



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Town and Country Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDC, FF

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were personally served to an agent for the Landlord, although she does not recall the date of service. The Landlord acknowledged receiving these documents on December 04, 2015.

On March 10, 2016 the Tenants submitted 48 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was personally served to an agent for the Landlord on March 07, 2016. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On March 15, 2016 the Landlord submitted 30 pages of evidence to the Residential Tenancy Branch. The female Agent for the Landlord stated that this evidence was placed inside the door frame of the Tenant's residence on March 15, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### **Issue(s) to be Decided:**

Are the Tenants entitled to compensation for property damaged in a house fire?

### **Background and Evidence:**

The Landlord and the Tenants agree:

- this tenancy began on May 01, 2004;
- there was a fire in the rental unit on January 03, 2014;
- the fire caused a significant amount of damage to the interior of the rental unit and to the Tenant's property;
- the rental unit could not be occupied after the fire;
- the fire investigation report, which was submitted in evidence, determined that the fire likely began in the oil fired furnace; and
- the fire investigation report determined that the fire was accidental.

The Tenants are seeking compensation for personal property that was damaged in the fire.

The female Tenant stated that:

- the only problem the Tenants noticed with the furnace during their tenancy was that it was dusty;
- in 2007 or 2008 there was a problem with the thermostat, which was replaced by the male Tenant;
- the only furnace maintenance completed after 2008 was completed by the male Tenant, who merely replaced the filter; and
- they did not have tenant's insurance.

The male Tenant stated that he was never asked to maintain the furnace, although he periodically changed the filter simply because nobody else was changing the filter.

The female Agent for the Landlord stated that:

- there was a problem with the furnace reported in 2008, although she cannot recall the nature of the problem;
- the problem with the furnace in 2008 was repaired by a furnace repair company;
- the Landlord had the furnace inspected annually until 2008, at which time the male Tenant agreed that he would maintain the furnace;
- the Landlord understood that the Tenant's agreement to maintain the furnace included changing the filter and reporting problems with the furnace;
- the Landlord's insurance company has paid for all repairs to the residential complex;
- the Landlord provided the Tenant with all documentation regarding maintenance of the furnace that the Landlord had in its possession;
- she does not recall what documents were provided to the insurance company or the fire department regarding maintenance of the furnace.

The Witness for the Tenants stated that:

- he is the author of the fire investigation report that was submitted in evidence;

- during his investigation the male Agent for the Landlord provided him with the name of the company that maintained the furnace for the Landlord;
- he contacted that company which had no service records for the furnace;
- the Tenants had told him that the furnace had not been serviced for many years, although it may have been serviced in the first year or two of their tenancy;
- he was unable to determine when the furnace was last serviced;
- a fire that starts in a furnace is not always related to lack of maintenance;
- the lack of maintenance could have been a “contributing factor” to the fire; and
- the most common causes of furnace related fires are lack of maintenance and “clearance of combustibles”.

The Tenants are seeking compensation for property that was stolen from the rental unit after the fire.

In support of this claim the male Tenant stated that:

- about 2-3 days after the fire someone broke into the house and stole additional personal property;
- he was present on January 04, 2014 and he knows the construction company did not secure the house on that date;
- the fire was still burning on January 04, 2014 at 2:00 a.m. when the construction company alleges it secured the house;
- he believes the construction company secured the house on January 05, 2014 or January 06, 2014;
- he went to the rental unit on January 06, 2014 or January 07, 2014 and noted that the rental unit had been “boarded up”;
- prior to going to the rental unit on January 06, 2014 or January 07, 2014 he was provided with a code to a “real estate box” and was told he would be able to access the unit with a key in that box; and
- when he arrived at the rental unit he was unable to find the “real estate box” and the door to the unit was insecure.

In response to this claim the female Agent for the Landlord stated that:

- after the fire the insurance adjustor hired a contractor to secure the residential property;
- she believes the construction company secured the property on January 04, 2014, as indicated in the construction company report;
- she does not know why it was secured again on January 12, 2014, as indicated in the construction company report;

The Landlord submitted a document from a construction company, dated March 26, 2014, in which the author of the report declared, in part:

- on January 04, 2014 they received an “Emergency after hours call: 2:00 am” to board up and secure windows and doors at the rear of the residence;

- on January 04, 2014 they received an “Emergency after hours call: 1:00 pm” to board up and secure windows and doors at the front of the residence; and
- on January 12, 2014 they re-secured the front entry.

