



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness provided evidence under oath.

### Preliminary Matter

It is noted that the Landlord did not receive a copy of the cd containing photos provided by the Tenant as evidence and that the Landlord has no objection to moving forward on the hearing without this evidence.

### Issue(s) to be Decided

Did the Landlord by act or negligence cause the rental unit to be damaged by fire?

Did the Landlord fail to provide a rental unit in a state of repair that complies with safety and housing standards required by law?

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy of an upper level unit in a house started on September 12, 2011. Rent of \$1,000.00 was payable on the first day of each month. On April 22, 2016 a house fire occurred

leaving the house unliveable. The security deposit collected by the Landlord at the outset of the tenancy has been returned to the Tenant.

The Tenant states that the fire started at about 11:00 a.m. in the morning and occurred as a result of faulty wiring that was put in place by the Landlord when the house was renovated to create the lower suite. The Tenant states that the Landlord did not have the permits to carry out the renovations. The Tenant states that the fire department report supports a finding of fault by the Landlord. The Tenant provided a copy of the fire department report.

The Tenant states that the fire left the Tenant speechless and dazed. The Tenant states that he is still affected by the fire and loss. The Tenant states that the Landlord never once told the Tenant that security would only be present for 19 hours. The Tenant states that they lost 90% of their belongings due to smoke and water damage. The Tenant states that for the two weeks following the fire the Tenant repeatedly begged the restoration company to allow him access and that 9 days after the fire the floor had been sufficiently secured for the Tenants entry. The Tenant states that he was told at this time to take as much as possible as it would be the Tenant's last opportunity.

The Tenant claims \$15,030.00 for the damage caused to the Tenant's belongings. The Tenant provides a particularized list of those items. The Tenant also provides invoices for the purchase of some of the items on that list. While the Tenant provided evidence about the age of the items lost, no evidence was provided on whether the amounts being claimed are replacement costs or loss of value costs.

The Landlord states the fire was started by a cigarette and provides a report done by another person on behalf of the Landlord's insurer. The Landlord provides a copy of that report. Each report notes that the fire started in the same area of the house by the carpet.

It is noted that the fire department report notes that some witnesses saw the fire start from the ground level and one witness saw it start at the top of the house. The fire department notes that no cigarette butts were found directly in or around heavily charred plant pots that were located near the area where the fire started. The fire report notes that a charred area along a wall where the fire started showed a wire leading to an empty receptacle that was split up the wall and that

an electrical breaker was thrown off. The fire department notes that this is the possible cause of the fire. The fire department does not note any possible start by cigarettes. The fire department notes that the lower tenant reported not smoking the morning of the fire as they were out of cigarettes. The report notes that the Tenant did smoke a cigarette before leaving for work and that the Tenant put the cigarette out in an ashtray. The report notes that this butt and ashtray were found as reported and no charring was around either.

The Landlord's report is noted to be an analysis of 3<sup>rd</sup> party report that finds the fire started due to the electrical wiring. The 3<sup>rd</sup> party report was not provided as evidence by either party. The Landlord's report notes that an examination of the area was done a day after the fire and notes several cigarette butts found on the ground in the area where the fire started. The Landlord's report concludes that the fire was caused by a cigarette likely put in the pot that was most charred and that there is no butt left to be found in the pots due to its combustion. The Landlord's report notes that the 3<sup>rd</sup> party report does not have any physical or witness evidence to support an electrical cause of the fire. The Landlord's report notes the evidence of witnessed who saw the fire start at the ground level. This report does not indicate any evidence from the witness noted in the fire report as having seen the fire start at a higher level.

The Tenant states that after the fire was extinguished the Tenant was only allowed into the unit to retrieve belongings but that the Tenant was only able to obtain a few personal articles as the smoke and chemical smell was overpowering at the time. The Tenant states that the fire department informed the Landlord that security was needed or the police would provide the security and the Landlord would be billed for the cost. The Tenant states that the fire department informed the Tenant that it was not safe to reenter the unit for 2 weeks in order to allow the restoration company time to ensure that the floor between the units was safe. It is noted that the fire report indicates that the property was returned to the owner at 4:00 p.m. on the day of the fire.

The Tenant states that the Landlord called the insurance company and people arrived and started boarding up the building. The Tenant states that the Landlord asked the people to allow the Tenant to enter again to obtain belongings. The Tenant states that he was led to believe that the security would be present until the Tenant could return to retrieve his belongings. The Tenant states that nobody warned him of any risks associated with leaving his belongings in the

unit. The Tenant states that when he returned the next day there was no security present and that the Tenant was able to retrieve some articles that did not appear to be damaged by the fire. The Tenant states that a few days after the fire and due to the lack of security on the house thieves entered and removed several items from the bedrooms. These items are detailed in the police report provided as evidence by the Tenant.

