



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**     MNDCT, MNSD, FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- monetary order for \$850 representing two times the amount of the security deposit, pursuant to sections 38 and 62 of the Act;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$12,971.42 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 February 10, 2022. I issued an interim decision setting out the reasons for the adjournment on February 11, 2022 (the "**Interim Decision**"). This decision should be read in conjunction with Interim Decision.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant as assisted by counsel ("**MT**"). The tenant's mother and sister were also present at the hearing, for moral support. They did not participate or make submissions.

### **Preliminary Issue – Amendment of Tenant's Claim**

At the outset of the hearing, MT requested that the tenant be permitted to amend his application pursuant to Rule of Procedure 4.2 to include a claim for aggravated damages in the amount of \$5,000.

Rule 4.2 states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Residential Tenancy Branch (the “RTB”) Policy Guideline 16 considers aggravated damages. It states:

“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

MT stated that she did not give the landlord prior notice of this request for amendment, as she did not think, in light of how the landlord acted at the prior hearing, that she would have meaningfully been able to engage with the landlord.

She argued that this amendment could reasonably have been anticipated, as all of the evidence necessary to support the claim was already served prior to previous hearing, and as the tenant alleged “aggravation” caused by the landlord, and sought damages in connection with this aggravation, throughout his materials. She argued that the tenant was a lay person, and the failure to include a claim for aggravated damages was merely a technical one caused by the tenant’s inexperience. She argued that the materials submitted at the time the application was made fully supported a claim for aggravated damages, and that the tenant should not be punished for such inexperience.

The landlord opposed this amendment. He stated that he had no prior notice and that he was hard of hearing and had trouble understanding what MT was saying. He requested that MT send him an email during the hearing containing her submissions on this point. I declined to make such an order, instead I repeated, slowly and loudly, what MT had said, and confirmed that he understood the request.

The landlord argued that he was not permitted to amend his counterclaim, so it would only be fair that the tenant not be permitted to amend his application. He also stated that it was not fair that she make the request at the hearing. I advised the landlord that he had not made a counterclaim (although he had referenced making one in excess of the RTB’s \$35,000 limit in his written submissions), so he could not possibly make an amendment to it. The landlord acknowledged that he understood this.

Based on the fact that the tenant stated that the landlord’s actions caused him “aggravation” and as all of the evidence necessary to support a claim for aggravated damages had already been submitted to the RTB and provided to the landlord, I find that the landlord would not be prejudiced if such an amendment were made. I find that the landlord ought to reasonably know that he would have to defend himself against the claim for aggravated damages in light of the fact the tenant alleged that the landlord caused him “aggravation”.

I accept that the tenant improperly characterized his claim when he made it, and that material submitted prior to the initial hearing indicate he intended to be compensated for aggravation caused to him by the landlord.

As such, I ordered that the application be amended to include a claim for \$5,000 for aggravated damages.

### **Preliminary Issue – Timing of Hearing**

At the last hearing, the landlord did not have an opportunity to make submissions. The hearing itself lasted roughly an hour and 45 minutes but was prolonged by numerous interruptions of the tenant's submissions by the landlord as well as procedural matters which were outlined in the Interim Decision. The tenant made his verbal submissions and was permitted to provide written submissions after the hearing, which contained more information than he was able to provide verbally at the prior hearing.

At the outset of this hearing, MT asserted that the tenant only had 20 minutes to make verbal submissions at the last hearing and had not spoken to all of his points. I pointed out that I had permitted the tenant to provide written submissions after the hearing and asked if there was any information not contained in those submissions or in his verbal submissions, that the tenant thought I needed to hear in order for me to make my decision.

MT responded that the tenant would like an opportunity to reply to whatever the landlord said at this hearing. I confirmed that he would have this opportunity.

This hearing took roughly 90 minutes. Shortly before ending, I noted that it did not appear that the landlord had addressed all of the points that he had referred to in his written submissions (which were submitted in advance of the prior hearing). I asked the landlord if there was any information not contained in those written submissions or his verbal testimony, which he thought I needed to know. He made brief submissions as to the reason why they move out condition inspection was not conducted on the final day of the tenancy (he alleged the tenant did not vacate the rental unit until 8:00 PM that evening, which caused there to be no time for a move out inspection).

Following these further submissions, I advised the parties that I would not need to hear anymore evidence from the landlord, and that I would rely on his verbal testimony, as well as his written submissions when making my decision. The tenant then made a brief reply (stating that he vacated the rental unit at 5:00 PM, and not 8:00 PM as alleged). He then stated that he did not want to drag this matter out further, and did not need to make further reply submissions. MT confirmed this, stating that this matter needed to be resolved, and that the tenant had provided ample evidentiary support at the prior hearing for his claims against the landlord. As such, she did not want this matter to be adjourned to a further hearing.

I advised the parties that, as the tenant had waived his right to a more fulsome reply, I would not be reconvening this hearing to another date, and that I would be issuing a final decision following the hearing.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) a monetary order of \$5,000.00 for aggravated damages;
- 2) a monetary order of \$850.00, representing the return of double his security deposit;
- 3) a monetary order of \$12,971.42 as compensation for the landlord's breaches of the Act; and
- 4) recover the filing fee?

### **Background and Evidence**

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

The parties entered into a written, fixed term tenancy agreement starting August 1, 2019 and ending July 31, 2020. The tenant moved out at the end of the fixed term. The rental unit is an apartment in multi-story apartment building. Monthly rent was \$1,300 and was payable on the first of each month. The parties conducted a move-in condition inspection at the start of the tenancy. The tenant paid the landlord a security deposit of \$650.

On August 14, 2020, the landlord sent \$450 of the security deposit to the tenant via registered mail. He retained \$200. The tenant did not consent to the landlord retaining this amount. The tenant provided the landlord with his forwarding address, in writing, on June 27, 2020.

#### 1) Security Deposit

The parties did not complete a move-out condition inspection report. The tenant testified that the landlord attended the rental unit while he was in the midst of cleaning out his belongings. He submitted a recording of this conversation into evidence. I understand the incident took place some time after the time the parties agreed that the tenant would vacate the rental unit. The landlord demanded the return of the keys (which the tenant gave him), stated that the remaining furniture needed to be removed, and then complained that the tenant had wasted his time.

