



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement. The landlord confirmed that the tenant handed a copy of her dispute resolution hearing package to the landlord on October 24, 2011. I am satisfied that the tenant served her hearing package and the parties served their written evidence to one another in accordance with the *Act*.

### Issues(s) to be Decided

Is the tenant entitled to a monetary Order for losses she has incurred arising out of this tenancy?

### Background and Evidence

This periodic tenancy commenced on or about February 1, 2000. Monthly rent is set at \$840.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$312.50 security deposit paid on or about January 24, 2010.

The tenant applied for a monetary Order of \$431.25 for losses she has incurred in response to her attempts to end a bedbug infestation in her rental unit. She provided receipts for the following expenses she has incurred for which she is seeking compensation from the landlord:

Item	Amount
Pest Control Spraying May 26, 2011	\$242.00
New Bedding	95.19
New Mattress Cover	94.06
<b>Total Monetary Order Requested</b>	<b>\$431.25</b>

There was conflicting testimony and evidence regarding the timing of the tenant's request to the landlord to resolve the bedbug problem in this rental unit. The parties did agree that the tenant spoke with the landlord at some point in mid-May 2011. The parties also agreed that the landlord put some powder (described by the tenant and her witness as "mothball like powder") around the entrance to the tenant's door to "treat" the

premises for bedbugs. The landlord testified that she placed this substance around the doors and in the halls of the whole building at that time as a precautionary measure to deal with pests in general. The parties also agreed that the landlord told the tenant at that time that the tenant was responsible for bringing the bedbugs into the building and should be responsible for eliminating them from her rental unit. This evidence was confirmed in the landlord's July 27<sup>th</sup>, 2011 letter to the tenant's advocate in which she asserted the following:

*When the landlord rents the suite to the tenants in the building, the rented suites become the tenants' private living area, so the tenants should be responsible for keeping their suites clean and healthy...*

The landlord testified that the tenant told her that she had accepted used furniture from her sister which came from the tenant's sister's premises which also had bedbug problems. The landlord claimed in her July 27<sup>th</sup>, 2011 letter that the tenant should be responsible for the bed bug infestation because "she brought bed bugs into her suite from somewhere else since there was no bed bug infestation for the past eleven years that she lived there." The tenant denied telling the landlord that the bedbugs came from her sister's used furniture.

The tenant's sister who provided sworn testimony at the hearing explained the circumstances surrounding one piece of outside furniture that was brought to the tenant's premises and left outside until the tenant decided to throw it out. The tenant's sister also testified that any bedbug problems that she had at her own condominium unit arose after she was exposed to them at the tenant's rental unit. Although there were some gaps in the tenant's sister's testimony, for the most part, she provided a clear and straightforward account of why she was certain that the bedbugs did not originate from any furniture or belongings that she gave to her sister and her sister brought to the rental unit.

The landlord also presented oral and written evidence that the tenant was not truthful in her assertion that she sent letters to the landlord about the bedbug problem on May 22, 2011 and June 7, 2011. The landlord testified that she did not receive either of these letters until June 16, 2011, when they were attached to the tenant's June 16, 2011 letter. The contents of the May 22, 2011 letter addressed to the landlord read as follows:

*It came to my attention that I had a bed bug infestation. I have not brought in any used furniture or clothing. This letter serves as a request to have my apartment sprayed to kill the bed bugs.*

The tenant was uncertain if she gave the landlord the May 22, 2011 letter directly or if she placed it in the landlord's mailbox at the rental property. The landlord also

questioned why a June 7, 2011 letter, apparently written by a case worker who helped the tenant, was addressed to "C and R." Both parties agreed at the hearing that these individuals were former building managers at this property. The tenant said that her case worker erred in addressing this letter to the former managers. The landlord said that she did not receive this letter which the tenant testified she left in the landlord's mailbox. In her July 27, 2011 letter to the tenant's advocate, the landlord stated the following:

*...we sent her (the tenant) a letter on June 17<sup>th</sup>, 2011 and told her that she had faked the date on the letters. No one from KFS contacted me about the bed bug infestation until I received a letter from you, KS, on July 25<sup>th</sup>, 2011...*

Although the landlord took swift action after she received the June 17, 2011 to have the landlord's pest control company inspect the rental unit, by that time the tenant's premises had already been sprayed on May 26, 2011.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 32 of the *Act* establishes a landlord's obligations to provide and maintain residential property in a proper and healthy condition. Section 28 of the *Act* protects a tenant's right to quiet enjoyment of the rental premises.

