



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: MND MNDC MNSD FF  
Tenant: MNR MNDC MNSD

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on June 16, 2022, and February 21, 2023. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlords and the Tenants both attended the hearings and provided affirmed testimony. The Tenants acknowledged receipt of the Landlord’s application package and evidence. No issues with service were raised on this application. I find the Landlords sufficiently served their Notice of Dispute Resolution Proceeding and evidence.

The Tenants stated they sent their Notice of Dispute Resolution Proceeding, printed evidence, and a CD with their video files to the Landlord by registered mail. The Landlords acknowledged getting this package, but stated they were unable to read the CD.

I turn to the following Rule of Procedure:

### ***3.10.5 Confirmation of access to digital evidence***

*The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.*

*Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.*

*Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.*

*If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.*

*Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.*

The Tenants stated they did not reach out or attempt to confirm if the Landlords were able to gain access to their video files on the CD. As such, I find the Tenants failed to serve their digital evidence in accordance with the Rules of Procedure. The Tenants should have taken steps to ensure and confirm their digital evidence was accessible. I find the Tenants' digital evidence is not admissible, as it was not properly served in accordance with the Rules of Procedure (3.10.5). Only the Tenants' printed documents and photos will be admissible.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

*Tenants*

- Are the Tenants entitled to a monetary order for emergency repairs they completed during the tenancy?
- Are the Tenants entitled to monetary compensation for damage or loss under the Act?
- Are the Tenants entitled to the return of double the security deposit held by the Landlord?

*Landlord*

- Is the Landlord entitled to a monetary order for damage to the rental unit or for damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenants?

Background and Evidence

A copy of the tenancy agreement was provided into evidence which shows that:

- Monthly rent is set at \$2,000.00 and is due on the first of the month
- The tenancy was a fixed term lease spanning from October 1, 2021, until September 30, 2022.
- The Tenants paid a security deposit in the amount of \$1,000.00 and the Landlord still holds this amount.
- A \$200.00 move-in fee was noted as a non-refundable fee.
- The agreement was signed on September 29, 2021.

The Tenants provided a copy of an e-transfer where they paid \$1,200.00 for the security deposit and the non-refundable move-in fee.

*Bed Bug Issue*

The Landlords explained that the Tenants moved into the rental unit at the beginning of October 2021, and within a few days, they were complaining about bed bug issues. A copy of the text messages were provided into evidence, which show that the Tenants sent the Landlord a message on October 4, 2021, stating that they have been waking

up to bug bites and that they had already contacted the fumigation company and were thinking of getting a hotel. The Landlord responded via text right away and stated that they believed the bed bugs must have come from the Tenants' belongings and storage, since the rental unit was sterilized before they moved in.

In a subsequent text message on October 6, 2021, the Tenants tried to explain that there is no way to know where the bed bugs came from, but that they were going to have the rental unit fumigated, and that they anticipate that they will break the lease. The Tenants stated that they reached out to Orkin pest control on October 5, 2021, and asked them to perform the fumigation on October 6, 2021. The Tenants stated that they could not wait any longer because they were not sleeping well, and were worried about their child.

The Landlord stated that they had no issues with bed bugs in the unit before the Tenants moved in. The Landlords provided a letter from their previous Tenant to support this. The Landlords also stated that they went to speak with neighbours in the building after the Tenants moved out, and none of them reported any bed bug activity. The Tenants also assert they never had any issue with bed bugs before this rental unit, so they doubt the bed bugs were brought to the unit by them. The Tenants provided a text message from their previous Landlord stating there were no issues.

The Tenants stated that the Landlord was not sufficiently prompt in dealing with the issue, so they felt this bed bug issue gave them cause to end the tenancy due to a material breach that was not corrected by the owner. The Tenants stated that they went to stay in a hotel for two nights (October 6 and 7, 2021) following the initial bed bug treatment they paid for on October 6, 2021. The Tenants stated that they went to stay in a hotel for the two nights because they wanted to be able to clean the unit before using it again, following the bed bug treatment.

The Tenants provided videos of the bed bugs. However, the videos are not admissible as they were not served in accordance with the Rules of Procedure.

The Tenants provided a few photos of bed bug bites showing numerous red marks on their skin. The Landlords sent a text message on October 7, 2021 stating they were going to come and do a K-9 bed bug inspection to detect if there was an issue on or around October 12, 2021. However, this date was rejected and had to be rescheduled due to conflicts and the fact that the Tenant had a birthday.