The tenant asked for the return of the security deposit and the landlord confirmed he had the tenant's forwarding address. The landlord did not state that he would return the

deposit to that address, however. The tenant then asked that the landlord not be aggressive (I am unsure what occurred that would have precipitated this comment), and then the landlord told the tenant to “go to hell” and called him “an asshole”.

The landlord testified that the tenant’s delay in vacating the rental unit caused him a great deal of stress and caused him to miss important time with his ailing wife. He did not deny that no move out inspection report was completed.

There is nothing in the evidentiary record to suggest that the landlord made any further attempt to conduct another move out condition inspection with the tenant.

The landlord returned \$450 of the security deposit to the tenant on August 14, 2020 via registered mail. The tenant submitted a letter into evidence that accompanied the returned portion of the security deposit. In it, the landlord indicated that he had deducted \$200 from the security deposit “for overstaying until 6:45 PM on July 31, 2020 and for disposal of left behind furniture”.

As noted above, the tenant stated that he remained in the rental unit until 5:00 PM. Landlord’s testimony at the hearing was that the tenant remained at the rental unit until 8:00 PM.

The tenant seeks the return of the balance of the security deposit (\$200) as well as an additional amount equal to the security deposit (\$650) for the landlord’s failure to return the full amount of the security deposit within 15 days of the end of the tenancy. The landlord opposed this relief, citing that the tenant caused him financial loss by not removing all of the furniture from the rental unit when he left, and for taking too long to vacate the rental unit, which wasted his time.

The tenant also seeks interest on the withholding of the security deposit of \$25.50, calculated as  $\$850 \times 3\% \text{ per year} \times \text{one year}$ . He selected the 3% rate based on the interest savings rate as of June 15, 2021.

## 2) Landlord’s Breaches of the Act

The tenant seeks compensation for variety of breaches of the act by the landlord throughout the tenancy. In his written submissions, the tenant wrote:

I am filing to recoup monies owed to me due to [the landlord’s] breach of the following terms under the Residential Tenancy Act (the Act) and the STANDARDS OF MAINTENANCE BY-LAW NO. 5462 of the City of Vancouver, BRITISH COLUMBIA.

[The landlord’s] violations include verbal rebuke to evict, attempt to trespass, use of foul language, verbal defamation, intimidations and harassment occurred during the start of the unprecedented COVID-19 pandemic, all of which interfered

with my “right to quiet enjoyment” and chronic stress while renting his apartment unit.

I must note that I do not have the statutory authority to make any monetary award against the landlord for breaches of a municipal maintenance bylaw. I can only grant monetary awards for breaches of the Act. However, the standards of maintenance set out in a municipal bylaw may inform the standard to which the landlord must adhere when discharging his statutory duty pursuant to the Act to maintain the residential property.

a) Failure to maintain

The tenant alleged that the landlord failed to maintain the rental unit in compliance with health, safety, and housing standards, which in turn made the rental unit unsanitary and uninhabitable.

The tenant testified that he and an occupant of a neighboring unit (“**SW**”) contacted the landlord on May 21, 2020 to advise him of a bed bug infestation in the rental unit and his neighbor’s apartment. The tenant contacted the landlord again on June 8, 2020, and then again (this time in writing) on July 17, 2020. A landlord replied to this complaint on June 19, 2020 wherein he proposed to undertake the remediation himself, rather than hire a professional exterminator.

The tenant objected to this course of action, but the landlord insisted. The tenant stated that the landlord “insisted on performing a steam treatment himself” and tried to forcibly enter his unit on July 23, 2020. The landlord gave the tenant notice via email of his intention to enter the rental unit, but the tenant, via e-mail, stated that that date would not work for him.

The tenant submitted a letter from SW into evidence. SW indicated that the landlord attended the tenant’s rental unit on May 25, 2020 to investigate the tenant’s complaints. He wrote that the landlord denied the presence of bed bugs at that time.

SW wrote that the following day, the landlord attended his rental unit on an unrelated matter and spoke disparagingly of the tenant accusing him of “dirtiness and poverty, and complaining about [the tenant’s] partner and occasional overnight guest [name redacted], who [the landlord] believed to be secretly living in the building”.

Over the next two weeks, SW and his partner began developing sores which turned out to be bedbug bites. On June 6, he was able to trap to bed bugs, and he contacted the landlord on June 7 to advise him of the presence of bed bugs in his unit. He wrote that the landlord attended the rental unit on June 8 and spent 15 minutes investigating the stairs and spraying them with Raid and a bottle of aphid spray. He wrote that the landlord then attempted to enter his unit, but that he refused, due to the fact that the

landlord had been walking through the most heavily infested area, and SW did not want the landlord to bring anymore bugs into the unit.

SW wrote that the landlord denied the presence of bed bugs, and when SW showed him the bugs he had captured, the landlord refused to believe they were bed bugs or and refused to hire an exterminator.

That night, SW wrote that the tenant contacted him to inform him that the stairwell was "crawling with bed bugs". SW investigated this and discovered that the area most heavily infested was the area where a homeless man regularly slept (who had been removed from the building recently).

SW wrote that he contacted the landlord again on June 11, and the landlord again denied that there were bed bugs in the building. SW wrote that, after the tenant sent the June 17 e-mail to the landlord, SW notified the landlord that if the landlord would not hire an exterminator to treat his room by June 19, he would hire a professional exterminator and seek compensation. SW wrote that he and the tenant hired a professional pest control company to treat both of their units on June 23.

SW wrote that the landlord attended his unit on June 25 to steam clean it, over SW's protestations. He wrote that bed bugs continued to appear in the rental unit until after the second treatment by the pest control company on July 6.

The tenant gave testimony which echoed SW's letter and stated that he believed the source of the bedbugs was most likely the homeless individual who had been sleeping in the stairwell.

The tenant testified that he incurred \$952.99 in expenses related to the bed bug infestation, as follows:

Description	Amount
Laundry charges	\$90.00
Cleaning supplies recommended by pest control company	\$337.28
Hiring pest control company	\$315.00
Cost of hotel room	\$144.80
Cost of transport to hotel	\$48.00
Cost of transport from hotel to Home Depot to purchase cleaning supplies	\$17.91
<b>Total</b>	<b>\$952.99</b>

The tenant testified that he had to do additional laundry as a result of the bed bug infestation in the rental unit. He testified that he hired a pest control company to attend the rental unit on June 23, 2022, following which they recommended he purchase a

number of cleaning supplies to deal with any additional outbreaks. He submitted copies of receipts supporting both of these expenses into evidence.

