



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Rainier Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** O; FF

### **Introduction**

This is the Landlord's application to restore the Tenant's monthly rent to \$780.00; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord stated that he served the Tenant with the Notice of Hearing documents by registered mail, but he did not know when he sent the documents. The Tenant acknowledged receipt of the Landlord's Notice of Hearing documents and most of the Landlord's documentary evidence, by registered mail "on the 3<sup>rd</sup> or 4<sup>th</sup> of January, 2014". The Tenant stated that he was not provided with a copy of invoices 96371152, 96491170 and 96473675 from the pest control company.

### **Issues to be Decided**

- Has the Landlord complied with the Order issued March 5, 2013?

### **Background and Evidence**

The parties had two previous hearings with respect to this tenancy. The first hearing took place on March 4, 2013, and a decision was rendered on March 5, 2014. This hearing was scheduled in response to the Tenant's application that the Landlord comply with the Act; make repairs to the rental unit; and for a reduction in rent for repairs, services or facilities agreed upon but not provided.

The Tenant was not provided with a rent reduction; however, the Tenant was given leave to reapply requesting other Orders or compensation from March 5, 2013, onwards. The arbitrator also made the following Orders:

"I find that there is no doubt that the landlord wishes to take steps to eradicate bed bugs and other pests from the building and during the hearing it was not disputed that the following Order should be issued, pursuant to section 62(3) of the Act:

- That a schedule of inspections, for licenced pest control follow-up in the building, will be developed and the tenant will be given a written copy of this schedule;
- That all treatments for pest control be followed by an inspection of the treated and surrounding suites, within the time-frame suggested by the licenced pest control company, in order to establish the need for further treatments;
- That any unit that has been treated for pests, inspected as required and found to have pests will again be treated as soon as possible and as recommended by the licenced pest control company;
- That tenants will be given notice of entry, in accordance with section 29 of the Act and pest control preparation sheets will be provided each time treatment or inspection is planned for a unit;
- That any occupant who does not cooperate with pest control treatment preparation and inspections will be given notice of their responsibility to cooperate and that the landlord is expected to ensure all occupants comply with the instruction of the licenced pest control company;
- That the landlord will take steps in accordance with the Act, should any occupant fail to cooperate with attempts to eradicate the pests, as those failures can contribute to prolonged infestation and impact the quiet enjoyment of other occupants;
- That the tenant be given permission and the authority to directly contact the licenced pest control company hired by the landlord, to report the presence of bed bugs and that the landlord will give the pest control company authority to respond to reports made by the tenant, so that delays in inspection and/or treatment do not occur;
- That the landlord give the licenced pest control company the authority to share general information of the on-going need for treatment and inspections in the building with the tenant; and
- That at the time of an inspection or treatment by the licenced pest control company occupants of the affected unit will be immediately notified, either in person or by way of a note left in the unit, if any follow-up visits are required and, if so, when to expect those visits by the licenced pest control company will be scheduled.

The parties agreed that a pest control technician would inspect the tenant's room on March 5, 2012."

The second hearing took place on July 17, 2013, and a decision was rendered on July 22, 2013. The second hearing dealt with the Tenant's application for compensation for damage or loss; a repair Order; and recovery of the filing fee.

The arbitrator at the second hearing made reference to the March 5<sup>th</sup> decision and Orders. She made the following additional Orders:

“The tenant is to withhold rent of \$780 for August, September, October, and November 2013, for a total of \$3120. The balance of his monetary award is \$716.64 (\$3836.64-\$3120), which amount I direct the tenant to retain from his monthly rent of \$780 for the month of December 2013. For clarity, the tenant’s rent payment for December 2013 is \$63.36.

Until the landlord has fully complied with the orders and directives of the Arbitrator contained in the March 5, 2013 Decision, I grant the tenant a continuing rent abatement of \$780 per month, beginning in January 2014, forward. I further authorize the tenant to withhold his monthly rent payment of \$780 until the landlord has filed an application for dispute to prove to the Residential Tenancy Branch that it has complied with this Decision and the Decision of March 5, 2013, and be granted an order restoring the tenant’s monthly rent of \$780.

When the tenant is withholding his monthly rent as directed above, the landlord is to consider that rent for these months is paid in full.”

At the Hearing of February 18, 2014, the Landlord stated that an inspection was done “last week” at the rental unit and that there has been no evidence of bed bugs since October 13, 2013. The Landlord submitted that he has eliminated the problem and therefore he seeks to have the Tenant’s rent re-instated. The Landlord provided various documents in support of his application.

The Tenant stated that the Landlord has still not complied with the Order made March 5, 2013. In particular, he stated that he was not provided with a written copy of the schedule of inspections and that the pest control company refused to provide him with general information of the on-going need for treatment and inspections in the building. The Tenant stated that he called the pest control company in August, 2013, and again “last week” to make enquiries and was told that they had not received the Landlord’s authority to release any information to the Tenant.

The Tenant stated that he is still concerned about bed bugs in the rental property. He stated that he has not seen any in his suite since October 15, 2013, but that he went to do laundry in the common area recently and came home with a bug on his ankle. The Tenant alleged that the whole building has not been inspected since August, 2013. The Tenant stated that he wants to move, but that he is concerned about bringing the bugs with him.

## **Analysis**

The Landlord did not file an Application for Review Consideration with respect to either of the previous decisions. As the parties were informed during the Hearing, I cannot re-hear and change or vary an Order already made as I am bound by the earlier decision, under the legal principle of *res judicata*.

I find that the Landlord did not provide sufficient evidence that he has complied with the Order of March 5, 2013. The Landlord provided no evidence:

- that an inspection schedule had been developed and a copy provided to the Tenant;
- that inspections or treatments had been done within time-frames suggested by a licensed pest control company;
- that the Tenant was given permission and authority to directly contact the licensed pest control company in order to report the presence of bed bugs;
- that the Landlord gave the licensed pest control company authority to respond to reports made by the Tenant;
- that the Landlord gave the licensed pest control company authority to share general information regarding treatment and inspections with the Tenant; or
- that, at the time of an inspection or treatment, occupants of the affected unit were immediately notified of follow-up visits.

It is also important to note that the Landlord's documentary evidence indicates that a canine inspection for bed bugs was done for the full building in August, 2013, but there is no indication on the invoice whether or not bed bugs or eggs were found.

## **Conclusion**

The Landlord's application is **dismissed**. The Landlord is at liberty to make another application to cancel the rent abatement **once the Landlord has complied fully** with the Order dated March 5, 2013.

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: March 07, 2014

