



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, FFL

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 38 and 67 for compensation for damage caused to the rental unit by the Tenant by claiming against the security deposit; and
- return of its filing fee pursuant to s. 72.

H.F. appeared as counsel for the Landlord. A.H. appeared as agent for the Landlord. E.D. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

This matter was adjourned after being originally scheduled for hearing on June 21, 2022. It was adjourned on the basis that the Landlord had failed to properly serve the Tenant, the reasons for which are outlined in the interim reasons.

At the outset of the hearing Landlord’s counsel confirmed that the Tenant was served with the Landlord’s application materials, which the Tenant confirmed receiving. The Landlord had provided a copy of a registered mail tracking receipt dated June 22, 2022 as proof of service. I find that the Tenant was served with the Landlord’s application materials in accordance with s. 89 of the *Act*.

The Tenant confirmed that he did not serve the Landlord with documentary evidence.

### Issues to be Decided

- 1) Is the Landlord entitled to claim against the security deposit for monetary compensation due to damage to the rental unit?
- 2) Is the Landlord entitled to the return of its filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on June 15, 2020.
- The Landlord obtained vacant possession of the rental unit on October 30, 2021.
- Rent of \$1,325.00 was due on the first of each month.
- The Tenant paid a security deposit of \$662.50 to the Landlord.

The Landlord provided a copy of the tenancy agreement in its evidence.

The Landlord's agent advised that the rental unit was a bachelor suite in which a murphy bed was provided by the Landlord. The Tenant acknowledged that the Landlord provided a murphy bed as part of the tenancy.

Landlord's counsel advised that bed bugs were discovered in the rental unit, specifically the mattress, at the end of the tenancy. I was directed to photographs in the Landlord's evidence, specifically one in which counsel submits indicates the mattress was manufactured in February 2020. The Landlord's agent indicates that the mattress was purchased new prior to the tenancy and installed in the rental unit on June 12, 2020.

Landlord's counsel indicates that the Landlord paid \$59.06 to remove and dispose of the mattress, \$795.20 to replace the mattress, and \$194.25 to treat the rental unit for bed bugs. The Landlord's evidence includes receipts for the amounts claimed.

The Tenant testified that he never had bed bugs prior to moving into the rental unit and that it is not an issue of cleanliness. The Tenant did indicate that he had been dealing with bed bugs for some months prior to the end of the tenancy. The Tenant argued that treating for bed bugs falls within the Landlord's responsibility under s. 32 of the *Act*. He

further argued that when the mattress had been replaced by the Landlord, he had used it throughout the tenancy, and that the Landlord's claim for its replacement amounted to replacing new for used if he is made to pay for it.

Landlord's counsel argued that s. 32 of the *Act* does not provide that Landlord is to treat for bed bugs and that the mattress needed to be replaced for the Landlord to fulfill its obligation to the prospective tenant to provide accommodation that complied with health and safety standards. Landlord's counsel further referenced the useful life of furniture as stated within Policy Guideline #40, indicating it is 10 years. Landlord's counsel submitted that a mattress is expected to last longer than the relatively short duration of the tenancy.

The parties confirmed that a written condition inspection report was conducted when the Tenant moved-in and moved-out, a copy of which was provided to me by the Landlord. The Tenant acknowledges receiving copies of the condition inspection report. The Landlord's agent testified that the Tenant refused to sign the report, which the Tenant acknowledged at the hearing. The Tenant argued that he did not sign it as he did not agree with the report.

The parties further confirmed that the Tenant provided a copy of his forwarding address on November 12, 2021.

### Analysis

The Landlord seeks compensation for damages by claiming against the security deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38(1) of the *Act*. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

Based on the undisputed evidence of the parties, I find that the Tenant provided the Landlord with his forwarding address on November 12, 2021. Upon review of the

information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed its application on November 22, 2021. Accordingly, I find that the Landlord filed its application within the 15-day window imposed by s. 38(1) of the *Act*.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 32 of the *Act* sets out the obligations of tenants and landlords with respect to the repair and maintenance of the rental unit during the tenancy. I reproduce the relevant portions of the section:

- 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.

Policy Guideline #1 provides guidance with respect to the responsibilities of landlords and tenants during a tenancy, which specifies that a landlord is generally responsible for insect control.

I provide this context because there is no dispute that the mattress formed part of the tenancy and that it was infected with bed bugs. Section 32 of the *Act* imposes an obligation on the Landlord to maintain the property such that it complies with the health, safety, and housing standards required by law and the Tenant must maintain reasonable cleanliness of the rental unit.

The issue with the Landlord's claim is that though I accept that there were bed bugs, the treatment was necessary, and the mattress needed to be replaced, it is unclear to me based on the evidence that the Tenant caused the infestation. I have been provided no evidence indicating that the treatments were limited to the rental unit or were conducted elsewhere in the residential property, which could suggest the Tenant caused the infestation or that it originated elsewhere. The condition inspection report notes the rental unit to generally be in acceptable condition, suggesting there were no cleanliness issues caused by the Tenant which may have resulted in the infestation.

I find that the Landlord has failed to demonstrate that the Tenant breached any of his obligations under the tenancy agreement, regulations, or the *Act*. The Landlord has failed to demonstrate the Tenant caused the infestation. Further, such insect treatments, as per Policy Guideline #1, would generally fall within the ambit of Landlord's responsibility. As such, I dismiss the Landlord's claim for monetary damages.

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
  - a landlord's application to retain all or part of the security deposit; or
  - a tenant's application for the return of the deposit.

Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

In this instance, though the Tenant did not sign the condition report he indicates he did participate during the move-in and move-out inspection. Accordingly, I find that the Tenant's right to the deposit has not been extinguished under ss. 36 or 39 of the *Act*.

As the Landlord holds the security deposit and that none of its claim has been permitted, I order that the Landlord return the security deposit in full.

### Conclusion

The Landlord has failed to demonstrate the damage was caused by the Tenant. Their claim for monetary damages is dismissed without leave to reapply.

The Landlord was unsuccessful in its application. I find that it is not entitled to the return of its filing fee. Its claim under s. 72 of the *Act* is dismissed without leave to reapply.

As the Landlord has retained the security deposit, I order that it be returned to the Tenant in full. I order that the Landlord pay **\$662.50** to the Tenant for the return of the deposit.

It is the Tenant's obligation to serve the monetary order on the Tenant. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with 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 30, 2022

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Residential Tenancy Branch