The tenant testified he had to rent a hotel room overnight while the extermination took place, and that he had to bring a large amount of luggage with him, that he did not want to be damaged by the extermination process. As such, he needed to rent an EVO vehicle to transport him and his luggage to the hotel. He also required this transport to get to and from Home Depot to purchase the aforementioned cleaning supplies.

The tenant also claimed that he had to discard a comforter due to the infestation. He purchased a replacement comforter at Bed Bath & Beyond for \$89.59. He submitted a receipt supporting this amount.

At the hearing, the landlord argued that bed bugs were never a problem in the residential property until the tenant moved in. He testified that in November or December 2019, occupants of the suite directly below the rental unit reported seeing a bedbug in their unit. He stated that this was the first sighting he was aware of the bed bug in the building.

The landlord stated that a “woman of unknown background” was living with the tenant. He speculated that this woman was homeless and had previously been living in a tent city in Oppenheimer Park or was an unemployed migrant. He provided no evidence to support either of these theories. He testified that when he attended the rental unit to deal with a problem with the tenant’s stove in May 2020, he observed that this woman had bed bug bites, but the tenant did not.

The landlord testified that when he was in the rental unit, he observed that the tenant had spread laundry out on the bed. He asserted that when laundry is air dried (rather than dried in a dryer) there is insufficient heat to kill bed bug eggs. He speculated that this was the likely reason why the tenant’s comforter became infested with bed bugs: the unidentified woman did her laundry (which contained bedbugs), and then left it to dry on the tenant’s bed. The landlord testified that when he first learned of the tenant’s claimed that there were bed bugs in the rental unit he gave him \$15 in coins to use the dryer in the laundry room to kill the bedbug eggs.

The landlord admitted that a person was seen “wandering around” a carpeted stairwell inside the building. He testified that he called the police and had the person removed. He then testified that he steam-cleaned the hallway leading to the stairwell.

The landlord testified that after the tenant vacated the rental unit, he received reports of bedbugs from a number of units in the building, none of which were in the vicinity of where the homeless person was seen walking. He placed the blame for the bedbug outbreak on the tenant, who he said often smoked in the open doorway of the carpeted stairwell and would lean against the doorframe. He speculated that the bed bugs leapt from the tenant onto the doorframe and then spread throughout the building.



The landlord testified that the reason he did not hire a professional exterminator was because most of the companies' employees have "no formal training". He testified that he had a "technical education" higher than the "high school" education he claimed the exterminators had. He also argued that he knew the building better than any exterminator so it made sense to him that he should exterminate the bedbugs. He testified that in the past he had hired exterminators, but they did not work.

The landlord testified that after the tenant left, he sealed the gaps between the rooms with caulking so as to prevent bedbugs from spreading between the rooms and that he used liquid wax to seal the flooring in the rental unit before a new tenant moved in.

In addition to the compensation set out above for reimbursement of expenses, the tenant seeks compensation equal to the amount of time he lost as result of dealing with the bed bug infestation. He argued that during the time lost he could have been working and seeks compensation equal to his professional rate of \$60 per hour (he testified he is a script writer and painter and that he is trying to break into acting). He did not provide documentary evidence substantiating this rate, nor did he provide evidence that he lost out on specific opportunities as a result of doing this work.

He testified that he spent time as follows:

- May 14 and May 21; 10 hours cleaning the rental unit due to bed bug infestation;
- May 21, 2020; one hour walking to the laundromat to launder his bug infested comforter;
- June 8, 2020; one hour discussing the infestation with his neighbor and assembling documentation of the infestation;
- June 14, 2020; two hours hand washing his personal effects and sanitizing his apartment;
- June 17, 2020; eight hours consulting with neighbour and RTB re tenancy issues and packing;
- June 18, 2020; eight hours packing belongings to protect them from contamination including clothes, suitcases, backpacks, jackets;
- June 19, 2020; one hour consulting with neighbour and writing to landlord
- June 20, 2020; two hours researching and calling professional pest control companies;
- June 22, 2020; one hour responding to the landlord that his steam cleaning proposal is not acceptable;
- June 23, 2020; eight hours due to having to vacate the rental unit to allow the exterminator to spray his unit;
- July 7, 2020; eight hours due to a second round of professional extermination, as well as lost sleep as the incident between him and the landlord on June 23 (see below) and the consequential need to search for a new apartment;
- July 17, 2020; one hour writing follow up e-mail to the landlord on unattended emergency repairs;

In total he seeks compensation for 51 hours of lost time, totalling \$3,060 (51 hours x \$60 per hour).

b) Landlord's harassment, assault, and aggravation

i) June 15 and 16, 2020

In a written submission provided prior to the hearing, the tenant wrote:

Around midday June 15th – [the landlord] confronts me in the basement, and told me that it is my fault that the bugs are there. [The landlord] berates me. He does not let me speak. He was intimidating me and was apparent that he wants me to leave instead of dealing with me (and my issue with the bed bugs). He said if I leave at the end of this month he would give me my deposit back. I soon realized that he was trying to scare me and was enforcing an eviction for a matter that he should deal with regardless of where the bugs come from. I later found out this is what he did to [another tenant] and her roommate when they found bedbugs in their apartment. As the landlord of the building, it is his job to call an exterminator. We are in a COVID19 pandemic situation; he has no right to treat me in this manner, evict me with or without a written notice, or with no cause.

[SW] and I discuss submitting an online dispute resolution complaint for arbitration against [the landlord] for not acting upon his responsibilities as a landlord to treat the infestation in a timely manner. I record conversation with [SW and the landlord] in the laundry room about calling an exterminator. [SW] specifically says this is the type of place where bed bugs live. [The landlord] doesn't listen and walks away like he always does and ignores us.

[The landlord] has been maliciously mongering and telling gossip/rumors about me and my personal being – [SW] informs me by text of [the landlord] telling him: "WAY TOO MUCH of my information" which is completely disrespectful of my privacy. [SW] informs me that [the landlord] "is constructing a story he thinks will scare me, and he's going to try and get other residents on board." [...] [The landlord's] malicious mongering goes against my privacy rights and breach of my quiet enjoyment.

[...]

June 16th, Tue – I go to the laundry room and see the words "KILL CHINKS" written on the glass from the outside in bold letters. I am shocked and appalled at the racism and potential violence in what I can now perceive as a dangerous habitat. I am NERVOUS/STRESSED and have enough of living here.

