



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for compensation for loss under the Act, and to retain all or part of the security deposit.

The landlord appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The landlord stated that the tenant provided their forwarding address in an email sent on February 10, 2013. Filed in evidence is a copy of the email.

The landlord stated she served the Application for Dispute Resolution and Notice of Hearing by registered mail sent on February 22, 2013, to the address provided in the email. Canada post tracking numbers were provided as evidence of service, the tenants did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for loss under the Act?  
Is the landlord entitled to keep all or part of the security deposit?

### Background and Evidence

The tenancy began on June 15, 2012. Rent in the amount of \$1,300.00 was payable on the first of each month. A security deposit of \$660.00 was paid by the tenants. The

tenancy ended on January 26, 2013. Filed in evidence is a copy of the tenancy agreement.

The landlord stated as a result of the tenant not complying with the strata rules, she received three noise violation fines totalling the amount of \$600.00.

The landlord stated when she spoke to the tenants they denied they were responsible for the noise violations. The landlord stated the strata counsel would not allow her to file a dispute and have the matter reviewed. The landlord stated a form K was not signed by the tenants.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

In this case, the landlord did not have the tenants sign a Form K - Notice of Tenant's Responsibility with the tenancy agreement. This form must be signed by any person renting a unit within a strata development; this is to confirm that the tenant has received a copy of the strata bylaws and agrees to abide by them.

Without the form being signed by the tenants, the rules do not become part of the tenancy agreement. The tenants are not under any obligation to abide by the strata rules and pay the strata fines, which are outside the Residential Tenancy Act.

Further, the evidence of the landlord was that the tenants denied these allegations, however, the strata counsel would not allow them an opportunity to file an appeal and have the matter reviewed.

While, I accept that the landlord has received noise violation fines, regarding this tenancy, there is no evidence that the strata rules became part of the tenancy agreement. The tenants did not sign a Form K, acknowledging they were aware of the strata rules and that they agreed to abide by them.

Further, the evidence of the landlord was the tenants did not agree with these violations, and they were not provided any opportunity to have the complaints reviewed.

As a result, I find the landlord has failed to prove that the tenants have violation of the Act or tenancy agreement. Therefore, I dismiss the landlord's claim for compensation and the landlord is not entitled to retain any portion of the security deposit.

I order that the landlord to return to the tenants their security deposit. I grant the tenants a monetary order in the amount of \$660.00, should the landlord fail to comply with this order.

### Conclusion

The landlord's application is dismissed. The tenants are granted a monetary in the above amount.

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: May 17, 2013

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Residential Tenancy Branch