



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      MNDC MNSD RPP O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, for the return of double their security deposit, for the recovery of the filing fee from the Landlord for this application, and to obtain an Order to have the Landlord return the Tenants' personal property.

Service of the hearing documents, by the Tenants to the Landlords, was done in accordance with section 89 of the *Act*, sent via registered mail on November 20, 2010. The Landlord confirmed receipt of the hearing documents.

The parties appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

1. Did the Landlord breach the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, have the Tenants proven entitlement to a Monetary Order as a result of that breach?
3. Do the Landlords have the Tenants' personal property in their possession?
4. If so, are the Landlords required to return the personal property in accordance with the *Residential Tenancy Act*?

### Background and Evidence

I heard undisputed testimony that the parties entered into a written tenancy agreement effective July 1, 2005. Rent was payable on the first of each month in the amount of \$815.00 and a security deposit of \$392.50 was paid by the Tenants on July 1, 2005. The tenancy ended after a fire occurred in the building on July 27, 2010, and all residents from the 85 units were evacuated.

The Tenants testified that they are seeking return of double their security deposit because their tenancy ended July 27, 2010 due to the fire and the Landlord did not return their security deposit until eighteen days later on August 13, 2010. They did not provide the Landlord with their forwarding address in writing, as they had not yet secured an address. They are also seeking monetary compensation up to \$25,000.00 as they were not allowed to retrieve their personal possessions from the rental unit. They testified that they believe there was little or no fire damage caused to their unit and questioned why they were not allowed to enter and retrieve their personal possessions when other tenants were given permission to enter. They even saw men walking on their floor and working only two feet away from the door to their unit so they believe they should have been allowed access.

The male Tenant testified that he was pleased the restoration company was concerned about safety however he believes they should have been able to enter his unit. He confirmed there was water poured above his unit to put the fire out but that a lot of his possession would not have been damaged by water. He stated that he even offered to hire a man lift to gain safe access to his unit but the site foreman would not allow him to do so. He feels they would have been able to salvage property that was worth more than the amount they are claiming.

The Landlord testified that it was not the Landlords' call to allow access to the building. He confirmed that the police took control of the building from the time of the fire on July 27, 2010 until control was passed to the restoration company on July 28, 2010. Out of 85 units 22 in that wing were burnt right down with nothing remaining and another 7 were still standing. Out of the 7 remaining units in the damaged wing only two units were allowed to be accessed for salvage. The remaining 5 were in an area that was classified by the engineers to be too dangerous to enter. A wall was erected and access past the wall was restricted. The Tenants' unit was behind the wall in the restricted access area. The building was demolished and all of the Tenants' possessions that remained inside the units were demolished and sent to the landfill. No possessions were salvaged after the building was demolished and the Landlord does not possess any of the Tenants' possessions.

The Agent testified that they worked on behalf of all the tenants with the restoration company to allow them access. He kept in contact with several tenants on a regular basis relaying information that there may still be hope to gain entry; however the day never came to allow them access and the building was demolished. The Landlord and Agent advised that when the demolition began the restoration company found asbestos and once that had been disturbed they restricted the tenants from entering. The hydro

company was also prevented from entering to read the meters as the restoration company had prevented access to everyone.

The Tenants argued that other tenants were allowed entry so they too should have been allowed to enter and retrieve their possessions. They confirmed they did not have insurance on their possessions and believe that the Landlord could have paid the restoration company more money to make the building safe enough for them to gain entry and retrieve their possessions.

The Landlord did not believe the building could be shored up to save it or to allow the Tenants' safe access. They had to follow the direction from the engineer and restoration companies as they were in control of the site.

### Analysis

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

The evidence supports the tenancy ended July 27, 2010, after the occupants were evacuated due to a fire. The Landlord refunded the Tenants their security deposit, interest, and the prorated rent from July 27 – 31, 2010, on August 13, 2010. The Tenants did not provide the Landlord with a forwarding address in writing.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the

Tenants did not provide the Landlord with a forwarding address in writing therefore the Landlords did not breach the Act.

Based on the above, I find that the Landlords have not failed to comply with Section 38(1) of the *Act* and that the Landlords are not subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit. Therefore I dismiss the Tenants' claim for the return of double their security deposit.

The evidence supports the Tenants' possessions were demolished and discarded when the building was demolished. Based on the aforementioned there is no evidence to support the Landlords have any of the Tenants' property, therefore I dismiss the Tenants' request for an Order for the return of their property.

This tenancy ended due to a tragic occurrence of fire which engulfed a large portion of this rental building and as a result, the Tenants lost their possessions. The Tenants did not mitigate their loss as they did not have insurance coverage for their possessions. After careful review of the testimony and evidence before me I find the Tenants provided insufficient evidence to prove the Landlords breached the Act, regulation, or tenancy agreement and therefore have not met the test for damage or loss as listed above. Based on the aforementioned I hereby dismiss the Tenants' claim for monetary compensation.

The Tenants have not been successful with their application; therefore I decline to award recovery of the filing fee.

### Conclusion

I HEREBY DISMISS the Tenants' application, 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: December 14, 2010.

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Dispute Resolution Officer