



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

MNDC, MNSD, O

### Introduction

This hearing dealt with an application by the tenant for a monetary order and an order for the return of his security deposit. Both parties participated in the conference call hearing.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to the return of his security deposit?

### Background and Evidence

The parties agreed that the tenancy in this unit began in 2011 when the tenant moved into the basement suite of the residential property from the upper suite which he had formerly occupied since 2007. The parties further agreed that in mid-July 2013, the tenants in the upper unit caused a fire and that as a result of the fire, there was severe water damage to the unit. The balance of July and the first part of August was filled with insurance adjusters and professionals assessing the extent of the damage. On August 16, 2013, a city by-law officer attended the unit and told the tenant that he had to vacate the unit as the city had deemed it uninhabitable. This officer, R.D., testified at the hearing and stated that the fire damage had rendered the unit unsafe to occupy.

The landlord called a witness, K.F., who is the Deputy Chief of the city fire services. She testified that she arrived at the unit on August 16 with an evacuation order signed by the Fire Commissioner. The police and fire department attended with K.F. and carried out the evacuation. The tenant indicated that he did not want to leave and the police would not permit him to re-enter the building. The parties agreed that the tenant's friend entered the unit to remove several vintage guitars and the tenant's cell phone.

K.F. testified that she overheard emergency social services personnel offer emergency shelter to the tenant and she overheard the tenant refuse that offer. The tenant agreed that he was offered shelter but testified that he did not want to share accommodation with anyone else. K.F. testified that she remained at the property until bonded and insured security personnel, retained by the fire department, arrived to secure the building. A fence was erected around the building

and windows were boarded up. K.F. testified that when an evacuation order is issued, her department requires that buildings be secured and access supervised as there is a concern for the safety of anyone entering the premises.

The tenant testified that he believed if the landlord had performed repairs in July, the building would not have been subject to the August evacuation order. He testified that he incurred motel and food costs as a result of the evacuation, he had to hire movers and he paid extra money for cell phone charges while attempting to secure alternate accommodation. He further testified that by the time he returned to the unit in late August to retrieve his belongings, some of his valuable possessions had been stolen. He alleged that the landlord had not left the area sufficiently secured and said that the security guard simply sat under a tree and permitted anyone to access the building. The landlord denied that the security guard was not actively securing the premises. K.F. testified that she periodically visited the rental unit until it was demolished and each time saw the security guard actively securing the premises.

The tenant seeks to recover the costs associated with having to move, the value of his belongings, the cell phone charges, the value of internet cable equipment which he alleged was stolen, punitive damages and rent paid for August and his \$200.00 damage deposit.

The parties agreed that the landlord offered to return half of August's rent to the tenant but he refused. The tenant testified that he refused because until he was forcibly removed by the police, he had not intended to vacate the unit.

The tenant testified that he did not give the landlord his forwarding address until he served the landlord with his application for dispute resolution.

### Analysis

In order to succeed in his claim, the tenant must prove that he suffered a loss as a result of the landlord's failure to comply with the Act, Regulation or tenancy agreement. In this case, the landlord did not evict the tenant; rather, the municipality evicted the tenant. The tenant argued that if the landlord had performed repairs in July, he would not have had to evacuate the unit. I am not satisfied that this is the case. It is clear on the evidence that the water damage resulting from the fire caused significant damage to the unit. The landlord had the option of either repairing or demolishing the property. The parties agreed that the landlord had professionals inspecting the property to determine the extent of the damage, which in my opinion was a reasonable course of action. The landlord testified that the opinions he received were that the structural damage to the property was so significant, a repair was not feasible. The parties agreed that the landlord warned the tenants that they would have to vacate the unit.

There is no provision in the Residential Tenancy Act whereby the landlord can give a one month or any advance notice that a unit is no longer habitable unless a government authority requires that the unit be vacated. In this case, the government authority determined that immediate vacancy was required. I find that the landlord acted reasonably and that the reason for the

immediate vacancy was not the fault of the landlord. I therefore find that the landlord cannot be held liable for the tenant's losses.

I find that the tenancy was frustrated on August 16, 2013 when the municipality ordered that the property be evacuated. When a contract is frustrated, it ends on the date of the frustration and the parties each bear their own losses after that point.

While the tenant claims that the landlord failed to properly secure the property, I am not persuaded that this was the case. The landlord hired a professional security guard and K.F. confirmed that the guard was actively securing the premises. I find that the tenant has failed to prove that the landlord inadequately secured his belongings.

I find that the tenant is entitled to recover half of August's rent and I order the landlord to return to the tenant \$412.50. The landlord has not filed an application for dispute resolution to retain the security deposit and in the absence of that application, I find that the landlord should return the \$200.00 deposit to the tenant. If the tenant had provided his forwarding address in writing to the landlord prior to the time he filed his application for dispute resolution, I would have awarded the tenant double the security deposit. But as the tenant failed to provide his address prior to making his claim, I find that he is not entitled to double the deposit as he did not trigger the landlord's obligation to deal with the deposit.

The rest of the tenant's claims are dismissed.

### Conclusion

The tenant has been awarded a total of \$612.50 and I grant him a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and 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 30, 2014

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Residential Tenancy Branch

