



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNDC FF O

### Introduction

This hearing dealt with two applications by tenants. The applicant tenant in unit 1, Ms L, is the daughter of the applicant tenants in unit 4, Mr. L and Mrs. L, and all three were represented by the same counsel. Both applications name the same landlord as respondent, and both applications stem from substantially the same incident. At the outset of the hearing, counsel for the three tenants and counsel for the landlord submitted that these matters may be most effectively heard in a joint hearing. I agreed with counsels' submissions and accordingly joined the files to be heard together.

The three applicant tenants, counsel for the tenants, the landlord and counsel for the landlord all participated in the teleconference hearing on November 10, 2009. At the conclusion of the hearing parties were invited to provide written submissions. The final date for written submissions was November 30, 2009.

### Preliminary Issue

Counsel for the landlord raised the issue that Ms L and Mr. and Mrs. L had previously applied for dispute resolution in 2007, and that the monetary claims on those applications were identical to the claims in the current applications. I consulted the history for those applications, confirmed that those previous applications had been withdrawn, and found that the tenants were therefore not prevented from pursuing the new applications. I noted that the previous application for Mr. and Mrs. L included an application to cancel a notice to end tenancy. I informed Mr. and Mrs. L that as they

chose to withdraw that application and move out, I would not consider the notice to end tenancy as a basis for compensation in their current application.

### Issues(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?

### Background and Evidence

The tenants in unit 4 of the apartment building in question, Mr. and Mrs. L, had resided in the building since approximately 1984. Their daughter, Ms L, had resided in unit 1 of the building since approximately 2005. In July 2007, Ms L's 18 month old daughter, AL, and their dog also resided in unit 1. The incident that gives rise to the tenants' applications occurred on July 23, 2007, when the landlord sprayed pesticide around the exterior and interior of the building, including inside unit 1, Ms L's apartment.

#### a) evidence of Ms L

The evidence of Ms L was as follows. On July 23, 2007, Ms L, her daughter AL and their dog were in the rental unit. Ms L was in the bedroom with her daughter when she heard a noise. Ms L came out of the bedroom and saw the landlord inside her rental unit. Ms L had not heard any knocking and the door to her unit had been locked. The landlord had a canister with a hose attached to it, and he said that he was there to spray for silverfish. The landlord had not given any written or verbal notice that he would be spraying the building or individual units for silverfish.

Ms L asked the landlord if the spray was toxic, and he said no. The landlord went into the kitchen, opened some cupboards and proceeded to spray. Ms L asked if she should move the dog's water dish, and the landlord said no. The landlord then sprayed in the bathroom and hallway.

After the landlord left, Ms L left the windows open in the rental unit she and her daughter had a nap. Ms L woke up with a headache. She went out at around 7:30 pm and when she returned to the building at approximately 9:00 pm she noticed a strong chemical odour on the walkway outside the building, as well as inside the building. Ms L's headache became worse, and she took some pain medicine before going to bed. The bathroom and kitchen still had a strong chemical smell. Ms L closed all of the windows before she went to bed because she lives on the first floor. She went to sleep and woke up several times in the night with stomach cramps, nausea, headache and diarrhoea. At approximately 3:00 am Ms L opened the bathroom door and there was a horrible smell, like gasoline, in the bathroom.

The next morning Ms L overheard another tenant in the building, KJ, talking on the phone to the landlord and asking what had been sprayed in her apartment. KJ said she and her cat became sick from the spray. KJ also believed that one of the substances the landlord had used to spray the apartment was diazinon, a toxic substance that has been banned in Canada.

Ms L then realized that she may have had a reaction to the spray the landlord used. Ms L called a pest control company and was advised to get herself and her daughter out of the apartment immediately. Ms L called her parents, who lived in the same building, and they came and helped get Ms L, Ms L's daughter AL, their dog and some things they needed for the day up to Mr. and Mrs. L's apartment, which had not been sprayed. When Ms L opened her apartment door there was a smell in the hallway that made her feel dizzy, gave her a headache and left a bad taste in her mouth. Ms L stated that at that point she felt emotionally paralyzed – she panicked about what the landlord had put in her and her daughter, and was fearful about what the impact might be.

While Ms L was at her parents' apartment that day, the landlord came to the door and showed Ms L a bottle labelled "Wilson's" and said that that was all he had used when he sprayed. Ms L read the instructions on the bottle, which included instructions to remove pets, leave the house for an hour, and that the surfaces to which the product was

applied should be cleaned after the product dried. The landlord did not follow those steps when he sprayed Ms L's apartment.

