



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      MNDCT, FFT

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 in the amount of \$1,371 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This matter was reconvened from a prior hearing on March 30, 2023. I issued an interim decision setting out the reasons for the adjournment on that same day (the Interim Decision). This decision should be read in conjunction with the Interim Decision.

The tenant attended the hearing but the landlord did not.

In the Interim Decision, I ordered the tenant to serve the landlord with the notice of dispute resolution proceeding package, the notice of reconvened hearing, the Interim Decision, and supporting documentary evidence by e-mail. He did this on April 2, 2023 and submitted a copy of the e-mail into evidence. Accordingly, I find that the landlord has been served with the required documents.

### **Preliminary Issue – Jurisdiction**

In the correspondence submitted by the tenant, the landlord indicates that she does not believe the Act applies to the contractual relationship between her and the tenant. In the Interim Decision, I advised the landlord that if this was her position, she would need to attend the hearing to explain why. I also advised the tenant that he must be prepared to explain why he believes the Act applies.

The tenant stated that he was starting a three-month teaching practicum on February 19, 2023. He did not live in the municipality where his practicum was taking place so he intended to move into a new residence so he can be closer for the duration of his practicum. He stated that prior to moving into the rental unit, he gave notice to end his prior tenancy.

He stated that he found the rental unit on Facebook marketplace, contacted the landlord, and advised her that he wanted to rent the rental unit for three months, from February 18 to May 18, 2023. The landlord agreed. Monthly rent was \$1,200 and the tenant provided a \$600 security deposit. The tenant provided a screenshot of the messenger chat between himself and the landlord corroborating these amounts as well as e-transfer receipts showing the payment of both of these amounts on February 19.

The tenant testified that the landlord told him he would need to pay tax on the rent, but that she would waive it if he paid cash. Despite this, the tenant paid by e-transfer, and the landlord did not request any further payment for taxes.

The rental unit is a bedroom with an attached bathroom. The tenant gained access to it from the exterior of the rental unit. He did not have access to a kitchen.

The client received welcome text messages from the landlord on February 17 and 18, 2023 which started with the phrase “welcome to [the landlord’s] B&B”.

I do not find that simply by calling the rental unit a “B&B” the landlord can cause the Act to not apply. The substance of the contractual arrangement must be examined.

Section 4 of the Act sets out types of agreements for living accommodations to which the Act does not apply. These types include “vacation or travel accommodation” and accommodation where the tenant shares a bathroom or kitchen with the owner.

Based on the tenants undisputed testimony, I find that the Act applies to the contractual relationship between the landlord and the tenant. I do not find that the tenant was on vacation or traveling when he rented the rental unit. Rather I find that he intended to occupy the rental unit as his principle and only residence for three months. The tenant had his own bathroom and did not share a kitchen with the landlord, or anyone else. There is no requirement in the Act that a rental unit contain a kitchen, and its absence does not mean that the Act does not apply.

I find that the length of time the tenant intended to occupy the rental unit was sufficiently long for the rental unit to have been considered his permanent residence.

The landlord was aware of the tenants’ intentions at the start of the tenancy and she could have reasonably anticipated that these circumstances would cause the Act to apply. The landlord charged the tenant a security deposit equal to 1/2 months rent,

which is the amount permitted by the Act. She did not charge him any tax on the rent. These factors further support my finding that the Act applies.

Accordingly, I find that I have jurisdiction over this dispute.

### **Issues to be Decided**

Is the tenant entitled to

- the return of his security deposit?
- the return of the balance of rent paid on February 19, 2023?
- recover the filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the tenant, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The parties entered into a tenancy agreement starting February 18, 2023 and ending May 18, 2023. Monthly rent was \$1,200 and was payable on the 18<sup>th</sup> day of each month. The tenant paid the landlord a security deposit of \$600, which the landlord continues to hold in trust for the tenant.

The tenant testified that after the first night he spent in the rental unit he woke up covered in bed bug bites. He advised the landlord of this and she sealed the rental unit and moved him to a different rental unit in the residential property. He stated that bed bugs continued to bite him and that he had to be hospitalized. He did not provide any documentation (such as photographs of the injuries or medical records) supporting this assertion.

The tenant testified that on February 28, he told the landlord that he needed to move out due to the infestation and demanded she return the security deposit and the balance of the first months rent he paid her. The tenant calculated this balance as \$771.

The landlord refused.

Despite this refusal, the tenant vacated the rental unit on February 28 and moved in with a colleague for the rest of his teaching practicum. He did not provide the landlord

with his forwarding address as he was afraid of what the landlord might do. He testified that she was threatening to disclose his confidential information after he demanded return of the security deposit and the balance of the rent.

### **Analysis**

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

(the Four-Part Test)

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

The tenant has not provided any documentary evidence supporting his allegation that the rental unit was infested with bed bugs. This evidence, such as photographs of the injuries or medical records substantiating his hospitalization, should have been relatively easy for the tenant to provide. As such, I do not find that the tenant has discharged his

evidentiary burden to show that the landlord has failed to comply with the Act (specifically section 32, which requires the landlord to provide the rental property in a state of repair that is suitable for occupation). The first part of the Four-Part Test has not therefore been satisfied.

I dismiss this portion of the tenant's application without leave to reapply.

Section 38 of the Act requires a landlord, within 15 days of the later of the end of the tenancy or of receiving the tenant's forwarding address or the ending of the tenancy of to either make an application to the RTB to keep the security deposit or to return the tenant's security deposit.

The tenant has not provided the landlord with his forwarding address. As such, the landlord does not have any obligation to return the security deposit. I dismiss this portion of the tenant's application with leave to reapply once he has provided the landlord with his forwarding address.

As the tenant has been unsuccessful in both portions of his application, I decline to order that he may recover the filing fee from the landlord.

### **Conclusion**

I dismiss the tenant's application to recover a portion of February 2023 rent and for the filing fee without leave to reapply.

I dismiss the tenant's application for the return of the security deposit with 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: May 8, 2023

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Residential Tenancy Branch