleaning. The tenant testified that he incurred a monetary loss for moving as well as trying to find a new replacement tenant. The tenant is also seeking compensation for the impact to his health and safety, and feels that the landlord failed to deal with the infestation in a timely manner.

The tenant is also seeking compensation for loss of quiet enjoyment associated with a loud noise. The tenant submitted audio clips in support of his claim. The tenant testified that the noise was so unbearable that he was unable to sleep, and suffered medical issues. The tenant testified that the issue is still ongoing as confirmed by the current tenant.

The landlord disputes that they were aware of the rat infestation prior to the beginning of this tenancy. Furthermore, the landlord responded that the tenant had decided to end the fixed-term tenancy instead giving the landlord to opportunity to resolve the manner. The landlord testified that these issues were never brought up by previous tenants in the suite. The landlord testified that as of June 4, 2020 the pest control company confirmed that there were no new rat droppings inside the home, nor consumption of the bait set out.

The landlord testified that the noise is not a result of any outstanding issues, and that it is normal given the age of the home, which is 108 years old.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I have considered the testimony and evidentiary materials submitted by both parties. Although the tenant believes that the landlord had misrepresented the condition of the rental unit before he had agreed to enter into the tenancy agreement, the onus is on the tenant, however, to support how the actions of the landlord constitute a contravention of the *Act*, and furthermore, how this contravention has caused the tenant to suffered a loss in the amounts claimed.

I find that although the tenant believes that the landlord was fully aware of the rat infestation before this tenancy began, in light of the disputed evidence before me, I do not find the evidence sufficient to support the claims made. I find that the opinion of the pest control company is speculative in nature, and does not definitively confirm the existence of a prior rat infestation, nor the knowledge of the landlord. Furthermore, the onus is on the applicant to support the value of the losses claimed, and that they mitigated these losses. In light of the evidence before me, I find that the tenant ended this tenancy in contravention of the *Act*, as supported by the previous decision made by the Arbitrator. I find that the tenant made the decision to end this tenancy before the end of the fixed term, instead of filing an application for dispute resolution for an order by an arbitrator or allowing for a resolution of the matter. Furthermore, as stated above, the burden of proof is on the applicant to support the value of the losses claimed. I find that the tenant has failed to establish that the landlord contravened the *Act*, nor did he support the value of the losses claimed as a direct result of the landlord's contravention of the *Act*. Lastly, I find that the tenant failed to demonstrated that he mitigated these losses as required by section 7(2) of the *Act*. For all these reasons, I dismiss the

tenant's entire monetary claim in relation to the issue of the rats inside the rental unit without leave to reapply.

The tenant also filed a monetary claim in relation to the noise in his rental unit.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

**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.*

Section 28 addresses the right of the tenant to quiet enjoyment.

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

In light of the evidence before me, I am not satisfied that the landlord has failed to fulfill their obligations in relation to repairs. I am not satisfied that the noise referenced in the tenant's application is a result of the landlord's failure to address any outstanding repairs or maintenance given the age of the building. I must also consider whether this noise infringes on the tenant's right to quiet enjoyment. Although I find that the tenant's expectations of this tenancy were not met, I find there is insufficient evidence for me to make a finding that the noise was unreasonable, especially considering the age of the building. Furthermore, as stated above, the burden of proof is on the applicant to support the value of the losses claimed. Although the tenant referenced the impact on his health or well-being, I am not satisfied that the tenant sufficiently supported the value claimed, and that these losses were associated with the landlord's failure to

comply with the *Act*. On this basis, I am dismissing the tenant's monetary claim in relation to the noise without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. Accordingly, I dismiss the tenant's application to recover the filing fee without leave to reapply.

### **Conclusion**

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

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: January 20, 2021

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Residential Tenancy Branch