Ms L felt very sick all day on July 24, 2007. She experienced stomach illness until July 25 and was still light headed and experiencing a dry mouth on July 26. On July 26, 2007 Ms L went to the doctor and told him that she thought she might have been exposed to toxic pesticide. The doctor ordered a blood test and told Ms L she should not go back to her apartment.

On July 28, 2007 the landlord sent Ms L a letter apologizing for the spraying. He also posted a notice saying that he would like to enter the sprayed suites on August 1, 2007 to clean affected areas. Ms L did not want to wait, so she cleaned her apartment herself on July 29, 2007. Some of Ms L's things continued to stink like the spray even after she had washed them several times, so she threw them out. These items included bath mats, some of her daughter's clothes, a crock pot, a mixer, the feeding tray for her daughter's high chair, a stockpot, another cooking pot, a pan set and a popcorn maker.

On August 13, 2009 Ms L returned to the doctor to get the blood results and because her chest was sore and she was still coughing. The result of the blood test showed that Ms L's blood level fell within the normal range. The doctor prescribed an inhaler to address Ms L's discomfort.

While Ms L's daughter, AL, did not get sick on the first night of the spraying, she got nasal congestion and was fussier than usual in the following days. Ms L did not take AL to the doctor immediately because AL finds the doctor to be a traumatic experience. AL started developing a terrible cough and started to sweat a lot on August 8 or 9, 2007. Ms L was not able to get a doctor's appointment for AL until August 13, 2007. The doctor's notes indicate he could not complete the examination because Mrs. L ("grandma") interrupted and said that AL was much better.

Ms L stated that she has suffered long-term physical and psychiatric effects of the spraying. Ms L had symptoms of a bad, metallic taste in her mouth and a dry mouth that lasted for a year, and she continues to use a ventolin inhaler to assist in breathing. Ms L received counselling and psychotherapy for her stress and anxiety on five dates between October 25 and December 20, 2007. The psychologist's notes from his sessions with Ms L indicate that Ms L was displaying symptoms of anxiety and post-traumatic stress disorder.

Ms L conducted her own research on the potential effects of pesticides, and she believes that her daughter AL may have be suffering long term effects of exposure to pesticide and the stressful situation following the spraying. AL was under two years old at the time of the spraying, and would have been especially vulnerable to effects of the pesticides. AL has developed an extreme fear of loud and startling noises.

Under cross-examination, Ms L acknowledged that her daughter AL was in better health at the time of her appointment on August 13, 2007, and that Ms L has not received any doctor's opinion on a connection between AL's reactions to noise and the pesticides. Ms L did not receive any further testing to confirm that her own physical or psychiatric symptoms were caused by the pesticide.

Ms L has claimed compensation of \$8000 for her physical pain and suffering; \$9,700 for psychiatric damage; \$2000 for physical pain and suffering for her daughter AL; \$300 for replacement of damaged items and labour for cleaning her apartment after the spraying; and \$5000 for aggravated damages for the landlord's wilful and reckless behaviour.

b) evidence of Mrs. L

On July 23, 2007 at about 2:00 pm, the landlord knocked on Mrs. L's door and said that he was going to spray her apartment. Mr. and Mrs. L had received no prior notice of the landlord's intent to spray pesticide in or around the building or their apartment. Mrs. L refused to allow the landlord to enter her apartment.

Approximately two or three hours later, Mrs. L left her apartment and noticed that the rubber mat and carpet in the hallway near her apartment door were soaking wet and there was a very strong odour similar to kerosene. The odour was also present in other areas of the building.

Mrs. L later returned to her apartment, and at about 8:00 or 9:00 that evening she started to cough uncontrollably. That night she had trouble sleeping and woke up several times with a swollen feeling, a bad taste in her mouth and cramps in her lower abdomen. She was still feeling very ill the next morning and experienced diarrhoea for several days afterward. Additionally, she was fearful for her granddaughter, and felt in shock, "in a fog, somewhat confused."

One of the other tenants in the building told Mrs. L that she had gone down into the basement of the building and found two empty bottles of chemicals, one labelled Diazinon and the other B1 Home and Ant Insecticide. Mrs. L called the landlord and asked him to bring her the bottle of whatever substance he had sprayed. The landlord came to the apartment and gave Mr. L a bottle of Wilson's, which he said he used to spray in and around the building.

When Mrs. L told the landlord that they were sick, he replied that nobody else in the building was sick. Later in the day when Mrs. L reiterated that they were sick, the landlord laughed at Mrs. L and said "yeah, right."

