



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, FF*

### **Introduction,**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss of use of the rental unit after a fire broke out in an adjacent unit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Was the landlord negligent in responding to the repair and restoration following the fire? Was the unit not fit to live in after the fire? Did the tenant suffer a loss of quiet enjoyment? Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy started on April 01, 2006 and ended on April 30, 2012. At the end of the tenancy, the rent was \$1,011.00 due on the first of each month.

On March 15, 2012, a fire broke out in the adjacent rental unit around 9:30 at night. The tenant evacuated the building along with the other residents. Approximately two hours after the fire began, the residents were allowed back in. The tenant was instructed by a fireman to return to the unit and keep the door shut to prevent lingering fumes from entering the rental unit.

In her written submission, the tenant states that she was not informed about whether it was safe or not to spend the night inside the rental unit. She decided to stay with family and took some her belongings with her.

The tenant stated that she did not go to work the next day as she was tired from lack of sleep and needed to talk to her insurance company. The tenant called the rental office and was informed that her unit was not damaged and it was ok for her to live there.

The tenant returned to the rental unit the next day and found two commercial sized fans and humidifiers in the unit. Her insurance agent visited later along with an adjuster who determined that there was minimal damage to her personal items. The tenant stated that she did not follow up with her insurance claim.

The tenant stated that she did not return to live in the rental unit for a variety of reasons which included the smoke smell for two weeks, the noisy fans and humidifiers, personal belongings moved around inside the unit and the presence of asbestos in the walls.

The tenant made requests for compensation and was denied. The landlord stated that some tenants requested to be moved to other units and the landlord accommodated their requests. The landlord stated that the tenant was informed of this option but was not interested. The tenant stated that she was not informed of this option.

In her written submission, the tenant states that the fans and humidifiers were removed on March 27, 2012. Upon being denied compensation by the landlord, the tenant decided to end the tenancy and on March 30, 2012, gave the landlord notice to end the tenancy effective April 30, 2012.

The tenant stated that on April 16, the wall between the rental unit and the adjacent one was torn down and a tarp was installed to cover the open area. The wall was not replaced at the time the tenant moved out at the end of April.

The tenant also stated that asbestos was found in the walls and on July 05, 2012, she made a written request to the landlord for the official report. The landlord stated that he did not comply with her request as the tenancy was over and he didn't see the need to.

The tenant stated that she did not return to live in the rental unit and therefore should not have to pay rent for the period of March 15 to April 30. The tenant has paid rent and is now applying for the return of rent for this period. The tenant stated that she left her belongings inside the unit because she did not have a place to store them.

The tenant is also claiming lost wages for the days she missed work for the purpose of packing for her move and to clean the rental unit. The tenant stated that her family home was at a greater distance from her work place and she had to use public transit. The tenant is claiming \$110.00 for the cost of a bus pass.

The tenant stated that the fans and humidifiers caused her utility bill to increase. She is claiming the cost of utilities for March and April and is also claiming moving costs.

The tenant is claiming compensation in the amount of \$3,021.23 as follows:

1.	Return of rent for March 2012	\$505.50
3.	Bus Pass	\$110.00
4.	Hydro (March)	\$29.45
5.	Hydro (April)	\$57.71
6.	Moving costs (total 3 invoices)	\$642.54
7.	Change of address	\$50.40
8.	Lost wages (March 16, April 19, April 20)	\$564.63
9.	Filing fee	\$50.00
	<b>Total</b>	<b>\$3,021.23</b>

The landlord stated that the tenant was advised to contact the landlord after she heard back from her insurance company, but she did not.

The landlord stated that upon receiving the tenant's application for dispute resolution, he made an offer to the tenant, to return rent in the amount of \$200.00 for March, \$400.00 for April plus \$45.14 towards hydro for a total of \$645.14. The tenant refused to accept this offer.

### **Analysis**

Based on the documentary evidence and sworn testimony of both parties, I find that a fire did take place in the adjacent unit. In determining the extent of damage to the tenant's unit, I have considered the tenant's written submission. In this submission, she states that the fire department allowed all residents back into the building two hours after the fire. She also states that her insurance company decided that there was minimal damage to her belongings and provided no financial compensation and that the landlord informed her that it was safe to reside in the rental unit.

Based on the above, I find that the rental unit was livable and that the tenant chose to move out. The tenant resided with family and did not provide any evidence to show that she incurred additional accommodation expenses.

The fire occurred on March 15 and the landlord placed fans and humidifiers inside the rental unit which were removed on March 27. Therefore I find that the tenant was inconvenienced for this period of time.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the

situation has existed. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. However a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that she was inconvenienced by the fire and the subsequent restoration work. Therefore I find that the tenant is entitled to nominal damages.

Since the tenant has not proven that the unit was declared unfit to live in and the unit was rented shortly after the tenant moved out, I find it appropriate to award the tenant **\$100.00** as a minimal award for the period of March 15 to March 27.

However, I also find that on April 16 a portion of the common wall between the two units was removed and replaced with a tarpaulin. Therefore I find that for the period of April 16 to April 30 the unit was not livable. Since the tenant used the unit to store her belongings in, I find that she must pay a portion of the rent for this period. I find that the offer that the landlord made for the return of **\$400.00** for April is adequate.

I further find that the tenant is entitled to the additional cost of hydro for the use of the fans and humidifiers. Since the fire was on March 15, the tenant is entitled to half of the cost of hydro for March and the total cost of hydro for April for a total of **\$72.43**.

Since the tenant chose to move out, I find that she must bear the cost of moving, lost wages and the bus pass.

Since the tenant has proven a portion of her claim, I award the tenant the recovery of the filing fee of **\$50.00**.

Overall the tenant has established a claim of \$622.43. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the tenant a monetary order in the amount of **\$622.43**

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 03, 2012.

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Residential Tenancy Branch