



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT MNDCT MNRT MNSD RPP OL

### Introduction

This hearing dealt with applications from both parties for compensation under the *Act*.

The landlord applied for:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order declaring the tenancy frustrated; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant applied for:

- a Monetary Order pursuant to section 67 of the *Act*;
- a return of the security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing by way of conference call. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords' explained that four separate evidentiary packages along with an application for dispute were sent to the tenant by way of Canada Post Registered Mail. The tenant acknowledged having received these documents. Pursuant to sections 88 & 89 of the *Act*, the tenant is found to have been duly served in accordance with the *Act*.

The tenant said he served the landlords with two separate evidentiary packages. The first package, given on November 8, 2018 was received by the landlords, while the second package, placed in the mail box of the rental unit in question on November 12, 2018 was not received by the landlords. Section 90 of the *Act* states, delivery of documents in this manner would deem them served three days after being placed in the mailbox. The evidence would therefore be deemed served on November 15, 2018.

*Residential Tenancy Policy Guideline 3.14* states, “Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.” The documents were deemed served on November 15, 2018, while the date for hearing was November 23, 2018. I therefore find the tenant has failed to serve the landlords by the final allowable date for service. I therefore decline to consider this portion of the tenant’s evidentiary package.

Following opening remarks, the landlords said they were seeking to amend their application for dispute and were looking to lower their application to reflect a new monetary amount of \$220.00. Pursuant to section 64(3)(c) of the *Act*, I amend the landlords application to reflect this new, lower amount.

#### Preliminary Matter – Frustrated Tenancy

A portion of the landlords’ application sought to have the tenancy declared frustrated. *Residential Tenancy Policy Guideline #34* notes, “A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because of an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.”

The parties explained a large fire had engulfed the rental home and destroyed the top floor, with the basement suite (and the unit in question) suffering water and smoke damage.

Section 56.1 of the *Act* states, “A landlord may make an application for dispute resolution requesting an order ending a tenancy because the unit is uninhabitable or the tenancy agreement is otherwise frustrated.” Both landlords and the tenant agreed that the unit was no longer habitable and the tenant had secured new accommodation, stating he did not wish to occupy the rental unit in question a future date. I therefore, find this tenancy ended by way of frustration as of November 26, 2018 and grant the landlords an immediate Order of Possession.

#### Issue(s) to be Decided

Is either party entitled to a monetary award?

Can either party recover the filing fee?

Is either party entitled to a return of the security deposit?

### Background and Evidence

Testimony provided by both parties explained this tenancy began on March 1, 2016. Rent was \$1,150.00 per month and a security deposit of \$525.00 paid at the outset of the tenancy continues to be held by the landlords.

In September 2018 the rental home which contained the unit in question was subject to a significant fire. This fire destroyed the rental unit and forced the tenant to move from the home.

The tenant is seeking a monetary award of \$22,650.00 for alleged loss under the tenancy, while the landlords are seeking an award of \$220.00.

The landlords said their application stems from an incident which occurred following the fire. The tenant's restoration company removed a dryer from the home and placed it in storage. The landlords said this dryer was their property and noted the restoration company refused to release the dryer to them without the tenant's consent. The tenant acknowledged the dryer was the landlords' property but stated he was owed \$150.00 for a delivery charge related to the dryer and therefore sought a return of these funds, prior to the dryer being returned or instructing the restoration company to release it.

The tenant seeks \$22,650.00 as follows:

ITEM	AMOUNT
Repaying of rent for 12 months (12 x \$1,150.00)	\$13,800.00
Damage to property by upstairs tenants and their children	600.00
Loss of Quiet Enjoyment during tenancy (17 x \$150.00)	2,550.00
Broken washer/dryer during tenancy (31 x \$150.00)	4,650.00
Return of Security deposit (2 x \$525.00)	1,050.00
<b>TOTAL =</b>	<b>\$22,650.00</b>

The tenant explained that he was seeking a monetary award in reflection of losses incurred during and following the tenancy. Specifically, the tenant said he was seeking a return of rent for one year because of losses associated with the fire. The tenant alleged the landlords had been negligent and failed to ensure that the rental unit had working fire alarms. The tenant said he voiced his concerns regarding the upstairs tenants to the landlords but he said these complaints were ignored and he suffered a resulting loss of quiet enjoyment during the tenancy. The tenant detailed damage his personal property suffered at the hands of the upstairs tenants' children and he provided photos depicting the damage in support of his testimony. The tenant said the upstairs tenants had several children who would create a significant amount of noise and havoc.

Further to the above described issues surrounding the tenancy, the tenant said he was seeking compensation for the disruption suffered to his life because of the fire. The tenant explained he had experienced numerous "out of pocket" expenses that his renters insurance would not cover and he had faced increased rental costs.