Because it was very hot in the building, Mrs. L had the windows open, and she kept the apartment door out into the hallway open as well. She continued to wear her shoes into her apartment for a few days after the spraying, because she was not aware that she should not do so.

Mrs. L continued to feel sick. On July 24, 2007 she experienced swollen lips. On July 26, 2007 she experienced a gum infection, which she treated herself with hydrogen

peroxide. A few days after the spraying she became very constipated and when she had bowel movements the stool was very large and bright yellow. On July 28, 2007 Mrs. L spoke to her doctor on the phone and he advised her to detox.

A few days after the spraying Mrs. L helped clean her daughter's apartment. Mrs. L noticed that the baby's clothes that had been hung to dry reeked like kerosene.

On July 25, 2007 Mrs. L contacted the Public Health Department to report the spraying. On July 28, 2007 the landlord posted notices around the building stating that the Health Department had told him to wash the affected areas of the building. Mrs. L stated that the landlord then began to intimidate Mr. and Mrs. L and other tenants in the building, to the point where "the building became like a pressure container" where people were in conflict and others were in fear of speaking up because they would be evicted.

Mrs. L continued to suffer physical symptoms of the spraying. She suffered from constipation and large bowel movements for two months, and she became "hormonally out of whack" where she had not had previous problems three years into menopause. She first turned to prayer and attempted to address her physical symptoms with homeopathic remedies, and then she attended at her doctor's office on September 20, 2007. The doctor prescribed her a nasal spray for rhinitis. Mrs. L stated that she still suffers from rhinitis now, as well as getting a bad taste in her mouth and sensitivities to strong chemical odours.

Mrs. L became very worried about the effects of the spraying on herself and her family, and she began to suffer stress and anxiety. Mrs. L, together with Mr. L, received counselling and psychotherapy for her stress and anxiety on six dates between October 25 and December 17, 2007. They attended the same psychologist as their daughter, Ms L. As with Ms L, the psychologist's notes indicate that Mrs. L and Mr. L were displaying symptoms of anxiety and post-traumatic stress disorder.

On cross-examination Mrs. L stated that she had not had rhinitis before the spraying. She also acknowledged that her doctor first thought her symptoms were the result of allergies or from the spraying of trees.

c) evidence of Mr. L

On the night of October 23, 2007, Mr. L witnessed his wife become very ill with an uncontrollable cough. By the morning of July 24, 2007, he could see that his wife was in a lot of pain, and that she had diarrhoea. That morning Mr. and Mrs. L's daughter, Ms L, called and said that she was very ill and needed to get out of her apartment because the landlord had sprayed for silverfish. Mr. L could see that Ms L was very ill, so much so that she was unable to care for her own daughter, AL, that day.

Based on the information of another tenant, KJ, that there were two bottles of pesticide down in the boiler room, on the afternoon of July 24, 2009 Mr. L went down to see if he could collect these bottles, but they were gone. The landlord attended Mr. and Mrs. L's rental unit that day and gave Mr. L an empty bottle of Wilson's Home Spray, and Mr. L kept the bottle. On the following day, July 25, 2007, the landlord returned and demanded that Mr. L give back the bottle of Wilson's, but Mr. L refused to do so. On a later date, a representative of the Ministry of Environment confiscated the bottle as evidence.

Mr. L talked to the other tenants about bringing legal action against the landlord for the spraying. Some time during the last two weeks of September 2007, Mr. L spoke to KJ, and she said that she had signed an agreement with the landlord that she would not take legal action against him for the spraying. KJ showed Mr. L her written agreement with the landlord. KJ also told Mr. L that she had received money from the landlord in exchange for signing the agreement, but she would not tell him the amount.

In late September and early October 2007 Mr. L began to regularly spend time, a few times a week for at least half an hour each time, in the basement storage room. While



there he noticed a really strong kerosene odour, the same smell that had been in the hallway outside his apartment on July 23, 2007. During that time Mr. L began to experience a sore dry throat, headaches and an upset stomach. In the first week of October he developed severe diarrhoea, which lasted several weeks.

As a result of the spraying and the effects it was having on his family, Mr. L began to feel extremely stressed. In 2004 Mr. L had been diagnosed with and treated for bipolar depression. By mid-July 2007 he had been taken off his medication, but by October 2007 he began experiencing sleep disturbances and a relapse into depression, so he had to resume taking medication. Mr. L was still taking that medication in November 2009. Mr. L, together with his wife Mrs. L, received counselling and psychotherapy for stress and anxiety on six dates between October 25 and December 17, 2007. The psychologist's notes indicate that Mr. L and Mrs. L were displaying symptoms of anxiety and post-traumatic stress disorder.