When a tenant proceeds to incur costs herself and seek compensation from the landlord as occurred in this instance, her ability to do so is governed by section 33 of the *Act*, for emergency repairs. Section 33(3) of the *Act* reads in part as follows:

**33** (3) *A tenant may have emergency repairs made only when all of the following conditions are met:*

*(a) emergency repairs are needed;*

*(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;*

*(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...*

In considering this case, I am satisfied that the tenant's actions to commission pest spraying for removal of bedbugs meets the definition of emergency repairs as set out in section 33(1) of the *Act*. I also find that this pest control treatment was needed.

Of critical importance is the timing of when the tenant alerted the landlord to her concerns about bedbugs in her rental unit and whether the tenant gave the landlord sufficient time to address her concerns in this regard. On the basis of the evidence presented, I am satisfied that the tenant did notify the landlord of her bedbug infestation in mid-May 2011. Although the exact date of this notification is uncertain, the preponderance of evidence convinces me that the landlord did know about the bedbug infestation and advised the tenant that she thought it was the tenant's responsibility to take steps to remove bedbugs from her rental suite. While the landlord has cast doubt on whether the tenant delivered the May 22, 2011 letter to her, section 33(3) of the *Act* does not require written notification before emergency repairs can be undertaken by a tenant. The tenant's sister testified that she witnessed one of the tenant's conversations with the landlord about the bedbug infestation and I am satisfied that the tenant did speak with the landlord about this situation on at least two occasions before the tenant commissioned her own spraying of her premises. This action by the tenant is consistent with the landlord's repeated oral and written claims that the tenant is responsible for the removal of the bedbugs because the tenant allegedly brought them into the premises.

Subsection 33(6) of the *Act* reads in part as follows:

*(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that...:*

*(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

I find that the landlord has not provided sufficient evidence to demonstrate that the tenant was responsible for introducing the bedbugs into her rental unit, her apparent reason for refusing to pay the tenant's claim pursuant to subsection 33(6)(d) of the *Act*. Unfortunately, bedbugs have become an increasing problem in rental properties in Vancouver and in other communities across the world in recent years. I find that the landlord has not provided clear evidence identifying the source of the tenant's bedbug infestation and that this source resulted from the tenant's negligence or lack of care. The tenant testified that other tenants in the building have also experienced bedbugs, an assertion that the landlord denied. I do not find that the landlord has demonstrated

that the bedbugs originated from used furniture brought to the tenant's rental premises by the tenant's sister. Identifying the source of bedbugs in a multi-unit building is difficult if not impossible to ascertain without detailed professional evidence, none of which was provided in this case.

The question that remains is whether the tenant complied with the requirements of section 33(3)(c) of the *Act* to give the landlord reasonable time to make the repairs, in this case, to treat the rental premises for bedbugs.

In considering this issue, I give weight to the landlord's ongoing insistence that the bedbugs were not her problem to address, but the tenant's responsibility. Even at the hearing and after the tenant raised concerns that she has recently been exposed to a recurrence of bedbugs in her rental unit, the landlord testified that her pest control company has been unable to eradicate this problem. However, the landlord did not produce evidence that she has had spraying conducted by the pest control company. She said that she has more confidence in a "natural way" to treat bedbug outbreaks, although she produced no substantive evidence regarding this natural way of treating the problem. More importantly, she provided no evidence regarding the success that she has had with this approach to what has become a massive problem in many parts of the world in recent years. Since the landlord continues to attach little apparent reliance to professional pesticide spraying to eradicate bedbugs, I find it highly unlikely that she needed more time to respond to the tenant's concerns about her bedbug infestation raised with the landlord in May 2011. The landlord's solution of placing powder around the tenant's front door would seem to be a singularly unrealistic approach to addressing the tenant's concerns.