A copy of a letter from the Landlords, dated October 11, 2021, was provided into evidence showing that an inspection was planned for October 15, 2021, to inspect the washing machine, and to inspect the unit for bed bugs. The Tenants noted that the K-9 unit only found traces of bed bugs in 2 pieces of furniture, and not in the apartment. Although the Tenant feels this could not be true given she had seen them with her own eyes on the walls. On October 15, 2021, the communications escalated somewhat, and the parties began communicating more formally, via email.

The Tenants dropped off a typed letter to the Landlord's front door on October 16, 2021, which stated that they wished to formally end the tenancy effective October 31, 2021, due to a breach of a material term, due to the bed bug issue. Over the following few days, the parties had a few back-and-forth emails in a tense and increasingly dysfunctional manner. The Tenants sent another email on October 27, 2021, stating that they would be returning the keys on October 31, 2021, and set up this time for doing the move-out inspection. The Tenants stated they never heard back about the inspection time, so they sent the same printed email by registered mail to the Landlords on October 28, 2021.

The Tenants stated that at the end of the tenancy Orkin came back (the company hired by the Tenants) and confirmed there was nothing in their furniture, but that there was some evidence of bed bugs in the wall/baseboard and that bug feces were located in that area. A copy of the report from October 28, 2021, was provided into evidence. This report shows there was a presence of bed bug activity near baseboards and heaters in the bedroom. Although some evidence of bed bugs was found, no live bugs were found.

The Tenants provided their forward address in writing, via email on October 29, 2021. The Landlords acknowledged getting this that same day.

The Landlords stated that they cannot be sure whether the Tenant was having an allergic reaction or whether it was a bed bug issue, since the red marks in the photos from the Tenants appeared to be hives. The Landlords assert that with the lack of history of any sort of bed bugs, they believe it was either an allergy to something else, or that it was bed bugs the Tenants brought in.

The Landlords stated that on the final day of the tenancy, when the move-out inspection was done (October 31, 2021), the Tenants stated they saw bed bugs that same day. As a result, the Landlords stated that they wanted to do further investigation and potential treatments before re-renting the unit, to be safe.

### *Tenants' Application*

The Tenants have applied for the following items:

- 1) \$2,000.00 - return of double their security deposit

The Tenants are seeking double the security deposit because the Landlord did not return their deposit, or file an application against the deposit within 15 days of the end of the tenancy. A copy of the move-in and move-out inspection was provided, which shows that the move-in inspection was done on October 1, 2021, and the move-out inspection was done on October 31, 2021. The Tenants moved out around October 26, 2021, but did not return the keys until October 31, 2021, which is the date the parties did the move-out inspection. The Tenants provided their forwarding address to the Landlords on October 29, 2021, and the Landlords acknowledged getting it this same day.

The Landlords filed their application with the RTB claiming against the security deposit on November 15, 2021.

- 2) \$200.00 – Move-in fee refund
- 3) \$427.00 – 2 days worth of hotel expenses
- 4) \$525.00 - Refund of costs for emergency repairs the Tenants paid for (pest control expense)

The Tenants are seeking the above noted items because of the bed bug issue which they feel the Landlord should be responsible for.

The Tenants are seeking the refund of the \$200.00 move-in fee they paid because they had to move as a result of the bed bug issue.

The Tenants also are seeking 2 days worth of hotel expenses, as per the receipt provided, for October 6 and 7, 2021, because they had to vacate the rental unit for 2 nights while the pest control company came and did the bed bug treatment.

Alongside the above noted items, the Tenants also applied for reimbursement of \$525.00 for “emergency repairs” they paid for, which consisted of a canine inspection and fumigation for bed bugs in the rental unit. The Tenants hired the company to do this treatment at a cost of \$525.00, and paid for this expense out of their own pockets. The

Tenants provided a copy of the invoice, showing these services were rendered on or around October 6, 2021.

The Landlord stated that they do not feel they ought to be liable for any of these items, as they assert the Tenants were the ones who brought the bed bugs into the rental unit. The Landlords also stated that there were no bed bug issues before the Tenants moved in, nor have there been issues after they moved out. The Landlords also stated that the Tenants acted so quickly, and informed them via text message after they had already contacted the pest control company, which didn't leave them much opportunity to rectify the issue before the Tenants took their own actions.

The Tenants deny that they brought the bed bugs, and provided a letter corroborating that they didn't have issues at their previous rental unit.

#### *Landlords' Application*

The Landlords provided a monetary worksheet which shows they are seeking the following items:

- 1) \$2,000.00 – breach of fixed term tenancy agreement

Initially, on the Landlords' application, they indicated that they were seeking \$6,000.00 in rental losses due to the Tenants' breach of the 1 year fixed term tenancy agreement. However, they requested to amend this amount to \$2,000.00, as they only suffered one-month rental loss. More specifically, the Landlords stated that they lost November 2021 rent, given the manner in which the Tenants vacated the rental unit, prematurely.

