



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC; FF

### **Introduction**

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Notice of Hearing documents and copies of the Tenant's documentary evidence were mailed to the Landlord, by registered mail, sent August 22, 2014. The Tenant provided a copy of the registered mail receipt and tracking number in evidence.

The Tenant stated that he also received copies of the Landlord's documentary evidence; however, the Landlord did not provide copies to the Residential Tenancy Branch.

### **Issues to be Decided**

- Is the Tenant entitled to compensation for loss of quiet enjoyment of the rental unit?

### **Background and Evidence**

The parties agreed that the tenancy agreement was a one year term lease, which ended on April 30, 2014. Monthly rent was \$1,800.00.

### **The Tenant gave the following testimony:**

The Tenant testified that he rented the rental unit from the owner of the rental property. The rental property is a house with two suites. The Tenant and his daughters lived in the upper unit. When the tenancy started in April, 2013, the Landlord occupied the lower suite.

The Tenant stated that in August, 2013, the Landlord told him that he would be moving out of the lower suite and hiring a property manager to take care of the property. The Tenant met with the Landlord's agent "Lauren" to confirm that it was really important that any new occupants not

be smokers. He stated that he was assured that the property manager would get the "right people". The Tenant provided a copy of a portion of the tenancy agreement in evidence.

The Tenant stated that he didn't want to interrupt his daughter's schooling and end of year exams by moving out the rental unit at the end of April and that he asked Lauren if he could extend the lease for 2 or 3 more months. He stated that Lauren said that they could do a month-to-month tenancy until July 31, 2014, so the Tenant rented a new place effective August 1, 2014. The Tenant testified that Lauren later reneged on their agreement to allow him to extend the tenancy agreement.

The Tenant testified that in September, 2013, he complained to Lauren that the garage door opened on its own and he came home to "the whole house open". The Tenant testified that on December 18, 2013, he had some possessions stolen, worth \$1,500.00, because the garage door had opened on its own. The Tenant stated that he had to unplug the electric garage door in order to secure the premises. The Tenant stated that the Landlord didn't address the issue until January, 2014, and that the repair man said the "machine needs to be replaced", but that it was not fixed before the end of the tenancy. The Tenant provided copies of emails to Lauren dated September 23, December 18, December 30, 2013 and January 10, 2014.

The lower suite was rented out to 2 people (the "New Occupants") in January, 2014, and the Tenant stated that his life became a "nightmare" because the New Occupants were smokers and had parties which would wake him up at 4:00 a.m. in the morning. The Tenant testified that there were 5 people living in the lower suite. The Tenant provided written statements from three witnesses in evidence.

The Tenant testified that the New Occupants were smoking cigarettes and marijuana and selling drugs from the lower suite. He stated that there was a constant smell of marijuana in the rental property and that he feared for his daughters. The Tenant stated that the New Occupants intimidated him and that his daughters were afraid to use the back yard because the New Occupants had "taken it over" and were openly doing drugs. The Tenant stated that he raised this with the property manager, but nothing was done. The Tenant testified that, contrary to his conversation with the property manager, the New Occupants' tenancy agreement did not include a "no smoking clause". The Tenant provided a copy of emails to the property manager "Jennifer" dated February 21, March 10 2014, in evidence.

The Tenant testified that on March 12, 2014, he filed an Application for Dispute Resolution against the property management company for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,500.00. The Tenant stated that he believed he was paying too much rent because he had no use of the yard; loss of enjoyment of the rental unit due to the New Occupant's partying and smoking; and to compensate him for his stolen possessions. The Tenant provided the file number for his Application. The Tenant's Application was scheduled to be heard on April 30, 2014.

The Tenant testified that Jennifer asked him to cancel the Hearing and take no further action in exchange for allowing him to stay in the rental unit and paying him the cost of his filing fee. The

Tenant stated that he felt he was coerced into agreeing to cancel the Hearing because he had no choice as he had already committed to a new tenancy agreement effective August 1, 2014, and would have had nowhere to live until then. The Tenant provided a copy of e-mails between him and the Jennifer, setting out the terms of their agreement. The Tenant stated that he has never been compensated for the cost of his filing fee.

The tenancy continued on a month to month basis until July 31, 2014.

