



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the tenants filed on January 23, 2022 for:

- compensation for monetary loss or other money owed; and
- the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The parties confirmed they had received each other's respective materials.

### Preliminary Matter

With the agreement of the parties, I amended the landlord's name in the dispute to reflect the landlord's legal name as indicated on the tenancy agreement. This amendment is in accordance with section 64(3)(c) of the Act.

### Issues to be Decided

- 1) Are the tenants entitled to compensation for monetary loss or other money owed?
- 2) Are the tenants entitled to the filing fee?

### Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began November 1, 2021 and ended November 15, 2021; rent was \$1,600.00, due on the first of the month; and the tenants paid a security deposit of \$815.00 and a pet damage deposit of \$815.00, both of which the landlord has returned.

I note that the tenancy agreement states that rent was \$1,630.00.

The tenants testified they are seeking \$2,526.46 as follows:

- \$1,630.00 for November 2021 rent;
- \$311.81 for hotel costs;
- \$88.65 for a U-Haul truck used to move out of unit;
- \$35.00 for November parking at the unit; and
- \$461.00 for home insurance for one year, required by the landlord, and non-transferrable as the tenants moved out of province.

Receipts for the non-rent items are submitted as evidence.

The tenants testified that they viewed the unit when people were still living there, that it was a quick viewing, and that the rental was very full of the other tenant's belongings.

The landlord submitted as evidence a "regular monthly pest control" service report from their pest control company, which documents that on October 12, 2021, the tenants' unit, along with 22 others, was inspected.

In an email dated February 16, 2022, submitted as evidence, the pest control company confirmed that the tenant's unit was randomly selected by the landlord's team for inspection, and that during the October 12, 2021 inspection of the unit, the pest control technician found no evidence of pest activity.

An email from the landlord to the pest control company dated February 16, 2022 and submitted as evidence, states that because the pest control technician had verbally told the landlord in October 2021 there was no pest activity found in the subject unit during the October 12 inspection, the landlord had rented out the unit for November 2021.

The landlord testified that during the October 31, 2021 move-in inspection, no cockroaches were seen.

The tenants testified that two days after they moved in, they saw two roaches emerge from a dial on the stove, and reported the issue to the landlord the next day, who sent maintenance up. The tenants testified that when maintenance took the stove apart, they spotted a live roach inside. The tenants testified that when maintenance went to put the top of the stove back on, it did not fit properly, suggesting that it had been taken off many times to look for roaches.

The tenants testified that they subsequently saw roaches in the dishwasher and under the kitchen sink, which they again reported to the landlord. The tenants testified that the landlord advised them to put all of their food into plastic bags, and said they would contact maintenance. When no one came, the tenants contacted the pest control company directly, who said they would send someone once a worker was available.

The landlord testified that after the tenants reported on November 8 that they had seen additional roaches, the landlord and maintenance visited the unit the next day, seeing only one, on the stove. The landlord testified that on November 10 they requested that the pest control company visit the unit, and submitted as evidence an email to the pest control company dated November 10, 2021.

The tenants testified that they killed more roaches, and began seeing them on the walls.

Tenant MM testified that on November 12 he sprayed for roaches himself, then was having a hard time breathing due to the chemicals, got a hotel room. (MM testified that tenant JM was not present as she was attending to a family matter.)

The tenants submitted as evidence an email to the landlord, dated November 12, 2021, in which tenant MM states that as both the tenants have health issues which experts have advised may be exacerbated by the presence of roaches, they have decided to move out, and that the pest control company indicated that as the tenants have spotted both adult and juvenile roaches, "the problem has been here for a long time." The email states that the tenant notified the office on the 8th and was "put off," then spoke to another of the landlord's representatives the next day, who had maintenance visit the unit. The email states "It's now Friday the 11th [sic] and still no pest control here to inspect." The email states that the tenants will be moving out on November 15, 2021, and inquires about getting the damage and pet damage deposits back.

Submitted as evidence is an email from the landlord, also dated November 12, 2021, stating that they are still waiting to hear from the pest control company regarding when the exterminator will be dispatched, and stating that they accept the tenants' notice to

end tenancy, and that the security and pet damage deposits will be returned after completion of the move-out inspection.

The landlord testified that after receiving the tenants' November 12, 2021 email stating that they will move out due to roaches in the unit, the landlord refunded their security and pet damage deposits, and did not charge them for the following month's rent.

The landlord testified they were able to re-rent the unit for December, and attached a November 23, 2021 inspection report, completed with the new tenant, which notes no deficiencies.

A February 16, 2022 email from the pest control technician to the landlord states that the company has not treated the subject unit since the previous visit, and that the company does not treat or spray unless they see evidence of pests.

The landlord submitted as evidence an email dated March 12, 2022, in which the new tenant indicates he moved into the unit on November 23, 2021, still lives there, has had no pest issues since he moved in, and that there has been no pest technician visit scheduled since he moved in.

### Analysis

Section 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. In this case, the onus is on the tenants to prove entitlement to a claim for a monetary award.

Policy Guideline 16 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.

I note that though the tenancy agreement required the tenants to give at least one month's notice, the landlord did not charge the tenants rent for December 2021, though the tenants gave less than one month's notice.

In support of their claim, the tenants provided affirmed testimony that two days after they moved into the rental unit they began seeing roaches, which they reported to the landlord. The tenants testified that after maintenance visited, finding a live roach in the stove, the tenants continued to see more roaches in the unit, which they reported to the landlord. The tenants testified that when no one had come by November 12, they sprayed the unit themselves, then had to get a hotel due to the overwhelming fumes.

In an email to the landlord, the tenants wrote that the pest control company indicated that as the tenants have spotted both adult and juvenile roaches, the problem in the unit had been going on for a long time.

Finding the landlord's response to the roach problem unsatisfactory, the tenants gave notice on November 12 that they would be moving out on November 15, 2021.

The tenants have not submitted as evidence any photos of roaches found in the rental unit.

Section 32(1) 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.

The landlord submitted as evidence correspondence with the pest control company, stating that because during a random inspection of the unit on October 12, 2021 the

pest control technician found no evidence of pest activity, the landlord rented out the unit for November 2021. The landlord testified that during the October 31, 2021 move in inspection, no roaches were seen.

The landlord has provided affirmed testimony, supported by documentary evidence, demonstrating that they were responsive to the tenants' reports of roach sightings, including visiting the unit on November 2 and November 9, 2021; requesting on November 10 that the pest control company treat the unit; and following up with the tenants on November 12 to say they were still waiting to hear back from the pest control company.

The landlord submitted as evidence a copy of the November 23, 2021 inspection report completed with the new tenant, which notes no deficiencies, and an email in which the new tenant indicates he moved into the unit on November 23, 2021, still lives there, and has had no pest issues since he moved in.

Based on the foregoing, I find that the landlord acted in a reasonable and timely way to address the tenants' reports of roach sightings, the landlord thereby meeting their obligation under the Act. The tenants chose to give notice to end the tenancy less than two weeks after moving in, not giving the landlord a reasonable amount of time to address the tenant's concerns about roaches.

I also find that the landlord's testimony and documentary evidence call into question the extent of the roach problem as reported by the tenants.

I find that, on a balance of probabilities, the tenants have failed to prove that damage or loss resulted from the landlord not complying with the Act, the regulations, or the tenancy agreement, as required by section 67 of the Act, and therefore find they are not entitled to compensation.

As the tenants have been unsuccessful in their application, I decline to award them the filing fee.

Conclusion

The tenants' claim is dismissed.

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: September 27, 2022

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Residential Tenancy Branch