

## **DECISION**

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on approximately August 14, 2010. The Landlord confirmed receipt of the hearing documents.

The Landlord, Building Manager, and Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary.

### Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order pursuant to sections 67 and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the fixed term tenancy agreement was effective November 1, 2009 and switched to a month to month tenancy after April 30, 2010. Rent was payable on the first of each month in the amount of \$1,000.00 and the Tenant paid a security deposit of \$500.00 on October 7, 2009.

The Tenant testified and confirmed that she did not submit documentary evidence in support of her claim. She stated that there were several witness to the fire however she

did not arrange to have any witness attend the hearing today or to be on standby in case they were required to provide testimony today.

The Tenant advised that a fire occurred in the building on August 7, 2010 at 1:45 a.m. while she was across the street on the tenth floor in another building. She stated that when her teenage daughter who was asleep in the rental unit was woken by the fire alarm she called the Tenant to inform her that the alarm bells were ringing and she was leaving the building. The Tenant stated that she looked outside at that time and saw that the building was on fire. When the Tenant arrived at the building the fire trucks had arrived to put out the fire which was approximately 1:48 a.m.

The Tenant is of the position that the fire alarms did not ring in her rental unit prior to 1:45 a.m. therefore she contends they were not working in accordance with the by-laws. She also stated that the fire doors outside of her unit on the first floor were not closed because the Landlord failed to repair the carpet which prevented them from closing. She said that to her knowledge the fire doors were only ever closed about 5 % of the time and that she verbally reported this to the building manager once and the Landlord's office once but that they failed to do anything about it.

The Tenant stated that she has talked with the fire investigator and she is waiting for a copy of the fire report. She stated the investigator told her there was mould and asbestos in the building. Three weeks after the fire she was advised she could come by and pick up some of her clothes. She stated that she was given three bags of clothing that were covered with water and smoke and that she washed these clothes several times and then became sick. She argued that she now suffers from asthma and chest problems as a result of being exposed to these dirty clothes. Since the fire she has not been allowed back in the building to remove her remaining possessions.

The Tenant stated that on August 10, 2010, she left a written notice to end her tenancy with one of the building managers.

The Landlord testified that she has been told by the fire investigator the fire has been declared an accident. The fire department indicated that the fire alarms did work and there was no indication of fault by the Landlord. She has dealt with the fire investigator on a daily basis since the fire up until a few weeks ago and at no time has the investigator indicated any other cause or any concerns relating to building maintenance or lack thereof. To her knowledge the fire department believes the fire was the result of a smouldering cigarette in one of the rental units.

The Landlord is of the position that there was no neglect of maintenance in this building. They had their annual fire inspection on March 10, 2010 which was passed and there were no indications of a problem with the fire doors near the Tenant's unit nor is there any record of a report of problems with those doors.

The fire inspectors handed the building back to the Landlords approximately five days after the fire. The east side of the firewall that divides the building, which is where the Tenant's unit is located, is currently unsafe to enter. No one has been allowed access to the units in this section of the building since the fire. The Landlord has employed full time security to ensure no one enters the building until they can be sure that it is safe to do so.

The Landlord advised that because this fire was deemed accidental the municipality provided emergency aid to all of the tenants which covered three days accommodation, food and clothing vouchers. The Landlord held a meeting on August 8, 2010, in one of the hotels used to accommodate the tenants, where the Landlord advised the tenants that they all would be reimbursed their security deposits and the Landlord offered temporary or permanent accommodations to anyone who wished to occupy any of the Landlord's vacant units. The Landlord stated that they offered one and two bedroom units in two of their buildings that are located on the border or within the same city location or other units in adjoining cities. This Tenant refused to accept any form of accommodation that was being offered by the Landlord. The security deposit refunds

were processed during the week of August 11, 2010 and the Tenant was contacted and advised she could pick up her deposit.

The Landlord stated that section 32 of the tenancy agreement required the Tenant to initial acknowledging that she knew she was required to have tenant's insurance. The Tenant initialled this section however the Tenant did not have insurance at the time of the fire. Had she had insurance coverage her losses, including her temporary accommodation would have been covered.

The Tenant confirmed that she did not have content insurance and that she turned down the Landlord's offer of temporary or permanent accommodation. She argued that this meeting did not happen until around the tenth of August and that the Landlord did not offer two bedroom units in her city. Her teenage daughter was attending high school so they could not relocate to a neighbouring city. She confirmed receiving the return of her full \$500.00 security deposit and argued that this was not returned to her until the last week of August 2010. The Tenant secured new accommodation and took possession of her new rental unit on September 1, 2010. She confirmed she is seeking \$25,000.00 as compensation for the balance of her August 2010 rent for when she was not able to occupy the unit, to cover her health damage as a result of being exposed to the wet and smoky clothes, and to cover the loss of her possessions. She is concerned that she has not been able to gain entry into her unit to retrieve her passport and stated that she does not want her remaining possessions returned.

The Landlord advised that entrance into the building and the Tenant's unit is currently in the hands of their insurance company. She confirms there is security at the building twenty four hours per day, seven days per week, to ensure the safety of the possessions that remain in the building. It is the Landlord's intention to contact all tenants once they have the clearance to allow them into the building to retrieve their possessions. The Landlord checked her records and confirmed the meeting held at the hotel was on August 8, 2010, the day after the fire.

## Analysis

All of the testimony was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

There was no documentary evidence submitted in support of the Tenant's claim. The Tenant provided unsupported testimony for which the Landlord provided opposing testimony. There is testimony that the building had passed their annual fire inspection on March 10, 2010 with no indication that there was a problem with the fire doors in the building.

There is opposing testimony as to the cause or fault of the fire and in the absence of the fire inspection report I find the Tenant has failed to provide sufficient evidence to support her claim that the Landlord was negligent.

The Tenant has sought compensation for a health issue that she argues is a result of handling three bags of wet and smoky clothes three weeks after the fire occurred. While the Tenant may be suffering from a medical issue there is no evidence before me to support that this condition was caused by the Landlords' breach of the Act or by any negligence on the part of the Landlord.

The Tenant is seeking compensation for the loss of her possessions however had the Tenant complied with Section 32 of her tenancy agreement, as acknowledged by her initialing this section, she would have had valid contents insurance to cover the loss of her possessions. There is no evidence to support the Landlord breached the agreement or Act in relation to the loss of the Tenant's possessions.

The Tenant was prevented from occupying the rental unit from August 8, 2010 to August 31, 2010 a period where she had paid rent. While the Landlord did offer the Tenant temporary or permanent accommodation in other buildings there is insufficient evidence to support that the locations of these other buildings would have met the Tenant's requirements for the remainder of August. Therefore I approve the Tenant's claim for the return of the balance of her August 2010 rent in the amount of \$789.12 (24 days x \$32.88 per day).

In the absence of documentary evidence and in the presence of opposing testimony, I find there is insufficient evidence to prove that the Landlords violated the *Residential Tenancy Act*, Regulation or the tenancy agreement or were negligent in relation to the Tenant's losses; therefore I dismiss the remainder of the Tenant's claim for compensation without leave to reapply.

The Tenant has only been partially successful with her application; therefore I award only \$50.00 recovery of the filing fee.

The Landlord is hereby instructed to contact the Tenant via telephone and by written communication, as soon as the insurance company and authorities have indicated tenants may enter the building to collect their personal belongings.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order in the amount of **\$839.12** (\$789.12 + \$50.00) This Order maybe filed in Provincial Court and may be enforced as an Order of that Court.

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: October 01, 2010.

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Dispute Resolution Officer