



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

MNDC, FF, O

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72; and
- an "other" remedy.

All parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants' testimony was provided by the tenant LA.

The landlord testified that he served the tenants with the dispute resolution package and all evidence by registered mail. The tenant LA confirmed receipt of the documents. On the basis of this evidence, I am satisfied that the tenants were served with the dispute resolution package and evidence pursuant to sections 88 and 89 of the Act.

The tenant LA testified that her parents personally served the landlord with the dispute resolution package and evidence. The landlord confirmed receipt of the dispute resolution package and the tenants' evidence. On the basis of this evidence, I am satisfied that the landlord was served with the dispute resolution package and evidence pursuant to sections 88 and 89 of the Act.

At the beginning of the hearing, I inquired of the tenants what "other" remedy they sought. The tenants could not explain what they were seeking. On this basis, I will not consider any claim under the heading "other".

### Issue(s) to be Decided

Are the tenants entitled to a monetary award for damage or loss under the Act, regulation or tenancy agreement? Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The parties entered into a written tenancy agreement dated 15 July 2014. The tenants received keys in mid-July and began to move their belongings into the rental unit. The tenants began occupying the rental unit on or about 1 August 2014. Monthly rent of \$1,250.00 was due on the first. The landlord continues to hold the tenants' security deposit in the amount of \$630.00, which was collected at the beginning of the tenancy. The landlord and tenant live on the same residential property.

The tenant LA testified that she paid August's rent in full. The landlord testified that the tenants made a partial payment towards August's rent and a pet deposit of \$1,000.00. There is disagreement as to whether or not the tenants and landlord had an arrangement that the tenant LA would provide cleaning services in lieu of \$250.00 rent.

On 11 August 2014, the tenant LA left a pot of oil unattended on the stove. The tenant LA left the rental unit to go to the grocery store. The tenants' children discovered the kitchen on fire. The tenants' children alerted the landlord, who was able to extinguish the fire. The fire department attended.

The landlord testified that on 11 August 2014, a safety inspector arrived and cut power to the rental unit. Power to the rental unit was eventually restored to all areas except the kitchen.

On 12 August 2014, a restoration company asked the tenants to remove their belongings from the home. The landlord testified that on 12 August 2014, the tenants were told to take what was most important to them. The landlord testified that the tenants took some of their belongings that day. The landlord testified that on 12 August 2014, the tenants moved their belongings out on to the deck. The landlord submitted that he is not responsible for the tenants' belongings that they left outdoors. The landlord testified that the tenants were told it would be 72 hours before they could go back in.

The tenants provided me with photographs that show, among other things, the tenants' belongings stacked outside the rental unit, and various broken items. The tenant LA testified that the landlord removed the tenants' property from the home and left it uncovered. Rain caused damage to this property, including damage to a coffee table and damage to a portable fireplace. The tenant LA testified that the landlord caused damage to the tenants' property by

packing the belongings recklessly. The tenants provided pictures of their belongings outside the rental unit that they say were packed by the landlord.

The landlord testified that many of the boxes were packed by the tenants themselves as they had not yet finished unpacking from their recent move. The landlord provided me with photographs of the rental unit taken on 12 August 2014 that show boxes in various stages of unpacking. Further, the landlord testified that the restoration company piled the tenants' belongings in a front room of the house and worked around them. The landlord testified that neither he nor the restoration company put the tenants' belongings outside.

The tenant LA testified that the landlord threw out \$250.00 of the tenants' food. The landlord testified that he discovered the rotting food approximately four days after the fire. The food had spoiled as a result of electricity being terminated to the kitchen. The landlord testified that he did not think to try to plug in the fridge to another socket as he had a lot on his mind.

The tenant LA testified that the rental unit only had a carbon monoxide detector and did not have a smoke detector. The tenant LA submitted that if the rental unit had a smoke detector that the fire would have been discovered earlier and the damage would have been avoided.

The tenants provided me with receipts. One receipt is for a recreational vehicle park rental dated 15 August 2014. That receipt is in the amount of \$598.50. A second receipt is for storage dated 16 August 2014. That receipt is in the amount of \$94.50.

The landlord provided me with a copy of a report from the Ministry of Justice. The landlord testified that the report was prepared as part of the customary reporting in relation to a fire event. That report set out that the ignition of vegetable oil was caused by an act or omission.