Under these circumstances, I find that the tenant did allow the landlord reasonable time to address her concerns about bedbugs. The landlord told the tenant that this was a problem that the tenant would have to address herself. Since I find that the landlord is responsible for dealing with this problem of bedbugs, I find that the tenant incurred costs to spray the premises that should have been borne by the landlord.

I have examined the receipts presented into written evidence by the tenant and confirm that the timing of these receipts coincides with the dates when the tenant encountered the bedbug infestation. The landlord's only question regarding these receipts was her observation that she did not see the tenant's pest control company on the premises on May 26, 2011 when this spraying occurred.

I find that the landlord's failure to notice a pest control vehicle and contractors on the rental property is not determinative of whether this spraying also occurred. Although the tenant's sister said that she was the person who actually paid the pest control company for the May 26, 2011 spraying, she said that this was a loan she made to her sister (i.e., the tenant). I accept that the pest control spraying claimed in the tenant's application for

a monetary Order occurred because the landlord refused to address this problem herself. As such and as the tenant continues to owe the cost of this spraying to her sister, I find that the tenant is entitled to a monetary award of \$242.00 to compensate her for losses arising out of this tenancy due to the landlord's refusal to take action to address her concerns about her loss of quiet enjoyment of these premises.

Turning to the tenant's claim for replacement of her mattress cover and her bedding, I find little evidence that would demonstrate that the landlord's failure to deal with the tenant's concerns about bedbugs in a timely fashion led to the tenant's need to replace these items. I do not find that these costs can be considered as emergency repairs, the underlying reason behind the tenant's entitlement to reimbursement of her losses arising out of this tenancy. The landlord provided evidence that she has regular bedbug inspections by a licensed pest control company. Whether or not the landlord undertook pesticide spraying immediately after the tenant first notified the landlord of this problem, the tenant would likely have needed to replace her bedding and mattress cover. For these reasons, I dismiss the tenant's application for reimbursement of her bedding and mattress cover without leave to reapply.

Section 33(7) of the *Act* allows a tenant to recover amounts from the tenant's rent that are not reimbursed by a landlord as required under section 33(5) of the *Act*. As such, I order the tenant to reduce her next monthly rental payment by \$242.00 in order to recover the amount of the monetary award issued in this decision.

Based on the landlord's testimony at the hearing, I am not satisfied that the landlord took the tenant's complaints of bedbugs seriously when they were raised with her. Several times during the hearing, and in particular near the end of the hearing, the landlord stated that the pest control company she has hired has been unable to eradicate bedbugs in this building. She said that she continues to try natural products to deal with this problem. She provided no evidence to demonstrate that any of these natural products have proven successful in treating rental properties containing bedbugs.

In accordance with the general powers delegated to me under section 62 of the *Act* to determine matters related to any dispute before me and to issue orders necessary to give effect to the tenant's rights under the *Act*, I order the landlord to retain the services of a licensed pest control company to provide professional pest control treatment to the tenant's rental unit and any nearby rental units where bedbugs may be present. I order that the landlord take this action as soon as possible and before February 1, 2012. I order that if the landlord does not commence this action by February 1, 2012, that the tenant is allowed to reduce her monthly rent by \$420.00 per month (i.e., one-half of the regular monthly rent) until such time as a licensed pest control company has inspected

the rental unit and commenced action to address ongoing pest control problems that may arise from that inspection.

### Conclusion

I issue a monetary award in the tenant's favour in the amount of \$242.00 to reimburse the tenant for the losses she incurred when she retained the services of a pest control company to conduct pesticide spraying in her rental unit in May 2011. To implement this monetary award, I order the tenant to reduce her next monthly rental payment by \$242.00 in order to recover the amount of the monetary award issued in this decision.

I dismiss the tenant's application for a monetary award for compensation for losses she incurred in replacing her bedding and mattress cover without leave to reapply.

I order the landlord to retain the services of a licensed pest control company to provide professional pest control treatment to the tenant's rental unit and any nearby rental units where bedbugs may be present. I order that the landlord take this action as soon as possible and before February 1, 2012. I order that if the landlord does not commence this action by February 1, 2012, that the tenant is allowed to reduce her monthly rent by \$420.00 per month until such time as a licensed pest control company has inspected the rental unit and commenced action to address ongoing pest control problems that may arise from that inspection.

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: January 13, 2012

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Residential Tenancy Branch