



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

On July 19, 2016, the Landlord submitted an Application for Dispute Resolution seeking a monetary order in the amount of \$25,000.00 for damage to the rental unit. The Landlord is also seeking to retain the security deposit and recover the cost of the filing fee. The matter was set for a conference call hearing.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The initial hearing on January 23, 2017, was adjourned. More time was needed for the parties to testify and respond. The hearing reconvened on February 21, 2017, and both parties were present. I have made Interim Decisions in this matter which should be read in conjunction with this decision.

The hearing was adjourned again on March 2, 2017, to allow the Landlord an opportunity to revise the monetary order worksheet to a maximum of \$25,000.00. The hearing reconvened on March 30, 2017, and the Tenant confirmed he received the Landlord's amended monetary order worksheet.

At the March 30, 2017 hearing, the Tenant raised an objection to allowing new evidence that was submitted from the Landlord. The new evidence was not admitted in accordance with my Interim Decision where I ordered that the parties were not permitted to provide any additional evidence, or to amend their application.

During the hearing the Landlord testified that she returned the security deposit to the Tenant on September 13, 2016. Therefore, the Landlord's request within the Application to keep the security deposit is dismissed.

#### Issues to be Decided

- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to recover the cost of the filing fee?

#### Background and Evidence

The parties testified that the tenancy commenced on November 1, 2002, as a month to month tenancy. Rent in the amount of \$788.00 was due to be paid on the first day of each month. The Tenant paid a security deposit in the amount of \$307.50 to the Landlord. The tenancy ended on April 28, 2016, due to a fire.

The rental unit is a 700 square foot apartment in a rental building. The Landlord purchased the building on September 14, 2015.

The Landlord testified that there was fire within the rental unit that was deliberately set by the Tenant's guest. The Landlord testified that the rental unit was damaged and required extensive cleaning and repair. The Landlord testified that the Landlord did not file a claim through insurance because the insurance deductible is \$75,000.00.

The Landlord provided a copy of a Fire Investigation Report ("the Report") obtained from the Fire Department. The Report provides a description of the fire and photographs of the exterior and interior of the rental unit. The Report includes the following information:

- From the street there was visible smoke and heat damage above the bedroom window and sliding glass door.
- The origin of the fire was the bedroom of unit 328 and the female occupant admitted to manually starting the fire.

The Report also provides:

- Heavy dark smoke was coming out of the window.
- The fire was struck and there was no extension beyond the room of origin.
- The unit below was investigated to mitigate water damage.

The Report contains photographs of the exterior and interior of the rental unit and property. Some of the photographs provide descriptors as follows:

Photo 0008	Smoke damage out the balcony
Photo 0029	Kitchen; no signs of fire damage
Photo 0030	Stove; no sign of fire damage
Photo 0031	Living room shows some smoke damage
Photo 0038	Bathroom
Photo 0039	Bathroom minor water damage
Photo 0041	Bathroom: no signs of fire or smoke
Photo 0049	Bedroom burn pattern on east wall
Photo 0050	Bedroom door fire damage
Photo 0054	Bedroom floor has fire damage and debris
Photo 0066	Floor under carpet is concrete slab
Photo 0071	Bedroom door and wall fire damage

The Landlord provided a revised monetary order worksheet requesting compensation from the Tenant in the amount of \$25,000.00 for the following items:

Restoration (item 1,2,6,7,8)	\$21,779.00
Renovation Contractor (item 4-11)	\$1,877.00
Bedroom window	\$685.00
Cleaning and flood restoration	\$659.00

### Restoration

The Landlord provided an invoice from a restoration company for the repair and renovation of the rental unit in the amount of \$21,779.00. The Landlord testified that abatement was performed to remove damaged drywall, and carpeting. The Landlord testified that the carpets were 20 years old. The Landlord testified that the bathroom tub surround was removed.

The Landlord testified that the renovation costs included a new bedroom door and new drywall for the bedroom walls and ceiling. The Landlord testified that the entire rental

unit was primed and repainted due to the heat and smoke damage. The Landlord testified the unit was last painted approximately 20 years prior.

