



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking money owed or compensation under the Act or tenancy agreement.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Issue

The Tenants had an incorrect spelling of the Landlord's name in their Application. With the consent of both parties, the style of cause has been amended to reflect the correct spelling.

### Issue(s) to be Decided

Are the Tenants entitled to monetary compensation from the Landlord?

### Background and Evidence

The Tenants are seeking compensation from the Landlord for damages done to their personal property from a pet cat which entered their rental unit, under unusual circumstances.

On January 11, 2013, at approximately 1:00 a.m., there was a fire in an apartment in the building (the "Damaged Apartment").

The Damaged Apartment was across the hall from the subject rental unit where the Tenants resided.

The Tenants testified they escaped over the balcony from the subject rental unit with the aid of the fire department. When they left the subject rental unit the door was locked.

The morning after the fire had been extinguished the Tenants were allowed into the subject rental unit to get some clothes and personal items. They testified they were escorted to the subject rental unit by security personnel and the door was open when they arrived there. They testified they could not get back into the subject rental unit until several weeks later.

The Tenants testified that on or about February 21, 2013, they entered the rental unit to remove the bulk of their belongings. The Tenants testified they found an unusual mess in the subject rental unit when they entered, and they initially thought they had been robbed. There were plants knocked over, containers that had been chewed and many wrappers from Halloween candy lying on the floor.

The Tenants testified they also found feces in the rental unit and urine stains on their furniture and bedding. According to the Tenants they could not keep or clean these items and they had to be replaced. The Tenants testified they spoke with people conducting the renovations and they informed the Tenants that their property would be looked after.

The Tenants reported their findings in the rental unit to the Landlord on February 21, 2013.

The Agent for the Landlord testified that a person from the restoration company was asked to look at the subject rental unit and this person found the cat, which was near death, hiding under a bed. The cat was in very poor health and was apparently taken to a veterinarian. It has since recovered and has been re-united with its owner. The owner of the cat was the person who formerly resided in the Damaged Apartment.

The Tenants testified they feel the Landlord should have checked with the owner of the cat following the fire to see if the pet was safe. The Tenants submit that the Landlord must have known there was a pet in the Damaged Apartment because they should have had a pet damage deposit.

The Tenants further testified that about a week before the fire one of the two cats from the Damaged Apartment had escaped and had entered the subject rental unit and hid there. The Tenants testified they coaxed the cat out of hiding with some cat food and returned it to the owner.

In reply, the Agent for the Landlord testified that the cat owner had not informed them that the cat was missing.

According to the testimony of the Agent, the cat's owner believed that the cat perished in the fire. The Agent for the Landlord testified that the owner of the cat had no contact with the Landlord for several weeks after the fire, as this person simply left the building and did not contact the Landlord. The Agent for the Landlord testified that the cat owner believed that people would be upset with him as he caused the fire by smoking in bed, so he simply took off.

The Agent for the Landlord testified that at the time of the fire, fire department personnel broke into every apartment to check for occupants who may not have been evacuated, including the subject rental unit. The Agent for the Landlord testified they believe the cat entered the subject rental unit at the time of the fire and was unnoticed due to the smoke in the hall and the commotion of the fire department personnel focusing on extinguishing the fire.

Both parties agree that access into and around the building was restricted following the fire. For example, anyone entering the building had to be escorted to the respective apartment by security personnel, and the elevator was prevented from stopping on the affected floor of the building.

The Tenants testified they were also allowed some access to the subject rental unit on or about February 12, 2013, to retrieve some of their property. They testified that on or about the 12<sup>th</sup> they noticed no damage in the subject rental unit. They submit that the subject rental unit was not locked at the time they entered on or about the 12<sup>th</sup> of February.

The Agent for the Landlord disputed this and testified that the morning after the fire and in the first day or two after the fire the Landlord secured all the affected units with padlocks. The Agent testified that all the keys were kept in a separate lock box and the locks had all been installed by the second day after the fire.

The Agent for the Landlord testified that the Damaged Apartment had been completely incinerated during the fire. In evidence the Landlord submitted an email report from the insurance adjuster dealing with the fire. The report describes that the cat was found in the subject rental unit on or about February 25, 2013, and returned to its owner. The owner of the cat informed the insurance adjuster that the veterinarian determined the cat had gone, "... without substantial food or water for about six weeks."

The insurance adjuster also writes, "... during my inspection of Saturday February 23, 2013, candy wrappers from a trick-or-treat bag were discovered throughout [the subject rental unit], concluding this was the feline's diet to survive. In conclusion, it is suspected the cat escaped [the Damaged Apartment] during evacuation/fire suppression and entered [the subject rental unit]."

The Tenants allege the cat must have entered the subject rental unit after February 12 and before February 21, 2013. They claim the Landlord is responsible to them for the damage to their personal property.

The Tenants claim \$20.00 for an arm chair, \$599.00 for a mattress, \$20.00 for pillows, \$50.00 for a recliner, \$289.00 for a futon, \$19.00 for a canister set, \$12.00 for five rugs or carpets, \$14.99 for three plants, \$89.00 for a computer chair, and \$39.00 for a sheet set, for a total claim of **\$1,151.99**. The Tenants further testified they had no insurance for their contents.

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this instance I find the Tenants have failed to prove the Landlord has breached the *Act* or the tenancy agreement. I further find the Tenants have failed to prove the Landlord was otherwise negligent in this matter. Therefore, I find the claims of the Tenants must be dismissed without leave to reapply.

I find the Tenants have failed to prove the Landlord acted negligently or unreasonably. I find the Landlord took reasonable precautions to secure the property of the Tenants and other occupants of the building from theft or other human entry to the rental units.

While it is not possible to say with any certainty when the cat entered the subject rental unit, I suspect it occurred contemporaneously with the fire suppression and evacuations that occurred. Regardless of these suspicions, the onus was on the Tenants to provide evidence sufficient to prove their case on a balance of probabilities, and I find they failed to do so.

I had trouble accepting the evidence of the Tenants that when they entered the subject rental unit on or about February 12, they did not notice any damage. While I find the Tenants did not lack credibility, they seemed vague on many of the dates and times they sought to enter the subject rental unit, and the actual dates they had entered. I attribute this to the fact that on these dates they did not think they had to make careful notes of these dates and events, as they would not have expected they would require such evidence at that time.

Furthermore, as the owner of the cat did not contact the Landlord to report the pet was missing, I find the Landlord acted in a reasonable manner. In fact, given the reported incineration of the Damaged Apartment, it might have been reasonable to conclude any pets would unfortunately have been lost in this fire. The Landlord had no reason to search for a pet cat that the Landlord did not know was missing. However, once the

damage was reported to the Landlord, I find the Landlord acted in a reasonable manner and in a reasonable time to try and locate the cause.

The Tenants should also note that this Landlord, or any other landlord, is not the insurer for the Tenants' personal property.

The Agent testified that it is the Landlord's policy to inform all renters at the outset of their tenancy to make sure they had their own content insurance, and that the Tenants had been informed of this. Despite this the Tenants did not acquire insurance, and according to their testimony at the hearing, still have no insurance for their personal property.

### Conclusion

I find the Tenants had insufficient evidence to prove the Landlord breached the Act or the tenancy agreement, or that the Landlord was negligent. Their Application is dismissed without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 29, 2013

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Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

## Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website ([www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)) has information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:  
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:  
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:  
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*  
**(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)