The tenant provided copies of the text messages he received from SW in which SW recounted what the landlord told him. SW stated that the landlord told him:

- 1) he believes you're in financial trouble and that you can't pay your rent on your own;

- 2) went on to tell me details about how your mom pays part of your rent;
- 3) described that you are an artist and therefore poor because you can't make money;
- 4) that [redacted] isn't on the tenancy agreement and she could be a homeless person from Oppenheimer park.

The tenant testified that he is scared and stressed and couldn't do any work all day or night for June 15 and 16, 2020. He seeks compensation in the amount of \$960 representing 16 hours of loss work at an hourly rate of \$60.

ii) June 23, 2020

The tenant testified, as stated above, on June 23, 2020, the landlord arrived at the rental unit at 10:00 AM and told him he was going to do a "steam treatment" and the tenant refused landlord entry into the rental unit. The tenant testified that the landlord began to yell and harass him and would not leave. He testified that the landlord tried to get him to fill out a notice to vacate right there, and that the landlord harassed and berated him with insults and false accusations. He testified that the landlord inserted his foot into the doorway so that the tenant could not close the door to the rental unit. The tenant testified that this was traumatizing.

The tenant submitted two audio recordings of this incident (one made by him, and another made by the tenant's neighbour from inside her unit), where the landlord repeatedly yells at the tenant (who repeatedly and calmly asks him not to), accuses the tenant of being a liar and the originator of the bed bugs, and refuses to leave or allow the tenant to end the conversation despite over a dozen requests for him to leave.

The tenant called 911 after the incident but was advised that this was a landlord/tenant disagreement and that the police would not intervene. The tenant characterized this incident as an "assault".

The tenant stated that he had a "sleepless night due to mental stress" caused by this incident. He testified that he was very fearful of being at the apartment in case he encountered the landlord.

The tenant stated that he "lost" all of June 24 and 25, 2020 due to the trauma and mental effects of the incident on June 23, 2020. He testified he spent this time documenting the incident, and conducting a search for a new apartment. He seeks compensation in the amount of \$960, representing two 8-hour days where he was unable to work productively, calculated at a rate of \$60 an hour.

iii) July 23 and 25, 2020

The tenant stated that he also seeks compensation for because he "lost" the entire day and night of July 23 and 25, 2020 due to the trauma and the mental effects of an assault

caused by the landlord and due to the need to search for a new apartment. He described this in more detail in his written submissions:

July 23rd – I continue to look for an affordable, clean apartment that fits my needs with no luck for the past three weeks. I question if [the landlord] is also giving bad references to the apartments I have been applying for. I am contemplating putting my things into a storage locker because I would have to rent one in case I do not find anything for August 1<sup>st</sup> as I am down to the wire. I have not been more stressed out in my life than the time I spent living here. I cannot rest properly because everyday I am thinking about how not to become homeless in a week.

[...]

July 25<sup>th</sup> – SEARCHING FOR ROOM TO RENT: Took a ferry to [redacted] to look at an apartment or floor for rent, as it is a cheap option, but then have to commute far. Also saw other possible places to move in, but too far, though cheaper than living in [municipality where rental unit is located].

Neither of these entries describe an assault. As such, I understand that the tenant is referring to the verbal confrontation between himself and the landlord on June 23, 2020, which the tenant has previously described as an “assault”.

The tenant seeks compensation in the amount of \$960, representing two 8-hour days where he was unable to work productively at a rate of \$60 an hour.

iv) August 6, 9,10, and 14 and September 1 and 24

The tenant stated that he attended counseling for one hour on each of August 6 and September 1 and 24, 2020 due to the anxiety and PTSD he suffered as a “consequential effect” of the harassment from the landlord. He seeks compensation in the amount of \$180 representing the three hours of his time he spent attending these counseling sessions.

In his written submissions, the tenant wrote:

August 9th SUN – CALLS FROM [the landlord]: I missed two calls from [the landlord]. When I called him back he says he doesn't remember calling me, that he never called me. He then remembers that he wants me back and he said I should move out the remaining furniture that was in the apartment which if he had only let me finish working I would have gotten rid of, and would have not been an issue if only he had done a proper inspection. He wanted me to come in and move them or else he said he will charge me \$200 for junk removal fee, [the landlord] hanged up on me without giving me a day or time when I should go back and move the furniture.

August 10th MON – [the landlord] HANGED UP AGAIN: I called [the landlord] in the afternoon to say that I am free on Tuesday August 11th, and even had asked a friend to come and help. He said that he had someone viewing the apartment and will have to “get back to me when I could come remove the furniture.” He hanged up on me again with no date or time to do the move.

August 14th FRI – [the landlord] WITHHELD \$200 FROM MY SECURITY DEPOSIT: I received an email from [the landlord], that he post mailed my security deposit cheque (he attached a photocopied Canada Post receipt and copy of the cheque, August 14th, 2020. He was supposed to return \$650 but he deducted \$200 for “overstaying until 6:45 pm on July 31, 2020 and for disposal of left behind furniture” leaving me with a balance amount of \$450.

The tenant describes this as “further aggravation” and seeks compensation of \$60 for each of these days (\$180 total).

c) Compensation for moving costs

The tenant testified that due to the landlord’s repeated aggressive behavior and failure to remediate the bed bugs, the tenant was required to vacate the rental unit. He argued that, had the landlord not acted in this way, the tenant would not have had to vacate the rental unit. He testified that he was only able to secure a room for rent (as opposed to an entire unit) on such short notice. The tenant seeks compensation for the time lost (valued at \$60 per hour) and money spent securing new living accommodations as follows:

Date	Description	Amount
25-Jul-20	Cost of return transportation (ferry ride) from apartment to [redacted] to view room for rent	\$34.30
26-Jul-20	Four Hours(s) lost/spent to view a ROOM for RENT	\$240.00
29-Jul-20	Eight hours single-handedly transporting large and small belongings from/to apartment that has no elevator to/from 1) rented storage and 2) rented bedroom situated up a hill	\$480.00
29-Jul-20	Cost of transportation (EVO rental) from apartment to new room	\$17.91
30-Jul-20	Eight hours single-handedly transporting large and small belongings from/to apartment that has no elevator to/from 1) rented storage and 2) rented bedroom situated up a hill	\$480.00
30-Jul-20	Cost of transportation (EVO rental) from apartment to new room	\$54.24
30-Jul-20	Cost of transportation (EVO rental) from apartment to new room	\$17.91
31-Jul-20	Eight hours single-handedly transporting large and small belongings from/to apartment that has no elevator to/from 1) rented storage and 2) rented bedroom situated up a hill	\$480.00



