



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to service of the application and evidence on file.

### Issues

Is the tenant entitled to compensation for loss and recovery of the filing fee?

### Background and Evidence

The rental unit is a studio suite in an 8 unit building. The tenancy began on November 1, 2012. The tenancy was frustrated as a result of a fire that occurred on November 17, 2017. The fire started by accident in a vacant unit in which repairs were being performed. The tenant's security deposit was returned in full by the landlord.

The tenant is claiming \$876.15 in storage related costs and alleges that she "suspects" the fire started as a result of the negligence of the landlord. The tenant alleges the contractor the landlord hired was not licensed and has since gone out of business.

The tenant is also claiming \$2000.00 for emotional distress. The tenant testified that after the fire, she was initially permitted to access her rental unit by the fire department

in order to retrieve some belongings and personal effects. The tenant alleges that after this initial access opportunity, the landlord restricted access to the building for 3 weeks. The tenant alleges the landlord did not provide any official reason to deny access such as a city order. The tenant testified that the insurance company only recommended people don't access the building but did not prevent such. The tenant alleges the landlord requested her to sign a waiver of liability before allowing access which she refused to sign. The tenant was able to gain access on December 3, 2017 and retrieve additional personal effects including her passport and some cash. The tenant ended up using her own key to gain access. She testified that she just assumed her key wouldn't work as the landlord had informed her that locks were going to be changed and she would not be able to access the unit. The tenant alleges the landlord miscommunicated information as to the reason access was being restricted.

The tenants witness did not provide any other relevant testimony other than confirming the above account from the tenant.

The landlord testified that she provided updates to all affected tenants in a timely manner and simply followed the advice of her insurance company. The landlord testified that there were concerns of asbestos and structural damage so they were advising the tenants that it was not safe to enter the building. The landlord testified that they held a meeting with all tenants on November 28, 2017 and arranged for dates for when the tenants could access the building. The landlord submitted a business licence for the contractor that was performing the renovation work at the time of the fire.

### Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

*Residential Tenancy Policy Guideline #16* "Compensation for Damage or Loss" provides the following guidance:

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, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

With respect the tenant's claims for storage related costs, I find the tenant has failed to establish that this loss was as a result of the landlord's failure to comply with the Act, regulation or tenancy agreement. The tenant provided no evidence to support her claim that the fire started as a result of negligence on the part of the landlord. The landlord submitted a copy of a business license which supports the contractor was licensed at the relevant time. This part of the tenant's claim is dismissed.

With respect to the tenant's emotional stress, I find that regardless of whether or not the landlord had valid reasons to restrict access or miscommunicated the reasons for restricting access to the unit after the fire, the tenant has failed to provide any evidence of how she suffered a loss as a result. The tenant had access to the unit on the day of the fire to retrieve personal belongings and again had access approximately two weeks after. Other than advise tenants they were not to enter, the landlord did not physically change any locks which would restrict access. Further, the tenant did not provide any medical evidence in support of being emotionally distressed or any evidence of how this emotional stress caused her to suffer a loss of \$2000.00. This part of the tenant's claim is also dismissed.

As the tenant was not successful in this application, the tenant is not entitled to recover the filing fee.

### Conclusion

The tenant's application is dismissed in its 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: June 13, 2019

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Residential Tenancy Branch