The Landlords stated that after the Tenants vacated at the end of October 2021, they further investigated the bed bug allegations, and hired another company to come and re-fumigate the rental unit on November 6, 2021. The Landlords also spoke to neighbours who said they were not having any issues. The Landlords stated that they reposted to ad on November 24, 2021, for an extra \$100.00 and were able to re-rent the unit as of December 1, 2021, for \$2,100.00.

The Tenants do not feel they should be responsible for the rent for November 2021, as they feel they had a basis to end the tenancy early, due to the bed bug issue.

- 2) \$525.00 – Inspection and treatment of bed bugs

The Landlords stated that they paid for two different bed bug treatments, the first being October 15, 2021, and the second on November 10, 2021. Both invoices were provided into evidence. The Landlords stated that, prior to the Tenants moving in, there was never any issue with bed bugs, and to support this, the Landlords provided a copy of a note from a previous Tenant of the rental unit who stated he never saw any.

The Tenants do not feel they should be liable for this expense, as they deny causing the infestation, and assert that the bed bugs were pre-existing in the rental unit when they moved in. The Tenants also pointed out that they paid for their own bed bug treatment.

### Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The applicant bears the burden of proof to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

### *Tenants' Application*

- 1) \$2,000.00 - return of double their security deposit

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenants moved out of the rental unit on or around October 26, 2021. However, they did not return the keys until October 31, 2021, which is the day the move-out inspection was completed. I find October 31, 2021,

reflects the end of the tenancy, as this is when the keys were returned, and the move-out inspection was completed. The Landlord confirmed that they got the Tenants' forwarding address in writing on October 29, 2021.

I note the Tenants did not authorize any deductions from the security deposit. I also note that, as per the documentary evidence, there was a move-in inspection, and a move-out inspection, and a report was completed. I find there is insufficient evidence to show that either party extinguished their right to the security deposit.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing or the end of the tenancy, whichever is later. In this case, the latter date is October 31, 2021, which is when the tenancy ended. The Landlord had until November 15, 2021 to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. Since the Landlord filed the application against the deposit in time, I dismiss the Tenants' application for double the security deposit. The Landlord holds the original deposit, which will be addressed further below.

- 2) \$200.00 – Move-in fee refund
- 3) \$427.00 – 2 days worth of hotel expenses
- 4) \$525.00 - Refund of costs for emergency repairs the Tenants paid for (bed bug treatment)

I have reviewed the testimony and evidence , as it relates to the above noted items.

First , I turn to the Tenants' request for repayment for "emergency repairs" they paid for during the tenancy (pest control services). I acknowledged that the Tenants described this issue as an emergency repair on their application. However, I do not find it meets the criteria of an emergency repair, as defined by the Act. I note section 33 of the Act specifies the following:

***Emergency repairs***

**33 (1)***In this section, "emergency repairs" means repairs that are*

*(a)urgent,*

*(b)necessary for the health or safety of anyone or for the preservation or use of residential property, and*

*(c)made for the purpose of repairing*

*(i)major leaks in pipes or the roof,*

*(ii)damaged or blocked water or sewer pipes or plumbing fixtures,  
(iii)the primary heating system,  
(iv)damaged or defective locks that give access to a rental unit,  
(v)the electrical systems, or  
(vi)in prescribed circumstances, a rental unit or residential property.*

I also note Policy Guideline #51, which states the following:

*Emergency repairs do not include things like repairs to a clothes dryer that has stopped working, mold removal, or pest control.*

Since this does not qualify as an emergency repair, I dismiss the Tenants' application for this item, in full.

Next, I turn to the Tenants' request for item #2 and #3 above. I note the Tenants are seeking these amounts due to the presence of bed bugs, and the reactions they were having to alleged bug bites. I note the Tenants provided a copy of the work order from Orkin Canada for the amount they paid, \$525.00. As part of that treatment, I note that there was a mist application on all cracks and crevices on couch, all baseboards, and the computer chair. However, I note there is no evidence, or direction from the contractor, on this work order/invoice to indicate that the Tenants could not live in the rental unit following the treatment. I find there is insufficient evidence showing that the Tenants' only option was to stay at a hotel, following the bed bug treatment. I am not satisfied the Tenants sufficiently mitigated their loss in this regard, as they may have been able to reside in the rental unit following the treatment, rather than stay at a hotel for 2 days. I dismiss the Tenants' request for item #3, in full.

Next, I turn to the Tenants' request for item #2, the refund of their move-in fee. I note this is an amount the Tenants paid when they moved in, and this cost is charged by the strata for all moves. Although there were a couple less critical issues the Tenants had with the rental unit, I accept that the Tenants felt they had to move out, largely due to the presence of bed bugs.

