



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

**Dispute Codes:** MNDC

### Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act. The tenant was seeking compensation for loss of possessions that occurred after a fire in the complex that was due to no fault of the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation for damages or loss?

### Background and Evidence

The parties testified that the tenancy began on January 10, 2013 and ended on March 1, 2013. The rent was \$575.00. A security deposit of \$287.50 was paid by the tenant. And has already been refunded. No copy of a tenancy agreement was in evidence.

The tenant testified that a fire occurred in the rooming house complex and the tenant claims that the resulting smoke rendered all of her possessions unusable and they all had to be discarded. The tenant testified that her personal items were all taken to the landfill. The tenant provided a list of these items with the value of each and is claiming compensation totaling \$1580.00 for the loss.

The landlord acknowledged that a fire occurred but disputed the claim. The landlord testified that the tenant's room was 60 feet away from the fire source and her possessions were not significantly damaged. The landlord testified that only the

common areas of the building were affected because fire doors were kept closed which prevented wide-spread smoke damage.

The landlord pointed out that the tenant should have purchased insurance to protect her own personal possessions, which is not the landlord's responsibility to arrange under the Act or the tenancy agreement. The landlord stated that the tenant failed to mitigate by not trying to salvage her property and wiping it down or laundering affected items.

The landlord testified that the smoke in the building was promptly remediated with restoration crews on site, cleaning and employing fans and air scrubbers. The landlord stated that none of the other residents in the complex reported any damage or losses.

The landlord's position is that the tenant did not provide sufficient evidentiary proof of her monetary losses and failed to show that the landlord should be held responsible under the Act or agreement to compensate the tenant.

### Analysis

In regard to an Applicant's right to claim damages from another party, Section 7 of the Act states that, if a tenant or a landlord does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

### Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the onus was on the tenant, to prove the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord.

Based on the evidence and testimony of the parties, I find that the tenant did suffer a substantial loss and inconvenience through no fault of her own. However, I find that the evidence offered by the tenant in support of this claim failed to satisfy elements 2, 3 and 4 of the test for damages.

I find that the tenant did not sufficiently prove that the landlord had violated the Act resulting in the claimed loss. I find that the tenant, in merely providing a list of discarded items, did not sufficiently prove the monetary value of the loss. Finally, I find that the tenant acknowledged that she failed to make any attempt to mitigate by cleaning or trying to restore her property. I find that the tenant believed that smoke exposure can never be eradicated to allow use of clothing, linens, furniture, small appliances or other house-wares, no matter what efforts are made.

I accept the landlord's observation that a tenant should be prepared to carry insurance on their own personal possessions, while a landlord is obligated by law to carry insurance with respect to liability related to the premises and the occupants.

Given the above, I find that the tenant's monetary claim for compensation has no merit under the Act.

Based on the testimony and evidence presented during these proceedings, the tenant's application is hereby dismissed in its entirety without leave to reapply.

### Conclusion

The tenant is unsuccessful in the application and the claims are dismissed 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: July 10, 2013

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Residential Tenancy Branch