The Landlord testified that the exterior of the building needed to be painted because of smoke damage. The Landlord provided a photograph of the exterior of the rental unit.

The Landlord provided an invoice for the following items:

- Fire Suite Abatement \$4,265.00
- Suite Reinstatement/ Renovation \$16,969.00
- Prime and paint exterior soffit \$475.00

#### Renovation Contractor

The Landlord provided an invoice from a contractor for the renovation of the rental unit in the amount of \$1,877.00.

The Landlord testified to the cost of the following items:

- Vanity \$252.00
- Extra coat of paint \$65.00
- Paint the bathroom \$190.00
- Paint kitchen cabinet \$200.00
- Paint kitchen cabinet 240.00
- Paint bathroom vanity \$160.00
- Paint bathroom vanity \$140.00
- Kitchen counter top \$630.00

The Landlord testified that the kitchen countertop was old and had water damage. The Landlord stated that she does not have any photographic evidence of the damage.

#### Window

The Landlord is claiming the cost to purchase and install a new bedroom window. The Landlord testified that the window was damaged by smoke and heat and would not close. The Landlord provided a receipt for the window replacement cost. The Landlord is seeking \$685.00 for this repair.

#### Cleaning

The Landlord testified that after the fire, a restoration company attended the unit with an air scrubber, dehumidifier, and a flood restoration unit for the unit below the Tenant's. The Landlord testified that the unit below the Tenant's had water damage. The Landlord is seeking \$659.00.

### Tenant's Response

The Tenant acknowledged that his ex-girlfriend started the fire in the rental unit.

The Tenant contests a number of the Landlord's claims for the following reasons:

- The Landlord's claim is an over reach of compensation for areas that were not affected by the fire;
- The Landlord has not assigned a value or itemization of what was damaged by the fire;
- The Landlord is seeking compensation for items that were beyond their useful life; and
- The Landlord made no effort to mitigate the costs of abatement and repair.

The Tenant submitted that the Landlord has applied for numerous claims that were not affected by the fire. The Tenant referred to photographs contained within the fire report of the kitchen and bathroom. The Tenant submitted that the area of origin of the fire was the bedroom and that the fire report states that there was no fire damage to the kitchen, living room, and bathroom.

The Tenant submits that the Landlord's invoices are not broken down adequately. He submits there is no itemization of the specific costs for items that were damaged by the fire.

The Tenant submitted that everything in the rental unit was beyond its useful life. The Tenant referred to the Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements. The Tenant submitted that the building was erected in the 1960's and all the fixtures, carpets, doors, windows, and drywall are beyond their useful life.

The Tenant submitted that the Landlord has made no effort to minimize the cost of the repairs. The Tenant submitted that only the drywall affected by the fire should have been replaced. The Tenant submitted that the Landlord is renovating units in the property and has renovated his entire unit and is attempting to recover the entire renovation costs. The Tenant provided copies of advertisements showing the renovations of other rental units in the property.

The Tenant submits that the Landlord uses a construction company who, according to their website, only performs work for the Landlord. The Tenant submits that the Landlord did not get multiple quotes to perform the work. The Tenant submitted that he works in construction and the Landlord's costs are high. He submitted that drywall does not cost very much.

The Tenant agreed to pay the amount of \$1,428.00 for the cost of cleaning and because he left some possessions behind.

The Landlord responded by submitting that the drywall doesn't cost much, but the labour costs to perform the work with a professional company is expensive. The Landlord submitted that the quote from the construction company was the lowest quote they received.

### Analysis

Residential Tenancy Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications for damages. The Guideline provides that an arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Under section 62 of the Act, the director has authority to determine disputes in relation to which the director has accepted an application for dispute resolution, and

*(b) any matters related to that dispute that arise under this Act or a tenancy agreement.*

*(2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.*

*(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order*

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

Based on the above evidence and testimony before me, I make the following findings:

I find that the Tenant is responsible for the actions of his guest and the Tenant is responsible for the damage caused by the fire at the rental property by his guest.

I find the Fire Investigation Report to be reliable information. The report was authored by an independent authority who had no vested interest in the outcome of this hearing. I assign substantial weight to contents of the Report.

