



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding E.A.R. Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for unpaid utilities – Section 67;
3. An order to retain all or part of the security deposit – Section 38;
4. An Order to recover the filing fee – Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on June 1, 2012 and ended on December 31, 2012. At the outset of the tenancy the Landlord collected \$475.00 as a security deposit. No move-in or move-out inspection was conducted. The Tenant agrees that the Landlord is owed \$160.09 for unpaid utilities.

The Landlord states that the Tenant broke the lock to the unit during a fight and that this was witnessed by a person not in attendance at the hearing. The Landlord states that

the Tenant replaced the lock without permission. The Landlord states that the replaced lock did not work with the master key and that the lock had to be replaced. The Landlord states that the Tenant's installed lock was offered back to the Tenant but that the Tenant has not retrieved this lock. The Landlord claims \$110.82 for the cost.

The Tenant denies that the lock was broke during a fight. The Tenant and the Witness state that the lock appeared to be at least 30 years old. The Tenant states that the lock had been faulty and that the plate broke when the Tenant put the key in the lock. The Witness states that the Tenant told the Witness that the lock could be replaced by the Tenant so the Witness purchased the lock and ensured that it fit to the Tenant's key.

### Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Based on the agreement of the Tenant, I find that the Landlord has substantiated an entitlement to \$160.09 for utilities. Given the evidence of the Tenant and Witness in relation to the age of the lock and considering that the Landlord did not provide witness evidence that the Tenant broke the lock, I find that the Landlord has not substantiated that the Tenant damaged the lock. I find it more likely, given that the Landlord did not dispute the age of the lock, that the lock failed as stated by the Tenant. As such, I find that the Landlord has not substantiated that the Tenant caused the damage to the lock and I dismiss this claim.

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential

property is extinguished. Based on the Landlord's evidence, I find that the move-in inspection was not conducted and that the Landlord's right to claim against the security deposit has been extinguished. Notwithstanding this extinguishment provision however, section 72 of the Act provides that where a tenant is ordered to pay an amount to the landlord, that amount may be deducted from the security deposit. As the Tenant owes monies to the Landlord, I find it would be appropriate to deduct the amount owed to the Landlord from the security deposit. I therefore deduct **\$160.09** from the security deposit of **\$475.00** plus zero interest and order the Landlord to return the remaining amount of **\$314.91** to the Tenant forthwith.

Given the Landlord's failure to comply with the Act in relation to the move-in inspection, I decline to award recovery of the filing fee.

#### Conclusion

**I order** that the Landlord retain \$160.09 from the **deposit** and interest of \$475.00 in full satisfaction of the claim and I grant the Tenant an order under Section 67 of the Act for the balance due of **\$314.91**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 15, 2013

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Residential Tenancy Branch