



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on August 31, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

S.K. attended the hearing on behalf of both Tenants. The Landlord attended the hearing and was assisted by A.W., a property manager. Both S.K. and A.W. provided a solemn affirmation.

S.K. testified the Application package and documentary evidence were served on the Landlord by UPS on September 8, 2018. Although unable to specify a date, the Landlord acknowledged receipt of the Application package in September 2018. Pursuant to section 71 of the *Act*, I find that the Application package was sufficiently served for the purposes of the *Act*.

On behalf of the Landlord, A.W. testified that attempts were made to serve the Tenants with documentary evidence in person. He stated that a "young woman" answered but would not accept service. However, the evidence was not received by S.K. until January 3, 2019, the day before the hearing. As the evidence was submitted to the Residential Tenancy Branch and was served on the Tenants contrary to the Rules of Procedure, I find it is appropriate to exclude the Landlord's documentary evidence from consideration.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

S.K. testified the tenancy began on May 1, 2016. At that time, both Tenants resided in the rental unit. However, on or about April 30, 2018, W.S. vacated the rental unit. S.K. remained in the rental unit and entered into a new tenancy agreement with the Landlord. The new tenancy was short-lived and S.K. vacated the rental unit on June 16, 2018. During the tenancy, rent in the amount of \$1,920.00 per month was due on the first day of each month.

The Tenants sought a monetary order in the amount of \$15,000.00 for losses they testified were associated with a carbon monoxide leak from a defective furnace at the rental property. S.K. testified that on or about October 19, 2017, a repair person attended the rental property to repair a faulty hot water heater. During the service, the repair person noted the smell of “gas” and determined that it appeared to be originating in the crawl space. According to S.K., the Landlord was notified of the concern on the same date. An invoice for the service in the amount of \$166.95 was submitted into evidence. The invoice included a statement indicating the water tank and furnace were not to code and needed to be replaced.

In the days that followed, the Tenants communicated with the Landlord further about their concerns. According to S.K., a repair person, B.P., attended the rental property and confirmed there was a carbon monoxide leak. According to S.K., B.P. advised he was not prepared to do the work because of the risk presented by rodents in the crawl space. However, S.K. testified that B.P. made temporary repairs to ensure the Tenants were safe. B.P. suggested that S.K. attend the hospital.

The Landlord was again advised of the Tenants' concerns October 25, 2018. In an email to the Landlord, S.K. demanded that the leak be fixed due to the negative health effects she was experiencing. A copy of the email was submitted into evidence.

In further support of the claim, the Tenants submitted records relating to S.K.'s hospital admission on October 25, 2017. The notes refer to complaints of a migraine headache, shakes, drowsiness, and loss of appetite. S.K. testified during the hearing that she believed these symptoms were related to the flu until B.P. suggested that she to go to hospital.

The parties agreed the furnace was replaced on October 30, 2017.

In addition, the Tenants rely on a document titled *Health Effects Carbon Monoxide Poisoning and Risk – CDC Tracking Network*, which describes the risks of carbon monoxide poisoning.

In reply, and on behalf of the Landlord, A.W. advised the Landlord took every step to address the problem. Indeed, the parties did not dispute that the alleged leak was reported to the Landlord on October 19, 2017, was temporarily repaired on October 25, 2017, and that the furnace was replaced on October 30, 2017.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

I find there is insufficient evidence before me to conclude the Landlord violated the *Act*, regulations, or the tenancy agreement. Although the Tenants believed the Landlord was not responding to their concerns, temporary repairs were completed on October 25, 2017, and the furnace was replaced on October 30, 2018. In other words, only 11 days passed from the Landlord becoming aware of an issue to having the issue fully resolved.

In addition, I find there is insufficient evidence before me to conclude that the symptoms reported by S.K. were caused by a carbon monoxide leak at the rental property. Indeed, S.K. testified during the hearing that she initially believed her symptoms were due to the flu. She did not consider they may be attributable to a gas leak until B.P. suggested that she attend hospital on October 25, 2018, which she did.

Similarly, the Tenants submitted hospital records in support of the claim. However, I find there is insufficient evidence before me – such as an opinion from a physician – to conclude that carbon monoxide was the cause of S.K.'s symptoms.

In light of my findings above, I find that the Tenants' Application is dismissed, without leave to reapply.

Conclusion

The Application is dismissed, 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: January 4, 2019

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Residential Tenancy Branch