



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sussex Realty Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Landlord: MNDC, O, FF  
Tenant: MNDC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by one of the named landlords; two agents for the landlords; and the tenant.

As noted below the tenant refers, in her testimony, to an addendum from a friend's tenancy agreement. I would not allow the tenant to submit the document as evidence for two reasons. The first reason is that under the Residential Tenancy Branch Rules of Procedure evidence must be served on the other party no later than 14 days before the hearing when it is the applicant's evidence.

In addition, the tenant would not provide the name of the party who is subject to the tenancy agreement that she states she has the addendum from. As such, I find that there is no practical way to determine the validity of the addendum. I also find it would be prejudicial to the landlord to respond to such incomplete and unauthenticated evidence.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to compensation for time in preparing for this hearing; costs for hiring legal counsel to prepare for this hearing and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 7, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to compensation for moving costs; return of all rent; and photocopies, pursuant to Sections 7, 67, and 72 of the *Act*.

### Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement signed by the parties on November 1, 2014 for a month to month tenancy agreement beginning on November 1, 2014 for a monthly rent of \$850.00 due on the 1<sup>st</sup> of each month with a security deposit of \$425.00 paid.

The parties used the standard Residential Tenancy Agreement published by the Residential Tenancy Branch containing all of the standard terms required for a tenancy agreement and an indication that there is no addendum to this specific tenancy agreement.

The tenant submitted the tenancy ended on May 31, 2015 despite her having to stay at various alternate locations during the tenancy.

The tenant submitted that when she left her previous tenancy she was doing so, at least in part, because she is asthmatic and cigarette and marijuana smoke permitted on the residential property was bothersome. She stated that her friend and colleague had mentioned that where she lived was a smoke-free residential property and she should look into it.

The tenant submitted the landlord informed her it was a non-smoking building and property and that the person above the subject rental unit and the person below it were both non-smokers.

The tenant testified that when she submitted her evidence she could not find the addendum to her tenancy agreement but that she got a copy of an addendum that she stated came from her friend's tenancy agreement with the landlord. The tenant would provide any details as to who's tenancy agreement the addendum came from.

The tenant read into evidence from this addendum that there was no smoking allowed in common areas such as halls and the laundry rooms. The tenant could not explain why the tenancy agreement states that there is no addendum she believes there was an addendum when she signed the tenancy agreement.

The tenant submitted that as a result of smelling smoke in the rental unit right from the start of the tenancy she had to contact the landlord several times to complain about smelling smoke in her rental unit. The tenant provided a list of 40 dates and times that she contacted the landlord. She clarified in the hearing that not all calls were related to the smell of smoke or someone smoking but that "many" of the calls were for that reason. She stated at least half of all of the calls were in regard to smoking.

The tenant submitted that if the landlords were not concerned about correcting a problem for the tenant regarding smoking it does not make sense that they would investigate each complaint. The landlord submitted that they had to investigate each complaint in case there was a problem with their heating and ventilation systems.

The landlord submitted that they had only received about 5 calls from the tenant and investigated the complaint and found no evidence that smoke was getting into the tenant's rental unit. The landlord testified that the tenant instead reported things of a personal nature when she would call such as being hospitalized for a bladder infection.

The landlord submitted that the issue of smoking on the property was not raised by the tenant during the showing of the rental unit or residential property. The landlord submitted that the tenant had indicated she was leaving the other rental unit.

The landlord acknowledges that common areas on the property are considered to be non-smoking. The landlord testified that he believed it was Canadian law required this restriction but it was not a part of any tenancy agreement and they do not add addendums to the standard tenancy agreement used.

The tenant seeks return of 7 months' worth of rent in the amount of \$5,950.00; moving costs of \$160.00; and photocopies in the amount of \$24.19 for a total claim of \$6,134.19.

The landlord seeks compensation for his time in preparing for this hearing in the amount of \$1,000.00; for his agent's time in the amount of \$100.00 and for legal fees incurred by the landlord to prepare for this hearing in the amount of \$672.00 for a total claim of \$1772.00 plus the filing fee of \$100.00 for this claim.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 7 of the *Act* states if a party to a tenancy does not comply with the *Act*, regulations or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results.

The section goes on to state that the party who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In regard to the tenant's claim that the landlord provided false information that she relied upon to decide to enter into the tenancy agreement and as a result she suffered a loss equivalent to the value of rent for the rental unit for the duration of the tenancy; recovery

of moving costs to move out of the rental unit and to make photocopies of her evidence I make the following findings.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In this case, burden rests with the tenant to provide sufficient evidence the landlord has not complied with the *Act*, regulation or tenancy agreement. As the landlord disputes the tenant's assertion that the issue of smoking was raised by the tenant when viewing the rental unit, the tenant must provide some form of corroborating evidence to establish if any promises were made that she then relied upon when deciding to enter into the tenancy agreement.

I find the tenant has failed to provide any evidence that would confirm any promises were made to her that the property was non-smoking or that any particular promise was made regarding the occupants of other rental units around the subject unit. Such evidence might include a tenancy agreement and/or addendum that provides confirmation that the entire property is non-smoking or some form of building rules provided or posted in conspicuous locations on the residential property that no smoking is allowed anywhere on the property.

I find the tenancy agreement submitted into evidence by the tenant herself confirms that there are no additional terms to the tenancy agreement than what was submitted. As such, I find the landlord had no obligation in this tenancy to provide a smoke-free environment.

As a result, I find the tenant has failed to establish any violation of the *Act*, regulation or tenancy agreement and her claim for compensation for moving costs and return of all of her rent; and photocopies must fail.

Section 58(1) of the *Act* states that except as restricted under this *Act*, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) Rights, obligations and prohibitions under this Act;
- (b) Rights and obligations under the terms of a tenancy agreement that
  - (i) Are required or prohibited under this Act, or
  - (ii) Relate to
    - (A) The tenant's use, occupation or maintenance of the rental unit, or
    - (B) The use of common areas or services or facilities.

The landlord seeks compensation for the time spent and legal counsel fees incurred to prepare to respond to the tenant's claim. As per Section 58(1) any tenant is allowed to

file a claim against the landlord as such, I find the tenant, by filing such a claim, as not violated the *Act*, regulation or tenancy agreement.

Therefore, I find the landlord has failed to establish that he has any ground to recover these costs. I also note the *Act* does not allow for compensation to either party for their time to conduct their business or to pursue and respond to claims by the other party or any legal costs incurred during the process.

### Conclusion

Based on the above, I dismiss both the landlords' and the tenant's Applications for Dispute Resolution in their entirety without leave to reapply.

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: November 30, 2016

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Residential Tenancy Branch