29-Jul-20	Cost for rent of storage locker for Aug and Sept 2020 (TT could only secure a room to rent, which did not have space for all belongings)	\$398.98
<b>Total</b>		<b>\$2,203.34</b>

d) Compensation for loss of quiet enjoyment

The tenant receives a \$300 subsidy from the provincial government to supplement his monthly rent. As such he pays \$1,000 per month for rent out of his own pocket. The tenant seeks a 100% reimbursement of his monthly rent for May, June, and July 2020 (\$3,000) due to his loss of quiet enjoyment of the rental unit caused by the landlord's:

abusive behavior, reproach, intimidation, harassment, malicious mongering, character defamation, wrongful accusations, constant aggravation and endangerment to my health and safety during COVID-19 pandemic,

I have set out above the tenant's allegations relating to the landlords conduct during this time and will not repeat them in detail here here. The tenant argued that the landlord's failure to remediate the bedbug infestation, coupled with his aggressive conduct, amounted to a loss of the quiet enjoyment to which he is entitled.

The tenant also seeks a monetary order of \$300, representing the loss of the \$300 government subsidy the tenant suffered as a result of having to vacate the rental unit due to the landlord's conduct.

e) Aggravated damages

MT argued that the landlords conduct was so outside the realm of acceptable behavior that it warranted aggravated damages. MT submitted that the landlord's conduct negatively affected the tenant's mental health and well-being, causing the tenant a significant amount of mental distress, which led to the tenant having to seek counseling. The tenant believes that \$5,000 is adequate compensation for the aggravated damages.

f) Summary of claim

To summarize, the tenant seeks a monetary order of \$18,721.08, calculated as follows:

Description	Amount
Aggravated Damages	\$5,000.00
Double Security Deposit	\$1,300.00
Credit for portion of security deposit returned	-\$450.00
Interest on security deposit	\$25.50
Expenses related to infestation	\$952.99

Replacement comforter	\$89.59
Compensation for lost time due to infestation	\$3,060.00
Mental distress - June 15 and 16	\$960.00
Mental distress - June 24 and 25	\$960.00
Mental distress - July 23 and 35	\$960.00
Time spent at counseling - August 6, Sept 1, and Sept 24	\$180.00
"Further aggravation" caused by landlord - August 9, 10, and 14	\$180.00
Moving costs	\$2,203.00
Loss of quiet enjoyment - May, June, July 2020	\$3,000.00
Loss of government subsidy - Aug 2020	\$300.00
<b>Total</b>	<b>\$18,721.08</b>

### 3) Landlord's Position

The bulk of the landlords all submissions related to the source of the bed bug infestation. As stated above, he alleged that the woman living with the tenant was the source of the infestation.

In his written materials, the landlord provided screenshots of Google searches which he says indicate that chemicals used to treat bed bug infestations are hazardous to people's health.

As part of his evidence package, the landlord provided an "opening statement" which outlines other issues the tenant has had with the landlord during the tenancy (a malfunctioning refrigerator) and provides a history of bed bugs in the residential property.

In this opening statement, the landlord reiterates his theory that the woman staying with the tenant may have come from a tent city. He alleges that the tenant lied about this woman's background, and that her presence in the rental unit amounts to a breach of the material term of the tenancy agreement.

The landlord denied attending the rental unit on June 23, 2020 unannounced and denied attempting to enter the rental unit. He stated that he emailed notice of his intention to enter the rental unit to the tenant on June 19, 2020 (he attached this e-mail to his evidence package). He denied that he is attending the rental unit that day amounted to a breach of privacy or an unreasonable disturbance.

The landlord denied having received the tenants e-mail on June 22, 2020 stating that the tenant did not want the landlord to steam clean the rental unit. The landlord stated that this was due to the tenant's "own negligence he sent the e-mail by normal speed

but not by urgent or fast speed.” He did not explain how a user may accelerate the speed at which an email could be sent, and I am not aware of any such feature existing.

The landlord wrote that the tenant’s refusal to allow him to enter the rental unit to steam clean it “infuriated” the landlord and caused him to raise his voice against the tenant.

The landlord denies evicting the tenant. Rather, he says that the tenant moved of his own accord. As such, the landlord argues he should not be responsible for any of the tenant’s moving costs.

The landlord argued that he maintained the rental unit in accordance with the Act, and as such he should not have to compensate the tenant for any failure to maintain the rental unit.

The landlord provided documents relating to the theatre and film industry during the COVID-19 pandemic. He testified that the tenant was a member of “ACTRA” (the Alliance of Canadian Cinema, Television, and Radio Artists), and that the film and TV industries were shut down in British Columbia from mid March 2020 to June 2020. As such, the landlord argued that the tenant could not have incurred the monetary losses set out above, as the work he purported to be undertaking was not happening in the province.

The landlord argued that the stress, anxiety, and loss of enjoyment of life, the tenant alleges to have suffered in early to mid-2020 were attributable to the COVID-19 pandemic, the loss of income as a result of the shutdown of the industry in which he works, and the financial consequences the tenant was suffering as a result of this shut down. Therefore, he argued that he was not responsible for the tenant’s state of mind during the relevant time period.

## **Analysis**

### 1) Security Deposit

Section 38(1) of the Act states:

#### **Return of security deposit and pet damage deposit**

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;



(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of the tenant, supported by the documentary evidence, I find that the tenancy ended on July 31, 2020 and that the tenant provided his forwarding address in writing to the landlord on June 27, 2020.

I find that the landlord returned \$450 of the security deposit to the tenant on August 14, 2020 and that he retained the balance (\$200). The tenant did not consent to the landlord retaining this amount.

I do not find that the tenant's right to the return of the security deposit was extinguished by the Act.

As such, I find that the landlord has not returned the full amount of the security deposit to the tenant within 15 days of receiving their forwarding address, or at all.

Additionally, there is nothing in evidence to suggest that the landlord made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenant, or at all. Instead, he unilaterally deducted from the security deposit an amount he found appropriate to compensate him for the tenant's purported breach of the Act.

The Act does not permit a landlord to do this without the written consent of the tenant. If the tenant does not consent to a deduction, the landlord must actually apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenants' forwarding address.