The Tenant seeks a monetary award in the amount of \$5,000.00 for loss of peaceful enjoyment of the rental unit, compensation for his stolen property, "coercion, anxiety, and stress".

The Landlord's agent CM gave the following testimony:

CM submitted that the Tenant's claim is not supportable. He submitted that the Tenant's claim for damages with respect to the theft of his possessions should be dismissed because the Tenant failed to mitigate his loss because he had no tenant's insurance. CM submitted that the garage door professional recommended changing the machine, but that the theft was no fault of the Landlord's.

CM acknowledged that the Tenant complained that the New Occupants were "growing or storing Pot" and that the Tenant was disturbed by the New Occupants' loud parties and smoke from their cigarettes and marijuana. He testified that on February 27, 2014, the property management company sent a warning to the New Occupants indicating that the Tenant had made complaints about smoking on the rental property. CM stated that the New Occupants showed the property management a license to smoke medical marijuana. He acknowledged that he did not provide a copy of the license in evidence, and that he was not certain if there was a copy of the license on their file. CM stated that the New Occupants' tenancy agreement did not include a "no smoking" clause.

CM denied that the property management company's agent Lauren had agreed that the tenancy could continue on a month-to-month basis at the end of the term. He stated that Lauren was no longer employed by the property management company. CM referred to the email of February 12, wherein it stated that the property management company would need the owner Landlord's consent in order to extend the term of the tenancy.

CM submitted that the parties came to an agreement with respect to the Tenant's first Application for Dispute Resolution, which should be upheld.

### **Analysis**

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, **the director may determine the amount** of, and order that party to pay, compensation to the other party.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The excerpt of the tenancy agreement between the Tenant and the Landlord indicates:

- No smoking of any combustible material is permitted **on the residential property**, including within the rental unit. [my emphasis]

I do not uphold the agreement between the parties wherein the Tenant agreed to cancel the Hearing with respect to his first Application and to “not request anything further from the landlord”. Part of this agreement was that the Landlord would pay the Tenant \$50.00 in reimbursement of his filing fee. CM did not dispute that the Landlord did not pay the Tenant \$50.00. I find that the “agreement” was not perfected or completed and that the Tenant is therefore entitled to file this second Application.

I find that the Tenant did not provide sufficient evidence to prove his claim with respect to compensation for his stolen possessions. I find that the Tenant did not provide sufficient evidence of the cost of replacing the stolen items, and that the Tenant did not provide sufficient evidence that he mitigated his loss by carrying tenants’ insurance. Therefore, parts three and four of the test for damages listed above have not been met and this portion of his claim is **dismissed**.

With respect to the Tenant’s claim for loss of peaceful enjoyment due to the New Occupants’ noise, I find that the Landlord did not make sufficient attempts to address this issue with the New Occupants. CM’s testimony was with respect to the New Occupants’ smoking of marijuana only. I accept the Tenant’s evidence that the Landlord’s agents were given notice that the Tenant’s peaceful enjoyment had been breached and that the Landlord’s agents did not take reasonable steps to address this issue.

I accept the Tenant’s evidence that it was of paramount importance to him that the rental property be smoke free. I find that it was a material term of the tenancy agreement. I find that the Landlord’s agent, the property management company, did not take sufficient steps to assure that the New Occupants’ tenancy agreement included a “no smoking clause” and that the Tenant suffered a loss as a result of this breach.

I find that the Tenant’s monetary claim is excessive. Despite the Tenant’s concerns with respect to drug use, cigarette smoking and loss of use of the yard, the Tenant wished to continue the tenancy a further 3 months after the initial term was completed. However, I find that the tenancy agreement was devalued as a result of the Landlord’s breach of the tenancy agreement and the Act. Further to the provisions of Section 67 of the Act, I find that the Tenant has established a monetary award in the amount of the equivalent of one month’s rent, **\$1,800.00**.

The Tenant's Application had merit, and I find that he is entitled to recover the cost of the filing fee in the amount of **\$50.00**.

**Conclusion**

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,850.00** for service upon the Landlord. This Order may be filed in the Provincial Court (Small Claims) 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: April 10, 2015

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Residential Tenancy Branch

