



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant November 02, 2022 (the “Application”). The Tenant applied as follows:

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant appeared at the hearing. S.L. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenant clarified at the hearing that they are seeking \$264.60 in compensation and \$100.00 for reimbursement for the filing fee.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate.

The Tenant seeks \$264.60 in compensation due to a moth infestation in the rental unit. The Tenant realized there was a moth issue in the rental unit and asked the Landlord to address this. The Landlord refused to address the issue so the Tenant paid to have a pest control company attend the rental unit and address the moth infestation. The Tenant submits that the Landlord is responsible for pest control in the rental unit. The Tenant noted that the rental unit does not have any screens on it which increases the risk of bug infestations.

The Tenant submitted a receipt from the pest control company for \$264.60.

S.L. submitted that the Tenant was responsible for addressing the moth infestation. S.L. testified that the rental unit was brand new when the Tenant moved in. S.L. testified that moths are brought into residences in home furnishings and on shoes. S.L. submitted that there is nothing the Landlord could have done to prevent the moth infestation. S.L. distinguished the moth infestation from other infestations which can occur by bugs crawling into the rental unit versus moths which are brought in on furnishings or feet. S.L. submitted that screens would not have prevented the moth infestation.

The Landlord provided written submissions with links to information about moths.

### Analysis

Section 7 of the *Residential Tenancy Act* (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.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

There is no issue that there was a moth infestation in the rental unit or that the Tenant paid \$264.60 for a pest control company to attend and address the infestation. The issue here is whether the Tenant or Landlord was responsible for addressing the moth infestation and therefore who should have paid for the pest control company to attend.

Section 32 of the *Act* 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.

(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.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

RTB Policy Guideline 01 states at page 7:

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

The above applies to pest control in the rental unit. The Landlord is generally responsible for pest control unless there is compelling evidence the Tenant caused the pest issue or was negligent in relation to the pest issue. I do not find that there is any compelling evidence before me showing the Tenant, or others the Tenant allowed into the rental unit, caused the moth infestation or were negligent in any way. The Landlord was responsible for addressing the moth infestation and is now responsible for paying for the pest control company to attend the rental unit and address the moth infestation. The Tenant is awarded \$264.60 as compensation for the pest control bill.

The Tenant is awarded \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

The Tenant is issued a Monetary Order for \$364.60 pursuant to section 67 of the *Act*. Alternatively, the Tenant can deduct \$364.60 from their next rent payment pursuant to section 72(2) of the *Act*.

### Conclusion

The Tenant is issued a Monetary Order for \$364.60. Alternatively, the Tenant can deduct \$364.60 from their next rent payment.

If the Tenant chooses to enforce the Monetary Order, it must be served on the Landlord. If the Landlord fails to comply with the Order, it 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 *Act*.

Dated: February 01, 2023

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Residential Tenancy Branch