The Tenants are seeking compensation for vandalism and theft to a motorhome that was parked on the residential property. The Tenants were advised that the Landlord cannot be held responsible for damage that occurs to vehicles parked on the residential property as a result of the criminal act of a third party. The Tenants were not, therefore, permitted to give evidence in regards to the vandalism/theft from the motorhome.

#### Analysis:

Section 32(1) of the *Residential Tenancy Act (Act)* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

On the basis of the fire investigation report submitted in evidence, I find that legislation requires oil-burning equipment to be maintained at least once per year. The evidence shows that the male Tenant periodically changed the filter in the furnace over the last several years of the tenancy but that the furnace was not maintained in any other manner. In the absence of more detailed evidence of the legislation regarding maintenance requirements, I am unable to conclude whether changing the filter can be considered adequate maintenance.

On the basis of the fire investigation report and the testimony of the author of that report, I find that the oil-fueled furnace was the source of the fire in the rental unit. He concluded that contributing factors may have included a vent duct not being securely fastened to the furnace and/or a malfunction related to normal wear and the absence of regular maintenance.

Even if the fire investigation report conclusively concluded that improper maintenance of the furnace was the cause of the fire, I would dismiss the Tenant's claim for compensation for all of their property that was damaged in the fire. In reaching this conclusion I was guided by section 7(2) of the *Act*, which stipulates, in part, that a tenant who claims compensation for damage or loss that results from a landlord's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

I find that the Tenants did not take reasonable steps to minimize their damage or loss. Specifically, I find that the Tenants did not have tenant's insurance which would have compensated them for the majority of their lost/damaged property in the same manner that the Landlord's insurance compensated the Landlord for the Landlord's loss.

Had the Tenant's purchased insurance and I was able to conclude that the fire was

caused by improper maintenance; I would have awarded the Tenants the amount of their insurance deductible. In these circumstances, where there is no deductible, I am unable to award compensation to the Tenants. The Tenants' claim for compensation for property damaged in the fire is dismissed.

I find that the Landlord acted reasonably and responsibly when they relied upon their insurance adjuster to ensure the residential property was secured after the fire. I find that the insurance adjuster acted reasonably and responsibly when they hired a construction company to secure the house. In reaching this conclusion I was heavily influenced by the letter from the construction company, dated March 26, 2014, in which they declare that they received two "Emergency after hours" calls on January 04, 2014 to secure the residence.

On the basis of the letter of March 26, 2014, I find it reasonable to conclude that the construction company did secure the residence on January 04, 2014. In reaching this conclusion I have placed little weight on the Tenants' submission that the fire was still burning at 2:00 a.m. on January 04, 2014 and could not, therefore, have been secured at that time. I note that the letter declares that the company received the first call after hours at 2:00 a.m.; it does not declare that the property was actually secured at that time. In my view, that would be consistent with the timeline of the fire and, presumably, the property would have been secured at some point after that time.

In determining that the residential complex was appropriately secured I was further influenced by the male Tenant's testimony that prior to going to the rental unit on January 06, 2014 or January 07, 2014 he was provided with a code to a "real estate box"; he was told he would be able to access the unit with a key in that box; and when he arrived at the rental unit he was unable to find the "real estate box" and the door to the unit was insecure. In my view this helps to establish that the residential property had been locked, although it appears someone broke into the rental unit after the property was secured, likely by stealing the key from the "real estate box".

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant when the tenant suffers a loss as a result of the landlord not complying with the *Act* or the tenancy agreement. While I accept that the Tenants suffered a loss as a result of someone breaking into the unit after the fire, I cannot conclude that the loss was the result of the Landlord's failure to secure the residential complex.

When a tenant suffers a loss that is not the result of the landlord failing to comply with the *Act*, a tenant is not entitled to compensation from the landlord for the loss. As the Tenants have failed to establish that the Landlord failed to comply with section 32(1) of the *Act* in regards to securing the rental unit, I dismiss the Tenants' claim for compensation for any theft from the unit that occurred after the fire.

I find that the Tenants' have failed to establish the merit of their Application for Dispute Resolution and I dismiss the claim to recover the fee paid to file this Application.

Conclusion:

The Tenants have failed to establish a monetary claim and their application for a monetary Order is dismissed.

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: March 26, 2016

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Residential Tenancy Branch