The Landlord's evidence was provided by the Witness, the Landlord's son, and through oral submissions by legal counsel as follows: The Witness was present on the day of the fire and when the insurance company arrived to board up the house. The Witness denies that the Tenant was told he could access the unit for two weeks and that the Tenant never asked for any security for his belongings. The Witness states that no discussion was held on what would happen after the fire. The Witness states that the Tenant asked the Landlord not to board up the door so that the Tenant could access his belongings. The Witness states that the police report also notes that the front door was not boarded up. The Witness states that the front door was only secured by a lock. The Witness argues that the police report notes these facts that would only have come from the Tenant. The Witness states that the police never spoke to the Landlord about the fire or the break-in. The Witness states that the Tenant was informed that security would only be present until everything was boarded up. The Witness states that the Tenant was not informed of how long security would be there. The Landlord argues that they are not responsible for securing the Tenant's belongings or the subsequent theft of those belongings. The Landlord argues that the Tenant has claimed the same items, i.e., clothes and shoes, as being damaged by the fire and as lost through theft. The Landlord argues that the Tenant provided no supporting materials of the items being claimed. The Landlord argues that the Tenant did not provide the police with further details of the missing property. It is noted that the police report indicates that the Tenant provided a detailed list of items on May 26, 2015. The Landlord argues that there are insufficient particulars of the items lost, particularly in relation to the claimed loss of jewelry. The Landlord argues that the claims are unreasonable given the number of suits and other clothing articles claimed. The Landlord argues that the Tenant has claimed for the loss of three TVs but also gave evidence that all the three TVs worked. The Landlord argues that if the Tenant required security for its belongings the Tenant should have asked the Landlord. The Landlord states that it would be unreasonable to expect security at the house for an indefinite period of time. The Landlord argues that boarding up the building satisfactorily meets the Landlord's obligation to reasonably secure the house.

The Witness states that their insurance covered the damage to the house itself but not the Tenant's contents. The Landlord states that the insurance company hired the fire investigator who authored the Landlord's report provided as evidence. The Landlord states that based on this report that the fire was caused by a cigarette the insurer denied coverage for the Tenant's losses as the Landlord was found not to be at fault.

The Tenant states that the Landlord refused to talk to the Tenant after the fire and would only yell at the Tenant. The Tenant states that he lost everything and that the Landlord failed to provide the Tenant with protection and did not even offer any compassion.

The Landlord argues that the stolen items are based on hearsay and that common sense dictates that the Tenant should have removed as much as possible instead of leaving it in the unit.

#### Analysis

Section 32 of the Act provides that a landlord must provide residential property in a state of repair that complies with the safety and housing standards required by law. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results.

The Landlord's report makes much of the fact that the 3<sup>rd</sup> party report does not have any physical or witness evidence to support an electrical cause for the fire and notes physical evidence of the present of cigarette butts and the evidence of witnesses that saw the fire start from the ground level. It is noted however that the Landlord's report fails to obtain any evidence from the witness, noted in the fire report, who saw the fire start at the top. Further, the fire department notes that no cigarette butts were present at the time of the fire and a full day passed before the Landlord's investigator went to the scene and found cigarette butts. I also consider that the persons who would most likely be around the house after the fire, the tenants, were smokers. I also note that while the fire department notes the wiring as a possible cause of the fire, the fire department does not note cigarette butts as a possibility. Given the evidence that no electrical permits were obtained by the Landlord to make the renovations for the lower

suite, I cannot find that the work was done in accordance to the law or that the work can be assumed to be up to the standard required. That is the purpose of requiring permits.

I consider the findings of a fire department present at the time of a fire to be more reliable than the findings of an investigator who attends the scene a day later. Further there is no evidence that the area around the house was secured leaving open the plausible occurrence of contamination of the area where the cigarette butts were found. As a result I find that the Tenant has substantiated on a balance of probabilities that the fire was caused by faulty electrical wiring. I find that the Tenant has substantiated on a balance of probabilities that the Landlord was negligent in renovating the house to create the basement suite. I find that this negligence resulted in the provision of an unsafe rental unit. As a result I find that the Tenant has substantiated that the Landlord breached the Act and is entitled to compensation for the damages that flow from this breach.

While it may be that the Landlord failed to sufficiently secure the unit after the fire, I note the Tenant's evidence that 90% of its belongings were damaged due to the fire. This indicates to me that the items lost through theft were damaged and of little value. I also consider the Landlord's evidence that articles listed as missing from theft were also listed as damaged by fire. As a result I find that the Tenant has not substantiated on a balance of probabilities the claim for the amount of articles lost through theft and I dismiss this claim.

Noting the damage set out in the fire report, I accept the Tenant's credible evidence that immediately after the fire the unit was dangerous to be inside and that the Tenant was unable to remove most of its belongings for that reason. I also accept that the Tenant mitigated its losses by removing some of the belongings from the unit, despite the danger to the Tenant in doing so. It is unknown if the costs set out for the items damaged in the fire represent costs to replace or compensation for value lost. However, despite the difficulty in reconciling this difference, the Tenant is entitled to be compensated for its significant loss of most of its belongings due to the fire, some of which are not doubt invaluable sentimental items. As I consider the claimed amount of **\$15,030.00** to be a reasonable and modest amount to cover the lost value of the belongings of the Tenant and its family members, I find that the Tenant is entitled to this amount. As the Tenant's application has also been primarily successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$15,130.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$15,130.00**. If necessary, this order may be filed in the Small Claims 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: July 15, 2016

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Residential Tenancy Branch