



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSD, 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 damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant represented themselves. The corporate landlord was represented by its agent (the "landlord").

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the background facts. This periodic tenancy began in November 2015 and ended on December 31, 2021. A deposit of \$512.50 representing a security deposit of \$462.50 and FOB deposit of \$50.00 was collected by the landlord at the start of the tenancy. The tenant provided a forwarding address prior to the end of the tenancy in November 2021. The landlord returned the deposit to the tenant by a cheque dated January 17, 2022. The landlord agrees that the deposit was returned outside of the 15 days provided under section 38 of the Act and the tenant is entitled to a return of double the deposit.

The tenant submits that the rental unit saw the presence of mice from October 2021 until the end of the tenancy. The tenant gave evidence that they reported the presence of mice to the landlord but submits the landlord took inadequate action in an unreasonable timeframe. The tenant says the issue was not resolved during the tenancy and the tenant was unable to reside in the rental unit due to health and safety concerns arising from mice and their droppings in and around the property. The tenant seeks a monetary award in the amount of \$3,147.00, the equivalent of 3 months full rent and submits the rental unit was not suitable for occupation.

The landlord disputes the tenant's monetary claim in its entirety. The landlord submits receipts from a third-party pest control company showing that the rental property was regularly monitored and treated for pests prior to the tenant's complaints.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As the landlord agrees that the tenant is entitled to a monetary award of \$512.50 for late return of the deposits for the tenancy, I find this portion of the claim is established. Accordingly, I issue a monetary award in the amount of \$512.50 in the tenant's favour.

Section 32 (1) of the *Act* states that:

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.

Residential Tenancy Act Regulations Schedule 8, in relevant part, states:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

Based on the evidence I find the landlord met their obligation to provide and maintain the residential property in a reasonable state. I find the presence of a few mice, and evidence of their activities, to be an unpleasant but unavoidable reality of residing in an ordinary property located in an urban community. I find the evidence of the tenant to demonstrate the existence of mice but not to a level where it would be reasonably considered as a breach of the standards of health, safety and housing requirements.

Based on the evidence I find that there was the presence of mice in the rental unit. I find the evidence consistent with the presence of a few individual mice rather than a volume that would be characterized as an infestation. While mice and their droppings may have some negative health effects, I find that the amount shown in the evidence is negligible and not a quantity that would be said to breach the standards of health or safety.

I accept the evidence of the parties that the landlord has regularly had exterminators set traps around the property and monitor and control the presence of pests. While I accept the tenant's submission that these measures did not wholly eliminate all mice, I find the steps taken to be appropriate and undertaken in a reasonable timeframe.

I find the tenant's conduct to vacate the rental unit entirely upon detecting the presence of mice to be wholly their choice and not one that was required due to any breach on the part of the landlord. I further find the tenant's choice to end the tenancy is not attributable to a breach by the landlord.

I find the tenant has not met their evidentiary burden to demonstrate a breach on the part of the landlord that would give rise to a monetary award. Consequently, I dismiss this portion of the tenant's application.

As the tenant was not wholly successful in their application, I decline to order recovery of the filing fee.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$512.50. 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: September 27, 2022

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Residential Tenancy Branch