The landlord did not do this. Accordingly, I find that he has failed to comply with their obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the full amount of the security deposit within the specified timeframe:

- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

RTB Policy Guideline 17 provides guidance as to how this section is to be applied when the landlord has returned a portion, but not all, of a security deposit:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without

an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ( $\$400 \times 2 = \$800$ ), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is  $\$525.00$  ( $\$800 - \$275 = \$525$ ).

I also find that the tenant did not act in such a way to cause his right to the return of the security deposit to be extinguished.

As the landlord has failed to comply with section 38(1), I must order that they pay the tenant  $\$850$  ( $\$650 \times 2 = \$1,300$ ;  $\$1,300 - \$450 = \$850$ ).

Section 4 of the Residential Tenancy Regulations sets the amount of interest payable at the prime interest rate (on January 1, 2022) minus 4.5%. At the beginning of this year prime interest rate was below 4.5%. As such, the tenant is not entitled to any interest on the returned deposit.

## 2) Failure to Repair or Maintain

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**”)

Section 32 of the Act states:

### **Landlord and tenant obligations to repair and maintain**

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and

- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

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. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the tenant bears the onus to demonstrate that the landlord breached section 32 of the Act, that he suffered quantifiable loss as a result of this breach, and that he acted reasonably to minimize this loss.

#### a) Did the landlord breach the Act?

It is not disputed that the rental unit, and other parts of the residential property, were infested with bed bugs. Rather, what is disputed is the source of these bed bugs. If the source of the bed bugs was the tenant, or someone he permitted on the residential property, then the presence of the bedbugs themselves, and the landlord's failure to adequately remediate the issue, would not constitute a breach of the Act. If the bedbugs are from any other source, then the landlord's failure to remediate would constitute a breach of the Act.

The tenant did not purport to know for certain the source of the bed bugs, but speculated that the source was a homeless man who was lingering in the residential property stairwell for some number of days. He categorically denies that he, or anyone he permitted in the residential property, was the source of the bed bugs.

The landlord, however, categorically states that the source of the bedbugs was the woman whom the tenant permitted to occupy the rental unit. He speculates that this

woman was living in a tent city prior to moving into the rental unit, and she brought bed bugs with her period he offered no corroborating evidence for this theory. He denied that the homeless person staying in the stairwell of the residential property could have been the source. He stated that any bed bugs in the common areas the residential property or carried there by the tenant, when he leaned against a doorframe, to smoke a cigarette.

Of these two competing theories, I find that the tenant's version of events is more likely. There is no evidence before me to suggest that the woman who is staying with the tenant came from conditions which would have made her a likely carrier for bed bugs. In any event, I find that it is difficult for the tent to prove a negative (that is, that he is not the source of the bed bugs). I find it would be a much simpler thing for the landlord to prove that the tenant (or someone he permitted on the residential property) is the source. Accordingly, in these circumstances, I find the tenant's testimony that the bedbugs did not originate with him, or the woman staying in the rental unit, sufficient to satisfy his evidentiary burden. It then falls to the landlord to provide evidence to the contrary.

I do not find the landlord's argument that the tenant must be the source of the bedbugs, as the building did not have bedbugs prior to the start of his tenancy. Even if it were true that the prior to the tenancy, there were no bedbugs in the building (which I make no finding of), it does not logically follow that this means that the tenant or someone he permitted into the building is the source. I see no reason why this would preclude the possibility that an existing tenant could not have brought them in or that the homeless individual was the source.

I do not find that the landlord has provide sufficient evidence to confirm his theory that the bedbug originated with the tenant or the woman staying in the rental unit. Accordingly, I find that the tenant, or someone he permitted into the residential property, is not the source of the bedbugs.

I accept the tenants undisputed testimony, supported by the letter of SW, that the tenant first notified the landlord of the bed bug infestation on May 21, 2020. I accept that this infestation persisted through June and into July, 2020.

Based on both parties testimony, I find that the landlord did not hire a professional extermination company, and instead attempted to deal with the issue himself. I do not find that this was a reasonable course of action. The landlord disparaged the knowledgably of extermination company employees and declared that he knew better than them when it came to dealing with pests. He offered no evidence to support this. I do not find it reasonable to think that an individual with no training or formal experience in exterminating bedbug would be in a better position to deal with a bed bug infestation than company who sole purpose is to exterminate infestations.

Furthermore, I am not persuaded by the landlord's argument, based on screenshots of Google searches, that it was reasonable for him not to hire professional exterminators due to the harmful chemicals they use. I have no evidence about what specific chemicals these companies used in the rental unit. Additionally, I do not find a Google search result, unsupported by expert testimony, to be a reliable source of information.

The landlord breached section 32 of the Act by failing to adequately remediate the bedbug infestation.

b) Did the tenant act reasonably to minimize his loss?

I find that the tenant acted reasonably in an attempt to minimize his loss. He repeatedly advised the landlord of the infestation. When the landlord refused to hire extermination company, he hired such a company himself, at his own expense. I find that it was reasonable for him to have done this, notwithstanding the fact he ended the tenancy shortly thereafter. I accept his explanation as wanting to make sure his belongings were not infested with bedbugs prior to moving to his new residence.

I do not find it unreasonable for the tenant to have expressed disagreement with the landlord for attempting to remediate the rental unit by himself, using steam. I have no confidence that such a remedy would have worked or resolved the infestation issue.

c) Did the tenant suffer quantifiable loss?

a. Out of pocket expenses related to infestation

I accept the tenant's testimony that he incurred \$952.99 in expenses associated with the infestation (set out above) and had to replace his comforter at a cost of \$89.59. These expenses were incurred as a direct result of the landlord's breach of the Act (failing to maintain the rental unit in a condition suitable for habitability). The tenant is entitled to recover these amounts from the landlord.

b. Time lost due to infestation

The tenant seeks compensation for 51 hours of time lost due to his dealing with issues related to the infestation. He values his time at \$60 per hour. The tenant did not provide any documentary evidence which would show that, but for having to deal with these issues, he would have earned \$60 per hour from some other source. Additionally, the tenant did not provide any documentary evidence which would suggest that he regularly earned \$60 per hour. As such, I do not find the hourly rate of \$60 to be a reasonable valuation of the tenant's time.

However, this does not mean that the tenant is not entitled to recover any amount in connection with time spent addressing infestation-related issues.