The landlord provided me with a copy of a letter from his insurer dated 20 August 2014:

*Our insured has reported the above noted claim file to our office for handling. Our investigation reveals that you are liable for the damages sustained to our insured.*

*If you carry a valid liability policy we ask that you forward our information onto them for further handling. If you do not carry a valid liability policy we ask that you contact our office direct in order to discuss payment of our claim.*

The landlord also provided me with a copy of the initial site report dated 12 August 2014 from the restoration company that set out that the cause of loss was the result of a "stove fire by the tenants". That site report also set out details of the tenants' response:

*At the time of my visit, the tenants were in the process of packing and moving their contents out of the home. There is some hostility from the tenants towards the owner in regards to the tenants not accepting that they need to move their contents out quickly in order for the loss to be properly mitigated. Myself, the insurance adjuster and fire inspector were on site at the time that this occurred.*

The landlord testified that the kitchen had to be brought down to studs. The landlord testified that there was extensive smoke damage to the entirety of the rental unit. The landlord testified that all of the walls had to be smoke sealed and then repainted. The landlord testified that the repairs cost over \$60,000.00. The landlord provided me with photographs taken by the restoration company. Those pictures document extensive fire damage to the kitchen and smoke damage throughout the rental unit.

The landlord testified that the rental unit was unusable as a rental unit for 90 days. The landlord testified that no one could have lived in the rental unit while it was undergoing the repairs. The landlord testified that the cleaners in the rental unit had to wear respirators as the drywall had small amounts of asbestos in it. The tenant LA testified that the fire department told her that she was not allowed in because of a cancer causing agent. The landlord testified that there was asbestos in the rental unit.

The tenants seek return of the rent that they paid for August.

The landlord denies that he caused damage to the tenants' property, that he is responsible for the return of August's rent, and that he is responsible for the cost of the tenants' housing costs.

### Analysis

The tenants have claimed the following compensation from the landlord:

Item	Amount
Return of August's Rent	\$1,250.00
RV Park Rental	600.00
Storage Costs	100.00
Broken Smartphone	500.00
Coffee Table	300.00
Miscellaneous Broken Items	300.00
Portable Fireplace	200.00
Food	250.00
Filing Fee	50.00
<b>Total Monetary Order Sought</b>	<b>\$3,550.00</b>

*Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" sets out the landlord's responsibility for smoke detectors:

If there are smoke detectors, or if they are required by law, the landlord must install and keep smoke alarms in good working condition.

The tenants have not provided any evidence that the landlord was required to provide a smoke detector by law. As such, the landlord's failure to do so is not relevant for the purposes of determining liability in this application.

It is undisputed that the cause of the fire was the ignition of the unattended cooking oil. I find that the fire was caused by the negligence of the tenant LA. I find that as a result of the fire caused by the negligence of the tenant LA, the house was rendered uninhabitable. I find that the tenancy ended on 11 August 2014 when the house was rendered uninhabitable.

The landlord and tenant LA's testimony conflict: where the tenant LA's and landlord's testimonies conflict, I prefer the testimony of the landlord. I prefer the landlord's testimony as I found the landlord to be forthright in providing his testimony and found his version of events to be more plausible. Further, the landlord's testimony is corroborated by the restoration company site report.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants' rent was due on the first of the month. The tenancy came to an end because of the tenant LA's negligent act. The tenant is not entitled to recover rent for August, in any amount, from the landlord. The tenants' claim for return of August's rent is dismissed.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

I find that the tenants have failed to show, on a balance of probabilities, that the tenants' belongings were damaged as a result of the landlord or the restoration company packing the tenants' belongings. In any event, the tenants have failed to provide any receipts or estimates that would substantiate the monetary amount of the damage or loss. As the tenants have failed to satisfy their evidentiary burden, I dismiss the tenants' claim for compensation for the various broken items.

I find that the tenants' food spoiled as a result of power to the kitchen being terminated. I find that the landlord did not owe any duty to the tenants to minimize the tenants' loss as a result of the tenants' own actions. I find that the tenants are not entitled to recover the cost of their spoiled food from the landlord.

I find that the tenants incurred extra costs relating to storage of their belongings and the recreational vehicle park rental as a result of the tenant LA rendering the rental unit uninhabitable. As the tenants have failed to show that the landlord caused this loss, the tenants are not entitled to recover their storage or living costs from the landlord.

As the tenants have been unsuccessful, they are not entitled to recover their filing fee from the landlord.

Conclusion

The tenants' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 25, 2015

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Residential Tenancy Branch