



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, MNDCT, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentation for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, **I refer to only the relevant facts and issues in this decision.**

### Issue to be Decided

Is the tenant entitled to a monetary award as compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the tenant entitled to an order that compels the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The tenant gave the following testimony. The tenancy began on January 15, 2015 with the current monthly rent of \$2000.00 payable on the first of each month. The tenant testified that she is responsible for 50% of the utilities. The tenant testified that she resides in the top floor of a two-level home. The tenant testified that when the downstairs tenants moved in on November 1, 2018; they consistently smoked cigarettes and marijuana. The tenant testified that the smoke entered her unit and made her physically ill. The tenant testified that she made numerous attempts to resolve it by working with the downstairs tenants, but to no avail.

The tenant testified that she has a babysitting business and that the constant smell of marijuana affected her business in that she lost several clients. The tenant testified that she incurred larger than normal heating costs because she had to air out her home by leaving doors and windows open for several hours to clear the air. The tenant testified that she took on the task of acting as the landlord's agent to file an application and obtain an order of possession for him in regard to the downstairs tenants. The tenant testified that due to the abusive behaviour of the tenants, the landlords lack of effort, and the constant smell of smoke; she seeks the following monetary compensation:

Hydro	\$900.00
Loss of Employment Revenue	\$5200.00
Loss of Quiet Enjoyment	\$3500.00
Filing Fee	\$100.00
	\$
	\$
<b>Total:</b>	<b>\$9700.00</b>

The landlord gave the following testimony. The landlord adamantly disputes the tenants monetary claim. The landlord testified that neither party has a "no-smoking" clause in their tenancy agreement. The landlord testified that the other tenants would complain that the subject tenant would instigate confrontations and that she was the one disturbing the peace in the home. The landlord testified that the subject tenant did obtain the order of possession for him, to which he served on the female tenant living in the basement that was the primary issue. The landlord testified that she vacated in late June or early July and the problem has been resolved. The landlord testified that her father has remained a tenant in the basement and does not smoke in the home or near

the upstairs tenant's unit. The landlord testified that it was a slow and difficult process to correct the problems but submits that tenants have a lot of rights and that he was subject to the law and the lengthy process involved to end a tenancy. The landlord submits there hasn't been an issue for the past several months and isn't sure why the tenant has filed this application. The landlord testified that the matter is resolved and that the tenant shouldn't get any compensation.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the tenant's application and my findings as follows.

Hydro - \$900.00

The tenant submitted that she should be entitled to 50% of her hydro costs for heating the home but did not provide sufficient evidence to quantify the amount as sought. The landlord argued that the amount of her costs has been consistent throughout her tenancy and that there hasn't been an increase. In addition, the landlord testified that the heating system is gas, not electric; so he was unsure as to why she seeks electrical costs that have no relation to the heating. Based on the tenants lack of clear and detailed documentation as to how she came to the amount as sought, I must dismiss this portion of her application.

Loss of Employment Revenue- \$5200.00

Both parties confirmed that this is a residential tenancy agreement and not a business arrangement. The landlord is not obligated to provide optimal working conditions for the tenant to conduct a business as that is not the primary reason for occupying this suite, accordingly; I dismiss this portion of the tenants application.

Loss of Quiet Enjoyment - \$3500.00

The tenant confirmed that neither her tenancy agreement or the agreement of the downstairs tenants has a "non-smoking" clause. The tenant also confirmed that the issue of the marijuana smoke was resolved shortly after the landlord obtained an order of possession and that the female tenant in the basement moved out. The landlord argues that all tenants have rights and that the process to remove a tenant is a lengthy and difficult one. The landlord confirmed that the subject tenant was instrumental in helping resolve the issue of the downstairs female tenant smoking marijuana.

The landlord testified that the subject tenant experienced what a landlord must deal with to end a tenancy and that the process is slow. The landlord testified that the problem tenant vacated by late June or early July and that it is no longer an issue. I find that the tenant has not provided sufficient evidence to support this claim, specifically in that they have not provided a calculation as to how they are seeking the amount sought. As noted above, a party must satisfy all four factors to be successful in their claim. As the tenant has not provided sufficient evidence to satisfy all four factors, I must dismiss this portion of their application.

The tenant has not been successful in any portion of her application and therefore is not entitled to the recovery of 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: September 27, 2019

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Residential Tenancy Branch