Broadly speaking, the 51 hours the tenant claims compensation for can be broken up into three categories:

- time cleaning, running related errands, and packing in preparation for extermination (May 14, 21, June 14, 17 (partial), and 18);
- research, correspondence, discussions with neighbour (June 8, 17 (partial), 19, 20, 22, and July 17); and
- time displaced to allow for exterminations (June 23 and July 7).

Of these three categories, I find that only the first is compensable.

Time spent communicating with the RTB, discussing issues with neighbours, writing the landlord to address related issues are things that are not things that were directly necessitated by the landlord's breach of the Act. They are secondary effects.

The time the tenant was displaced from the rental unit to allow for the exterminations is not compensable, as the tenant could have organized his affairs to make use of this time for other activities (errands, socializing, recreation, for example). The exterminations did not cause the tenant to lose two days of time, it caused him to lose the use of the rental unit (the loss of which I will address below). As such, I do not find he is entitled to the compensation claimed for this time.

The tenant gave evidence that he spent 21 hours on May 14, 21, June 14 and June 18 cleaning, running related errands, and packing. Additionally, he spent some portion of 8 hours on June 17 packing (the other portion was for consulting with his neighbour and the RTB). I find an equal division of time between these two categories is appropriate. As such, I find that the tenant spent 25 hours cleaning the rental unit, running related errands, and packing his belongings in preparation for the exterminations. I have stated above that I do not find that the tenant has satisfied me that the hourly rate claimed (\$60) is warranted. In light of the nature of the work, I find that a reasonable hourly rate for such work is \$25.

Accordingly, I order the landlord to pay the tenant \$625 (25 hours x \$25/hour).

### 3) Loss of Quiet Enjoyment

The landlord claim for loss quiet enjoyment takes two different forms: compensation for mental distress caused by the landlord's conduct, calculated on a lost-time basis; and full reimbursement of his portion of monthly rent due to the bed bug infestation.

Both claims are rooted in the claim that the landlord breached section 28 of the Act, which states:

#### **Protection of tenant's right to quiet enjoyment**

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

RTB Policy Guideline 6 discusses breaches of quiet enjoyment and how such breaches are to be compensated:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

[...]

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

a) Bedbug Infestation

The presence of bedbugs in the rental unit amounts to an unreasonable disturbance. The presence of bedbugs represents a substantial interference with the tenant's ordinary use of the rental unit. They were present for a prolonged period of time. The tenant was not able to use his rental unit in the matter he was entitled to due to their presence.

The tenant seeks \$3,000 as compensation for his loss of quiet enjoyment for the months of May, June, and July 2020. This represents a full reimbursement of the portion of monthly rent that he paid for these months.

The tenant first informed the landlord of the presence of bedbugs on May 21, 2020. As such, this was the earliest that the landlord could have addressed the infestation. Accordingly, the tenant is not entitled to compensation for the entire month of May; the landlord was not given an opportunity to rectify the problem before May 21, 2020. Additionally, after being reported, the landlord is entitled to a reasonable amount of time to address the issue. If the issue is addressed within a reasonable timeframe, the landlord will not be liable to compensate the tenant for the deprivation. In these circumstances, I find that the balance of May (10 days) is a reasonable time frame within which the landlord could have addressed the issue. This period of time is not compensable. I do not find that giving the tenant \$15 in coins to do laundry amounts to

adequately addressing the issue. The landlord is however entitled to a \$15 credit on whatever monetary order is awarded against him.

As such, the landlord must compensate the tenant for the tenant's loss of quiet enjoyment for the month of June and July 2020. I do not find that a complete reimbursement of the portion of monthly rent the tenant paid is appropriate, however. Despite the presence of the bed bugs, the tenant still derived some benefit from having the rental unit. He had a place to sleep, cook, bathe, and store his belongings.

The tenant had to vacate the rental unit for two days (June 23 and July 7) to allow two rounds of extermination. On those days, he did not have use of the rental unit. The tenant should be compensated the full of rent, calculated on a *pro rata* basis, for those two days in the amount of \$65.58 (June:  $\$1,000 \div 30 \text{ days} = \$33.33$  per day; July:  $\$1,000 \div 31 \text{ days} = \$32.25$  per day), and compensated 50% of rent or the balance of the days in the amount of \$967.04 (June:  $\$33.33 \times 29 \text{ day} \div 2 = \$483.29$ ; July:  $\$32.25 \times 30 \text{ days} \div 2 = \$483.75$ ).

b) Mental Distress

The tenant seeks compensation in the amount of \$3,240 for mental distress, representing six 8-hour days of "lost time" due to dealing with distress caused by the landlord's action, three instances of "further aggravation" caused by the landlord lasting 1 hour each, and three 1-hour counseling visits. The tenant's claim is based on an hourly rate of compensation of \$60. As I have stated above, I do not find that the tenant has established a basis for this amount. Instead of calculating loss on an hourly rate, I find it appropriate to award lump sum payments based on the severity of the landlord's conduct. I will address each of the incidents in turn.

I also note that, while I accept that the tenant may have been caused stress or anxiety by his financial situation, a scarcity of work, or the COVID-19 pandemic in general, I do not find that this means that he could not also suffer mental distress or anguish caused by the landlord's conduct.

a. June 15 Incident

Based on the tenant's testimony, I find that the landlord levied an unfounded accusation that tenant was the source of the bedbugs. I also accept that the landlord berated him while doing this. Such conduct is consistent with the recordings of other incidents entered into evidence and the manner in which the landlord conducted himself at the first hearing. I also accept that the landlord attempted to pressure the tenant into leaving the rental unit and used the possibility of returned the deposit as an incentive. The implication of this statement is that, if the tenant did not leave, the landlord would withhold the deposit (which would be a breach of the Act).



I do not find it unreasonable that these actions of the landlord caused the tenant mental distress. The unfounded allegation amounts to gaslighting, and the landlord abused his position to threaten the tenant with financial harm.

I find that this interaction amounted to an unreasonable disturbance and a loss of the tenant's quiet enjoyment. The landlord's conduct was severe. I find that the tenant is entitled to compensation of \$250 for the deprivation of his quiet enjoyment.

b. June 16 Incident

The tenant has not provided any evidence to support a finding that the landlord was responsible writing racist remark on laundry room glass. It is well documented that, at the outset of the COVID-19 pandemic, there was a surge in anti-Asian hate crime in British Columbia. In light of this unfortunate development, I do not find it is more likely than not that the landlord wrote the racist remark.