The final portions of the tenant's application concerned the landlords' alleged failure to repair a washer/dryer and loss of items which were left outside the home following the fire. The tenant said he made repeated requests to the landlord seeking a repair of the washer/dryer which went ignored. The tenant explained he eventually purchased his own washer/dryer and was never reimbursed for the charge associated with the delivery fee. The tenant said, following the fire, several expensive automobile and other personal items were recovered and placed at the side of the house by his insurance company. When the tenant went to retrieve these items they were missing, and the tenant sought compensation for their replacement.

In addition to the tenant's application for a monetary award, the tenant has applied for a return of his security deposit.

The landlords sought a dismissal of the tenant's application for a monetary award. The landlords testified they took adequate steps to ensure the rental unit was safe for occupation. Specifically, they said the rental unit in question was equipped with working smoke alarms that were tested at move-in and the suite was equipped with a fire extinguisher. The landlords said all smoke alarms had not expired and were valid until January 4, 2021.

The landlords acknowledged that during the course of the tenancy a family began occupying the main floor of the rental home. The landlords disputed the tenant's allegation that these people caused a significant interference, noting the noises to which

the tenant made reference in his testimony related to the everyday noises associated with a family living on the main floor of a home. The landlords said the main floor contained three bedrooms which housed several children and noted it was inevitable that these persons would cause more noise than the single occupant who had previously lived above the tenant.

The landlords questioned what, if any duty they owed the tenant as it related to damage caused by the upstairs tenants' children or for items lost or stolen after having being placed outside by the tenant's insurance company. Furthermore, they argued that the tenant's insurance provided him with coverage related to any loss which resulted from the fire. Under questioning by the landlords, the tenant acknowledged receiving a lump sum payment on September 4, 2018 and said he may receive more money in the future, but he noted he had limits on his insurance which would not cover some items for which he sought compensation; nor would his insurance reflect his increased living expenses.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on both parties to prove their entitlement to a monetary award.

Section 67 is expanded upon by *Residential Tenancy Policy Guideline #16* which says, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether a party to the tenancy agreement has failed to comply with the *Act*, regulations or tenancy agreement and loss has resulted from this non-compliance."

I find the entirety of the landlords' application and a majority of the tenant's application relate to matters that do not fall within a failure by either party to comply with the *Act*, regulations or the tenancy agreement.

The landlords' application for a monetary award relates to a disagreement with the tenant regarding an item purchased for the rental home. A large portion of the tenant's application concerns personal property not covered by his insurance, relief in addition to that provided by his insurer or actions taken by his insurer which potentially led to a loss of personal items. Following a review of the evidence submitted by the parties and after having considered their testimony, I find the landlords did take concerted steps to address the issues related to a washer/dryer. Specifically, when a new machine was purchased by the tenant, the landlords provided the landlord with a rental credit in reflection of this purchase. I dismiss the landlord's application in its entirety and will only focus on the portion of the tenant's application as it relates to loss of quiet enjoyment, a broken washer/dryer and a return of the security deposit.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. *Residential Tenancy Policy Guideline #6* further discusses the right to quiet enjoyment explaining:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

After reviewing the tenant's evidentiary package and considering his oral testimony, I find that the tenant has failed to demonstrate that he suffered from *frequent* and *ongoing* interference or unreasonable disturbances. Many of the issues cited by the tenant related to the daily noises associated with living in a basement suite. Furthermore, the landlord cannot be held responsible for the actions of a tenant's child.

In this case, the tenant sought compensation from the landlord as it related to damage to his personal belongings by the upstairs tenants' children. I find the landlord had no responsibility as it related to the actions of these children and therefore cannot be found to owe the tenant any compensation for damage that arose as a result of their actions. For these reasons, I dismiss this portion of the tenant's application.

I accept the landlords' testimony that they did not have knowledge of the tenant's intention to have the washing machine and dryer delivered and in the absence of any evidentiary information provided by the tenant in relation to his application for a return of the delivery fee, I dismiss this portion of the tenant's application.

Both applications for monetary awards are dismissed without leave to reapply. Both parties must bear the costs of their own filing fee.

The landlords are directed to return the tenant's security deposit in its entirety. I decline to double the tenant's security deposit pursuant to section 38 of the *Act*, as the tenancy officially ended following my order that it was frustrated and the landlords therefore did not fall outside the time permitted to apply to withhold the deposit pursuant to section 38.

### Conclusion

The landlords' application for a monetary award is dismissed without leave to reapply.

The tenant's application for a monetary award is dismissed without leave to reapply.

The landlords are directed to return the tenant's security deposit in its entirety.

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: December 5, 2018

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Residential Tenancy Branch