



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, FFT, MNDCT

### Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord 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 and arguments. The parties confirmed that they had exchanged their documentary evidence.

### Issue(s) to be Decided

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

Is the tenant entitled to a monetary order as compensation?

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

### Background and Evidence

The tenant gave the following testimony. The basement tenants moved in June 2020. The tenant testified that since they moved in, they have been smoking marijuana in the house. The tenant testified that the landlord has a no smoking policy for the inside of the home. The tenant testified that the basement tenants have continually smoked marijuana in the house, sometimes two to three times per day. The tenant testified that despite voicing her complaints to the landlord, the basement tenant's behaviour has not changed. The tenant requests that the landlord enforce the no smoking policy. The

tenant also seeks \$240.00 for the following costs; \$100.00 filing fee and \$140.00 for bus tickets to go to the post office and the registered mail costs to serve documents for this case.

The landlord gave the following testimony. The landlord testified that the basement tenants do not deny that they smoke marijuana. The landlord testified that the tenants do adamantly dispute the claim that they smoke in the house. The landlord testified that the tenants smoke in the yard and as a result, the smoke has wafted into open windows. The landlord testified that she attempted to mediate the situation with all parties, and they agreed to an outside smoking area, however, the tenant continues to complain. The landlord testified that she has investigated and inspected the home including the basement and did not find any evidence of smoking of any kind. The landlord submits that the tenant has not proven the accusations.

### 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 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.

The tenant testified that she has not seen the tenants smoking inside the house but assumes that they do because she can smell it. As explained by the landlord, the tenants smoke marijuana on the property which is not a breach of the tenancy agreement. The tenant did not provide sufficient evidence on a balance of probabilities, that the tenants smoked inside the home, therefore I dismiss her request to provide a specific to order the landlord to comply with no smoking clause in the tenancy agreement. As the tenant has not provided sufficient evidence to illustrate that breach, she is not entitled to any recovery of the costs as applied for, accordingly; I dismiss the monetary claim of \$140.00 as well as the recovery of the filing fee of \$100.00. The tenant has not been successful in her application.

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: February 05, 2021

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Residential Tenancy Branch