Under cross-examination, Mr. L acknowledged that his family doctor did not causally link the spraying with Mr. L's resulting symptoms. The doctor could not give such an opinion because he was not a toxicologist.

The combined claim of Mrs. L and Mr. L is as follows: \$5000 for Mrs. L's physical pain and suffering; \$5000 for Mrs. L's psychiatric damage; \$5000 for Mr. L's physical pain and suffering; \$5000 for Mr. L's psychiatric damage; and \$5000 for the landlord's wilful and reckless behaviour.

d) additional documentary evidence of applicants

In their additional documentary evidence to support their applications, the tenants submitted the report of a Pesticide Management Officer from the Ministry of Environment who investigated the spraying. In his report, the officer noted that the landlord had entered into five apartments in the building and applied a pesticide to kitchen and bathroom areas, that the landlord did not give prior notice of the spraying to any tenants, and that he sprayed without a required licence. In an interview with the

officer on July 27, 2007, the landlord stated that he sprayed Wilson's inside the building, and he only applied Diazinon outside the building, as he knew it was toxic and he would never spray it inside. The officer obtained the bottle of Wilson's but was not able to obtain the bottle of Diazinon because the landlord threw it out. The officer doubted that the landlord would comply with licensing requirements in the future, based on his disregard for the rights and safety of his tenants.

The tenants also submitted in their evidence a copy of the violation ticket issued to the landlord for use of pesticide without a certificate, contrary to the *Integrated Pest Management Act*.

e) evidence of the landlord

On October 23, 2007 the landlord sprayed the interior and exterior of the building for silverfish. The landlord attended at Mr. and Mrs. L's apartment and said he wanted to spray for silverfish, but Mrs. L said no. He attended at Ms L's apartment, knocked with a fairly loud knock, and when there was no response he went into the apartment. The landlord did not recall Ms L asking about whether the spray was toxic. Inside Ms L's apartment, he sprayed under the kitchen sink and in the bathroom.

The landlord sprayed inside some other apartments, as well as in the hallways and stairs of the building, on the baseboards and the edges of the stairs. He sprayed the baseboards in the boiler rooms, the laundry room and the locker room. He was inside the building for 30 to 45 minutes, and during that time sprayed for no more than 20 minutes. He was not wearing a mask while he was spraying, and he did not get sick as a result of his exposure to the spray. Inside the building he used a product that he had purchased at Home Depot. He did not spray anything else in the building after October 23, 2007. He did not spray diazinon anywhere except outside the southwest exterior corner of the building, under a tree.

The landlord later received a call from Fraser Health, who told the landlord to clean up the spray with baking soda and vinegar, so that is what he did. He sent the tenants notices asking whether they wanted him to clean where he had sprayed in their suites. Ms L never responded to the notice. The landlord cleaned the hallways on July 28, 2007 and he cleaned the individual suites other than Ms L's on August 1, 2007. He then sent a letter to Fraser Health saying that he had complied with their instructions.

In his supporting documents the landlord submitted statements of six other tenants, including KJ. In general, these tenants all stated that they have not ever felt threatened or intimidated by the landlord, and that Mr. L and Mrs. L were confronting and harassing other tenants to try to get support for their claim against the landlord. KJ's statement did not address Mr. L's allegation that she had signed an agreement with the landlord in exchange for money. The landlord stated in the hearing that he had no agreement with KJ and that he did not give her any money.

In his direct testimony the landlord acknowledged that he had not given the tenants notice of the spraying at that time, and when he now needs to give them notice he posts a notice above the mailboxes in the building. Under cross-examination the landlord acknowledged that he had not read the instructions on the pesticide he purchased from Home Depot. The landlord also stated that he no longer treats the building for silverfish, and it is now a tenant's responsibility to hire someone if they want to get rid of silverfish. The landlord stated "I've had enough."

## Analysis

In considering the testimonial and documentary evidence and written submissions of the parties, I find as follows.

### a) physical damage

In the case of Ms L, I accept that her immediate physical symptoms were more likely than not the result of the spraying. Ms L developed a headache, abdominal cramps and diarrhoea within a few hours after having been exposed to the spray in and around her apartment, and there is no evidence to conclude that these symptoms resulted from any other cause. In regard to any long-term physical effects, the result of Ms L's blood test did not show a connection between her physical symptoms and exposure to insecticide, and Ms L did not pursue any further testing or diagnoses to establish such a connection. I therefore grant Ms L \$500 for her short-term physical pain and suffering.