I assign no weight to the Condition Inspection Report ("the CIR") submitted by the Landlord. The CIR was not completed at the start of the tenancy, lacks sufficient detail to indicate damage, and is not signed by the Tenant. I find that the CIR is not evidence of the state of repair and condition of the rental unit at the start and end of the tenancy.

I find that the fire was contained to the bedroom; however, due to the bedroom door being ajar, smoke from the fire affected the interior of the rental unit, and the exterior balcony and soffit.

I find that the Tenant is responsible for the abatement and reinstatement costs for work done to the bedroom. I find that the Tenant is also responsible for any claims to paint the rental unit due to the smoke that affected the interior walls and ceiling of the rental unit and the exterior balcony and soffit.

I do not find that the Tenant is responsible for costs to renovate the kitchen and bathroom and livingroom flooring of the rental unit. I prefer the evidence of the Report that indicates the fire was contained to the bedroom, and I do not find the Tenant is responsible to pay for the renovations to the bathroom and kitchen.

I find the Landlord's evidence supports that the claim goes beyond remediation and includes renovation. The Landlord provided an insufficient breakdown of costs because the invoices she provided combine the costs for abatement and renovation. The Landlord did not itemize the specific costs for each activity. Therefore, the Landlord's claims for renovating the kitchen and bathroom are dismissed.

I find that it is not appropriate to consider the age of the building elements in calculating the Tenant's responsibility for the cost of repairs. While the carpet, drywall, and paint may have been beyond their useful life, there is insufficient evidence before me that they were in need of any repair. The fire was started intentionally by the Tenant's guest, and I find that in the circumstances it would not be appropriate for the Landlord to bear the cost of replacement for items that were damaged or affected by an intentional act.

Pursuant to section 67 of the Act, I award the Landlord the following amounts:

### Restoration

I award the Landlord 75% of the claim for \$4,265.00 for the costs to remove and dispose of drywall, carpet, and damaged furniture. I do not find sufficient evidence that

the Landlord needed to remove and dispose of any items in the bathroom or kitchen. The Landlord is awarded \$3,198.75.

I award the Landlord 25% of the Landlord's claim of \$16,969.00 for Reinstatement/Renovation. The Landlord is awarded \$4,242.25 for reinstatement costs. I find that the Tenant is not responsible to pay for renovations in the rental unit for items that were not affected by the fire. I find that kitchen and bathroom renovations are much more expensive than the reinstatement of a bedroom and painting costs and the Landlord's claim is reduced by 75% to account for this.

#### Renovation Contractor

I find that smoke from the fire affected the painted surfaces of the rental unit and the Tenant is responsible for the costs of painting the rental unit. The Landlord testified that her claim for reinstatement and renovation included the cost of painting the entire unit because of heat or smoke damage.

I find that the painting costs were included in the reinstatement invoice. I do not find sufficient evidence from the Landlord that the Tenant is responsible to pay for items 4 to 11 in the invoice provided, and these claims are dismissed.

#### Window

After considering the testimony of the parties and the evidence and photographs within the Report, I find that the Tenant is responsible for the cost of replacing the bedroom window. I grant the Landlord the amount of \$685.65 for the cost of the window replacement.

#### Cleaning & Restoration

I find that the Tenant is responsible for the cost of the cleaning and restoration after the fire. The Landlord took action against further damage and claims by arranging for dehumidifiers, air scrubbers, and anti-microbial treatments. I grant the Landlord the amount of \$659.67.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful in the application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a monetary claim as follows:



Restoration	\$7,441.00
Window	\$685.00
Cleaning & Restoration	\$659.00
Filing fee	\$100.00
Total	\$8,885.00

I grant the Landlord a monetary order in the amount of \$8,885.00. This order must be served on the Tenant and may be enforced in Provincial Court.

### Conclusion

The Tenant is responsible for damage caused to the rental unit due to a fire that was deliberately set by the Tenant's guest. I find that the Tenant owes the Landlord the total amount of \$8,885.00.

I grant the Landlord a monetary order in the amount of \$8,885.00. This order must be served on the Tenant and may be enforced in Provincial 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 28, 2017

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Residential Tenancy Branch