Additionally, there is no evidence before me to suggest the landlord permitted the remark to be written or permitted it to stay up once he became aware of it. Accordingly, I do not find that the landlord caused the tenant a loss of quiet enjoyment with respect to this incident. I decline to award the tenant any amount in connection with this portion of his claim.

c. June 23 Incident

I have listened to the audio recordings of the incident on June 23, 2020. The landlord repeatedly yelled at the tenant, demanded entry into the rental unit, and accused the tenant of lying and causing the bedbug infestation. Additionally, the landlord unnecessarily prolonged the encounter by refusing to leave. I accept the tenant's testimony that the landlord inserted his foot into the doorway of the rental unit preventing the tenant from closing the door to end the encounter.

The landlords conduct amounted to an unreasonable disturbance. I accept that the tenant was "traumatized" by such conduct, and this conduct cost him distress for June 24 and June 25. I find that the tenant is entitled to compensation of \$750 for the loss of quiet enjoyment caused by the landlord's actions on the day of the incident and the two ensuing days.

d. July 23 and 25

In his written submissions, the tenant listed these two days as days where he was searching for a new apartment. At the hearing, he also mentioned that he “lost” both of these days due to the mental distress caused by the landlord on June 23, 2020. I do not see how he could have “lost” these days, when his time was spent searching for an apartment. Accordingly, I do not find that the tenant is entitled to compensation for mental distress for these days. I will address the tenant’s moving expenses below and will address the claim for compensation for time searching for a new apartment there.

I dismiss this portion of the tenant’s claim.

e. August 6, September 21, and 24 Counselling

I accept that the tenant sought counseling in connection with the mental distress caused by the landlords conduct and by his failure to remediate the bed bug infestation. I find that the tenants claim for \$180 as compensation for these visits to be reasonable. I order the landlord to pay him that amount.

f. August 9, 10 and 14 Incidents

These incidents occurred after that tenancy ended. They cannot therefore be considered loss of quiet enjoyment of the rental unit, as the tenant was no longer entitled such enjoyment. Additionally, as the tenancy it ended, the Act did not apply to the ongoing relationship between the landlord and the tenant. As such, while the tenant may have been aggravated by the landlord’s conduct on these days, such conduct could not amount to a breach of the Act. Accordingly, I decline to order any compensation for this part of tenant’s claim.

4) Aggravated Damages

RTB Policy Guideline 16 addresses aggravated damages. It states:

“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

I do not find that the tenant cannot be fully compensated by an award for the damage or loss caused by the landlord’s breaches of the Act. I have ordered the landlord pay the tenant for the loss of quiet enjoyment caused by the landlord’s actions (both the mental

distress and the failure to remediate the bed bug infestation). The tenant did not provide sufficient evidence to satisfy me on a balance of probabilities that the damage caused by the landlord's actions was significant or ongoing. Medical records or doctor's notes regarding the cause of and of the continuing nature of the tenant's mental distress would be necessary in order for me to make such a finding.

I accept that the tenant had counselling sessions on the matter of the landlord's conduct, but I do not know what the outcome of these sessions were or what conclusions the counsellor drew.

As such, I decline to order that the landlord pay the tenant any aggravated damages.

#### 5) Moving Costs

In addition to the moving costs described in the section above (\$2,203), the amount claimed for lost time due to mental distress on July 23 and 25 (\$960) is better characterized as a moving cost. In total, the tenant seeks a monetary order of \$3,163 for moving-related expenses.

The fourth part of the Four-Part Test requires that a tenant act reasonably to minimize his loss. The tenant vacated the rental unit as a direct result of the landlord's failure to remediate the bed bug infestation and due to the landlord's verbal abuse. I do not find that the landlord evicted the tenant. No notice to end tenancy was entered into evidence. No order of possession was issued in favour of the landlord. Without either of these documents, it cannot be said that the landlord "evicted" the tenant. If the tenant elected to remain in the rental unit for August 2020, the landlord could not have prevented him.

From the time the tenant reported the issue of bed bugs to the landlord (May 21, 2020) to the time the tenancy ended (July 31, 2020) little more than two months had elapsed. In this time, the tenant did not make any application to the RTB for an order that the landlord address the bed bug infestation, an order for the landlord compensate him for the cost of exterminating the infestation himself, or for an order that the landlord provide him with the quiet enjoyment to which he is entitled (specifically that the landlord refrain from acting in such a way so as to unreasonably disturbed the tenant).

As such, I find that the tenant did not act reasonably to minimize his loss, especially in light of the fact that there does not appear to be any significant issues between the landlord and tenant prior to May 2020. There are steps that the tenant could have taken to address the issues which would have allowed him to remain in the rental unit. He did not take these steps. The tenant was entitled to end the tenancy with proper notice to the landlord, but for the foregoing reasons I do not find that he is entitled to have his moving costs, or any associated expenses reimbursed. I dismiss this portion of the tenant's claim.

6) Loss of government subsidy

For similar reasons, I find the tenant is not entitled to compensation for the loss of the government subsidy. Additionally, the tenant has not provided any proof of the duration of the government subsidy he received to supplement his rent. I have no evidence before me that the tenant could not have applied for or received a similar subsidy for the room he rented after the tenancy ended.

As such, I find that the tenant has failed to establish that he suffered a loss, or that he acted reasonably to minimize this loss. I dismiss this portion of his application

7) Filing Fee

Pursuant to section 72(1) of the Act, as the tenant has been partially successful in the application, he may recover the filing fee from the landlord.

**Conclusion**

Pursuant to sections 62, 67, and 72 of the Act, I order that the landlord pay the tenant \$4,815.20, representing the following:

Description	Amount
Double Security Deposit	\$1,300.00
Credit for portion of security deposit returned	-\$450.00
Expenses related to infestation	\$952.99
Replacement Comforter	\$89.59
Compensation for lost time due to infestation	\$625.00
Mental distress - June 15 and 16	\$250.00
Mental distress - June 24 and 25	\$750.00
Time spent at counseling - August 6, Sept 1, and Sept 24	\$180.00
Loss of quiet enjoyment - May, June, July 2020	\$1,032.62
Credit for laundry coins	-\$15.00
Filing Fee	\$100.00
<b>Total</b>	<b>\$4,815.20</b>

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: July 28, 2022

---

Residential Tenancy Branch