I note the Tenants wish to recover this fee because of how short the tenancy was and because they feel it was the Landlords' fault that they had to move so soon, due to the presence of bed bugs. However, I am not satisfied that moving out was the only option, since it does not appear the Tenants afforded the Landlord sufficient time, nor did they

allow for all treatment methods to be engaged and completed before opting to end the tenancy. It appears most of the bed bug activity was within the first few days of the tenancy, prior to any treatments. I note the Tenants provided a written notice to the Landlords that they would be moving out on or around October 16, 2021, due to a material breach of the tenancy agreement. However, I am not satisfied that the Tenants gave enough time for the Landlords to sufficiently address any alleged bed bug issues before being able to terminate the tenancy lawfully, due to breach of a material term.

I note the Tenants also took issue with some other items in the rental unit, hot water/laundry, and flooring. However, I do not find any of these issues were such that they could be considered as reasonable grounds to end the tenancy early due to breach of material term.

Overall, I find there is insufficient evidence that the Landlord breached section 32(1) of the Act with respect to their obligation to maintain the property. I note the Landlords deny that there was any bed bug issue before the Tenants moved in, and they state there wasn't an issue after they left. I also note the Landlord engaged with the pest control company more than once due to the Tenant's complaints. Ultimately, I do not find the Tenants have met the onus to prove that the Landlord breached the Act. I also find the Tenants have not sufficiently mitigated their claim on this matter, as it has not been demonstrated that the only option was to stay at a hotel while the treatment was occurring, and then to move out so swiftly after treatment had been started. I dismiss these items in full.

### *Landlords' Application*

The Landlords provided a monetary worksheet which shows they are seeking the following items:

- 1) \$2,000.00 – Rental losses due to breach of fixed term tenancy agreement

I have reviewed the testimony and evidence on this matter. I note this was a fixed term tenancy agreement, spanning from October 1, 2021, to September 30, 2022. The Landlord is seeking rental losses for November 2021, which is the length of time the unit sat empty after the Tenants left. I note the Tenants ended the tenancy early, which is potentially a breach of section 45(2) of the Act. This could mean the Tenants are liable for rental losses. However, even if the Landlords suffered a loss, due to the manner in which the Tenants ended their fixed term tenancy agreement, I note that it is incumbent on the Landlords to mitigate their losses.

I note the following relevant portions of the Policy Guideline #5 – Duty to Minimize Loss:

**REASONABLE EFFORTS TO MINIMIZE LOSSES**

*A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.*

I note the following relevant portions of the Policy Guideline #5 – Duty to Minimize Loss:

*Claims for loss of rental income*

*In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.*

In this case, I note the Landlords were able to re-rent the unit by December 1, 2021, so they only suffered a loss of rent for November 2021. However, I note the Landlords waited until November 24, 2021, to repost the ad for rent, which is over 3 weeks after the tenancy ended, and likely well over a month after they became aware the Tenants were going to move out at the end of October. Although there were alleged bed bug issues, I do not find it is reasonable to wait so long to repost the ad to re-rent the unit. I find the Landlords failed to sufficiently mitigate their loss for November, since they waited over 3 weeks after the tenancy ended before posting the ad online. I find it more likely than not that this significantly contributed to the November 2021 rent loss, and it is possible that a significant portion of the November rental loss could have been avoided if the ad was posted sooner. I do not find a bed bug treatment on November 10, 2021, is a sufficient reason to wait so long to re-post the ad. I am not satisfied the Landlords have sufficiently mitigated their loss on this matter, and this item is dismissed, in full.

2) \$525.00 – Inspection and treatment of bed bugs

I have reviewed the testimony and evidence on this matter. I note the following relevant portions of the Policy Guideline #1 – Responsibility for Residential Premises:

**PROPERTY MAINTENANCE**

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

Although the Landlords have provided a statement from a previous Tenant, who stated that he never saw any bed bugs while he was living there, I find the Landlords have failed to sufficiently demonstrate that it was the Tenants who are responsible for the infestation. There is insufficient evidence as to where the bugs originated from.

Generally speaking, and as per the above noted guideline, the Landlord is responsible for insect control, especially in the absence of clear evidence that the Tenants directly or indirectly caused the issue with the bed bugs. I find the Landlord is responsible for this cost, and I decline to award this item.

I decline to award the recover of either filing fee as both parties were largely unsuccessful.

The Landlords are ordered to return the deposit they currently hold in the amount of \$1,000.00.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$1,000.00**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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: February 22, 2023

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Residential Tenancy Branch