



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNRT, OLC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed;
- Recovery of costs incurred for emergency repairs;
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant testified that the documentary evidence before me and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were personally served on the Landlord in the presence of a witness, C.D., on October 15, 2020, at the Landlord's primary residence. I note that October 15, 2020, is more than three days after the date the Notice of Dispute Resolution Proceeding Package was emailed to the Tenant by the Branch on October 7, 2020; however, as the hearing date of January 22, 2021, was more than 3 months after the date the documents were personally served on the Landlord, and

neither the Landlord nor an agent acting on their behalf, attended the hearing to make any arguments or submissions about why service of the above noted documents on that date should form a reasonable basis for dismissing or adjourning the matter, I find that the Landlord was sufficiently served with the above noted documents for the purpose of section 59(3) of the Act on October 15, 2020, pursuant to section 71(2)(b) of the Act and the Rules of Procedure.

I verified that the hearing information contained in the Notice of Dispute Resolution Proceeding was correct and note that the Tenant had no difficulty attending the hearing on time using this information. Based on the above, and pursuant to rule 7.3 of the Rules of Procedure, the hearing proceeded as scheduled, despite the absence of the Landlord or anyone acting on their behalf.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

#### Preliminary Matters

As the Tenant has vacated the rental unit and the tenancy has ended, they no longer required an order for the Landlord to comply with the Act, regulations, or tenancy agreement and this portion of their claim was withdrawn. The Tenant also withdrew their claim for \$2,500.00 in costs incurred for emergency repairs as it was inadvertently filed under the wrong section of the Act.

The hearing therefore proceeded based only the Tenant's claim for \$8,902.00 in compensation for monetary loss or other money owed, and recovery of the \$100.00 filing fee.

#### Issue(s) to be Decided

Is the Tenant entitled to \$8,902.00, or any portion thereof, for monetary loss or other money owed?

Is the Tenant entitled to recovery of the \$100.00 filing fee?

### Background and Evidence

The Tenant stated that although they signed something at the start of the tenancy, they were never provided a copy of this document by the Landlord, and as a result, their tenancy agreement was mostly verbal. The Tenant stated that their tenancy began on September 15, 2018, that rent in the amount of \$1,300.00 was due on the first day of the month, and that they paid a \$650.00 security deposit to the Landlord, which the Landlord still holds. The Tenant stated that the rental unit consisted of a single family home and a front and back yard. The Tenant stated that the Landlord maintained working farm land on either a portion of the property not rented to them as part of the tenancy agreement, or adjacent to it, and that the Landlord and persons who rented this farm land from the Landlord, maintained access to the farm land through a portion of the property.

The Tenant stated that there was also a large shed, approximately 15 feet by 20 feet, located on the property rented to them under the tenancy agreement, and that the shed was approximately five feet from the house. The Tenant stated that shortly after moving into the rental unit, they discovered that the gas furnace did not work as there was no gas connected to the house and inquired with the Landlord regarding how they were to heat the home, as there was no other heat source. The Tenant stated that they and the Landlord disputed whether it was the Tenant's responsibility or the Landlord's responsibility to install adequate heating devices but that ultimately the Landlord had electric baseboard heaters installed.

The Tenant stated that shortly after moving in, they also became suspicious that someone was living in a trailer in the shed located in the yard of the rental unit, but these claims were dismissed by the Landlord, who advised them that the person they were seeing simply comes by the property periodically to check on things. The Tenant stated that after having a conversation with this person through a friend who acted as an interpreter, it was discovered that this person did in fact reside full-time in a trailer located in the shed. The Tenant stated that the Landlord later moved two more people into the shed, also residing in trailers.

The Tenant stated that the shed was not properly zoned or set up for people to reside there and that they realized that the occupants of the shed were stealing their electricity, when their electricity bills were routinely higher than the \$1,300.00 they paid in rent each month. The Tenant stated that they repeatedly requested that the Landlord remove the unauthorized occupants from the property, but the Landlord took no action.

The Tenant stated that on September 19, 2020, and September 20, 2020, there was a fire in the shed where the trailers were located as the result of use of a space heater. The Tenant stated that the fire entirely destroyed the shed, all of its contents, as well as possessions belonging to the Tenant and their son that were in the yard, such as toys, bicycles, a trampoline and a large above ground pool. The Tenant stated that the home was also significantly smoke damaged as the fire cracked a window in the rental unit and that some of their possessions were also water damaged when the fire department hosed down the house in an attempt to prevent it from burning down.

The Tenant stated that there were also no smoke detectors in the home, which put them at a very significant risk, and that had a neighbour not spotted the fire, called the fire department, and broken down their door to alert them of the fire, both they and their son could have lost their lives as the rental unit would likely have burned down, given the very close proximity of the shed to the home.

As a result of the fire, the smoke damage and the water damage, the Tenant stated that they lost the vast majority of their possessions, including most of their clothing, furniture, and soft toys, which could not be adequately cleaned despite their best efforts, all of the food in their pantry, the above noted bicycles, trampoline and above ground pool, as well as patio furniture and both their and their sons mattresses. The Tenant stated that the only salvageable belongings were a leather couch, a table, and a few kitchen items. The Tenant stated that as the fire knocked out all of the electricity to the home, all of the food in their fridge and freezer also spoiled and the rental unit was uninhabitable due to a lack of heat and electricity.

The Tenant sought \$8,902.00 for the above noted losses, which they estimate to be a smaller amount than the actual cost of their loss, and submitted documentary evidence in support of their claim, including photographs of the burnt and smoke damaged items, photographs of the shed destroyed by the fire and copies of text messages regarding the fire.

No one appeared on behalf of the Landlord to provide any evidence or testimony for my consideration.

### Analysis

As there is no evidence or testimony before me to the contrary, I accept as fact that the terms of the tenancy are as described by the Tenant in the Application and the hearing, as set out above.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The Tenant argued that the Landlord breached section 32(1) of the Act when they permitted unauthorized occupants to reside in unsafe conditions in the shed located on the rental premises rented to the Tenant under the tenancy agreement and that as a result of these unsafe conditions, a fire occurred resulting in significant damage and loss to the Tenant and their possessions. The Tenant also stated that the Landlord breached section 32(1) of the Act when they failed to have fire alarms installed in the rental unit, the presence of which would have allowed them to know of the smoke and fire sooner, and likely would have allowed them to take action with regards to the fire and their possessions sooner, reducing the value of the losses suffered by them. I agree.

Although the Tenant did not submit a detailed accounting of each of the losses suffered or the costs incurred to replace each damaged item, based on the photographs submitted by the Tenant for my review and the testimony given by the Tenant during the hearing regarding the items destroyed or irreparably damaged, I am satisfied on a balance of probabilities that the loss of personal possessions suffered by the Tenant as a result of the Landlord's failure to comply with section 32(1) of the Act was at least \$8,902.00, if not significantly higher. Based on the above, I am satisfied that a breach of the Act on the part of the Landlord resulted in a loss to the Tenant of personal possessions worth not less than \$8,902.00, and that the Tenant acted reasonably in mitigating their loss by first attempting to clean the smoke damaged items, albeit with little success, and by salvaging what possessions they could.

As I am satisfied that the requirements for granting monetary claims set out in Policy Guideline #16 have been met, I therefore grant the Tenant compensation in the amount of \$8,902.00 pursuant to sections 7 and 32(1) of the Act.

As the Tenant was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act I therefore grant the Tenant a Monetary Order against the Landlord in the amount of \$9,002.00.

### Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$9,002.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. The Landlord is cautioned that costs of such enforcement may be recoverable from them by the Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 22, 2021

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Residential Tenancy Branch