



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      RP (MNDC, FF)

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an Order for the landlord to make repairs to the property. At the outset the representative for the tenant asked to amend their claim to include a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement and a Monetary Order to recover the filing fee. I have allowed this amendment.

The tenant served the landlord by registered mail on May 13, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing. The landlord confirms that they received this on May 15, 2009. Both parties presented additional evidence and this was also received by the other party.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to a Monetary Order for loss or damage under the *Act*?
- Should the tenant pay the costs of the fire damage?
- Is the tenant entitled to compensation for loss of quiet enjoyment of his apartment?

- Is the tenant entitled to be compensated for the work he did on cleaning and preparing the apartment for painting?

## Background and Evidence

This tenancy started on August 01, 2006. Rent is \$824.00 per month payable on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$390.00 on August 01, 2006. On April 08, 2009 a fire occurred in the closet of the tenants' apartment. The tenant extinguished this with a chemical fire extinguisher. The fire caused damage to the closet as well as smoke damage to the rest of the apartment. The fire service was called in to investigate the source of the fire. The fire officers' report shows that the fire was determined to have been caused by the tenants' cell phone charger. The report states that the recently charged cell phone was stored in a basket on the closet shelf with the wall charging unit still attached to the phone. The fire officer states that due to various reading glasses also being stored in the same basket one of these contacted the prongs of the charger and produced a dead short of 110 volts which in turn ignited ordinary combustibles also in the basket. The tenant claims that the fire officer determined that the manner in which the tenant stored the device was not negligent.

The tenants' representative testifies that on May 15, 2009 the tenant cleaned the apartment in preparation for the painters. This included scrubbing the walls, cleaning the drapes and fixtures and moving the furniture away from the walls. On May 11th and 20th the repairs and painting took place and the tenant had to vacate the apartment due to paint fumes. The tenant requests that the landlord compensates him for the loss of quiet enjoyment of his apartment for the cost of a hotel and for the cleaning costs he incurred.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlord does not contest the facts that there was a fire at the apartment and to the damage that occurred. The landlord feels that as the fire was caused by the tenants actions he should be reasonable for the costs of cleaning and repainting the apartment. They feel that the tenant should claim on any insurance he has to cover any damage to his personal belongings as stated in the tenancy agreement. The landlord is willing to contribute, without prejudice, the cost of two fifths of one coat of paint as the rental unit would be repainted in 2 years time as per the tenancy agreement.

The landlords insurance does not include cover for damages that are beyond the landlords control and would only cover the landlord if it was proven that the landlord was negligent in this matter.

## Analysis

The tenants' representative argues that the tenant should not be held responsible for the fire as it was not caused by any negligence on his part. However, the *Residential Tenancy Act* section 32 states that:

(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.

In this instance, it was the tenant actions rather than negligence that inadvertently caused the fire and therefore the landlord can not be held responsible for that. As it was the tenants' actions that consequently caused the damage to the apartment the landlord can not be held responsible for the clean up or repairs to the apartment or have to compensate the tenant for any loss of quiet enjoyment or hotel fees.

The tenants' representative argues that a tenant is not required to make repairs for reasonable wear and tear pursuant to section 32(4) of the *Act*. However, the fire damage can not be deemed to be reasonable wear and tear. I accept that the tenant did what he could to minimize the effects of the fire by extinguishing it in a timely manner and by carrying out the initial clean up of the apartment. However, this would be reasonable steps for the tenant to take to minimize the damage or loss that occurred at the time, pursuant to section 7(2) of the *Act*.

I find that the tenant is not entitled to a reduction in rent as compensation for the clean up work he carried out, for the loss of use of his apartment while it was being repainted or for the cost of a hotel for one night. I find that the tenant has not established any part of his monetary claim and he is not entitled to recover the cost of filing his application. Therefore, the tenants claim for compensation and for an order for the landlord to repair the property is dismissed without leave to reapply.

## Conclusion

I find that the tenants' application has no merit under the *Act* and dismiss it without leave to reapply.

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: June 22, 2009.

---

Dispute Resolution Officer