Ms L's daughter, AL, did not develop any immediate symptoms and when she was examined by a doctor on August 13, 2007 she was "much better." There is insufficient evidence to establish that AL suffered any physical symptoms as a result of the spraying, and I therefore dismiss that portion of Ms L's claim.

I accept Mrs. L's testimony that she suffered some immediate physical symptoms that more likely than not resulted from being exposed to the spray. Mrs. L suffered a headache, abdominal cramps and diarrhoea shortly after having been exposed to the spray in the hallways, any spray that may have been carried into her apartment on her shoes, and fumes coming into the apartment through the windows or open apartment door. Mrs. L was also exposed to the spray when she helped her daughter clean her apartment, which had been sprayed. There is no evidence to conclude that these symptoms resulted from any other cause. However, Mrs. L did not see a doctor until approximately two months after the spraying, and she therefore did not take steps to

mitigate any long-term physical damage. Further, Mrs. L did not pursue testing or diagnoses to establish a connection between her physical symptoms and the spraying. I therefore grant Mrs. L \$250 for her short-term physical pain and suffering.

Mr. L did not develop any physical symptoms until late September 2007, and he did not pursue testing or diagnoses to establish a connection between his physical symptoms and the spraying. There is insufficient evidence to establish on a balance of probabilities that Mr. L suffered physical symptoms as a result of the spraying, and I therefore dismiss that portion of Mr. L's claim.

b) psychological damage

I accept that the applicants all suffered stress and anxiety resulting from the spraying, and that their stress and anxiety were reasonable in the circumstances. The applicants were exposed to one or more chemical substances, potentially including a toxic and banned substance, which they learned may have long-term effects on some or all of them. In the case of Mr. L, I accept the evidence that he suffered Bipolar Disorder prior to the spraying and that as a result of the spraying he may have been more vulnerable to and suffered more from the resulting stress. However, the clinical notes of the psychologist which refer to "post traumatic stress disorder" of all three applicants do not amount to a diagnosis. I find there is insufficient evidence to conclude that any of the applicants suffered long-term psychological damage directly related to the spraying. I therefore find that for short-term stress related to the spraying, Ms L and Mrs. L are entitled to \$250 each and Mr. L is entitled to \$500.

c) replacement of chattels

In regard to this portion of her claim, Ms L did not provide supporting evidence such as photographs of the damaged items, receipts for the replacement items, or a breakdown of the hours and rates for cleaning. I therefore find that there is insufficient evidence to

support this portion of her claim. I accordingly dismiss that portion of her claim regarding replacement of chattels.

d) aggravated damages

I find that the applicants suffered from and are entitled to compensation for their losses directly resulting from the landlord's wilfully negligent act of spraying for silverfish on July 23, 2007. The landlord committed egregious violations of the *Residential Tenancy Act* by not giving notice to the tenants before spraying in and around the building, by carrying out the spraying without a required licence, by entering Ms L's suite without notice, and by recklessly disregarding the health of the tenants. The landlord did not allow the tenants to properly prepare for or respond to the spraying, and he did not follow even the basic instructions on how to carry out the spraying. I accept that the applicants suffered some physical effects as well as stress and anxiety as a result of the spraying, and that the landlord should have reasonably foreseen that the spraying would cause such effects.

Despite the landlord's letter of apology, he continued to act toward in such a manner toward the applicants that he caused them further stress and anxiety. Further, the evidence – including the landlord's own testimony – suggests that the landlord purposely hid evidence of his use of Diazinon, that he only cooperated with cleanup of the building after having been directed to do so, and that after the spraying he continued to blame the applicants for the resulting tension among the tenants in the building.

I therefore find that the applicants are entitled to the full amounts claimed for aggravated damages, \$5000 for Ms L and \$5000 for Mrs. L and Mr. L.

The applicants are also entitled to recovery of their filing fees for the cost of their respective applications.

Conclusion

I grant a monetary award to Ms L for the following amounts: \$500 for short-term physical pain and suffering; \$250 for short-term stress and anxiety; \$5000 for aggravated damages; and \$100 for recovery of her filing fee, for a balance of \$5850.

I grant a monetary award to Mrs. L and Mrs. L for the following amounts: \$250 for Mrs. L's short-term physical pain and suffering; \$250 for Mrs. L's short-term stress and anxiety; \$500 for Mr. L's short-term stress and anxiety; \$5000 for aggravated damages; and \$100 for recovery of their filing fee, for a balance of \$6100.

These monetary orders are granted under section 67 of the *Residential Tenancy Act* and may be filed in the Small Claims Court and enforced as orders 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: December 28, 2009.

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Dispute Resolution Officer