



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Strata's Choice Property Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing them to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

At the hearing, the tenant's agent, R.W., confirmed that the corporate name was misspelled on the application for dispute resolution and the parties agreed that the name should be amended. The style of cause in this decision and the accompanying order reflect that change.

### Issue to be Decided

Is the landlord entitled to a monetary order as claimed?  
Should the landlord be permitted to retain the security deposit?

### Background and Evidence

The parties agreed that the tenancy began in July 2011 and ended in June 2013 pursuant to the service of a one month notice to end tenancy for cause. They further agreed that at the outset of the tenancy, the tenant paid a \$487.50 security deposit.

The parties agreed that the landlord was entitled to deduct a total of \$281.25 from the security deposit, which represents \$150.00 as the cost of repairing a baseboard and \$131.25 to repair a burn mark.

The tenant is a corporate body and the used the rental unit to house an individual hereinafter referred to as "the Occupant".

In dispute is whether the tenant is responsible for loss of income in the month of July 2013. The landlord testified that the Occupant would not allow access to the unit during

the last month of the tenancy and thereby prevented the landlord from re-renting the unit for the month of July. The landlord stated that she sent the Occupant numerous emails and telephoned her repeatedly in June, but the Occupant didn't return her phone calls or messages. The landlord further testified that the tenant told them that she had a large dog, so they had concerns about entering the property. The landlord's realtor also had some difficulty showing the unit to prospective purchasers as the Occupant was not fully cooperative.

The parties agreed that in early June, the landlord contacted the corporate tenant and advised that the Occupant was preventing access. The tenant testified that upon learning of the situation, they contacted the landlord's realtor and assured the realtor that if they were given 24 hours notice, they would arrange for access to the unit.

The landlord testified that the corporate tenant did not advise her that they would arrange access and throughout June she laboured under the misapprehension that access would continue to be denied.

The landlord testified that they advertised the unit for rent and for sale during June and July and that the unit sold in August or September.

### Analysis

As the parties agreed that the landlord is entitled to an award of \$281.25, I award the landlord that sum.

In order to establish their claim for loss of income for July, the landlord must prove that the loss was directly attributable to the tenant or the Occupant. I am not satisfied that this is the case.

The landlord was leaving messages for the tenant which went unanswered, but I have no evidence before me showing that the landlord spoke with the Occupant or actually gave the Occupant a notice of entry as required under the Act. Rather, the landlord appears to have placed the matter of access into the Occupant's hands and given the tenant the option of responding, which she chose not to do.

Further, the landlord appointed an agent to deal with the sale of the property and should reasonably have expected that the corporate tenant would deal with the realtor when that was convenient. I find that the corporate tenant made reasonable efforts to advise the landlord that access would be provided when necessary and that communication with the agent rather than the landlord was appropriate.

Further, I find it more likely than not that the owner of the unit was more motivated to sell the unit rather than to rent and that the realtor's reluctance to show the unit while it was occupied was due to the fact that she knew she could attract more buyers to an unoccupied property.

For these reasons, I find that the loss of income for the month of July cannot be attributed to the tenant and I dismiss that part of the claim.

Because the landlord could have settled this matter with the tenant had they not sought loss of income for July, I find that the landlord should bear the cost of the \$50.00 filing fee.

### Conclusion

The landlord is awarded \$281.25. I order the landlord to retain this amount from the \$487.50 security deposit and to return the balance of \$206.25 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$206.25. This order may be filed in the Small Claims Division of the Provincial 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: October 28, 2013

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Residential Tenancy Branch

