



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MND, MNR, FF

### Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit, site or property pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72; and
- for other remedies, identified in their application as a request for the recovery of strata fines arising out of this tenancy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The female landlord (the landlord) gave undisputed sworn testimony that the tenancy ended on February 21, 2014, when the tenant vacated the rental unit. As the landlords already have possession of the rental unit, the landlord withdrew their application for an Order of Possession. The landlords' application for an Order of Possession is withdrawn.

### Preliminary Issues – Service of Documents

The tenant confirmed that one of the landlords handed him the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on February 11, 2014. The tenant also confirmed that he received a copy of the landlords' original dispute resolution hearing package in which the landlords were seeking a monetary award of \$1,350.00, sent by the landlords by registered mail on February 19, 2014. I am satisfied that the landlords served the above documents and copies of their written evidence to the tenant in accordance with the *Act*.

The female landlord (the landlord) testified that the landlords sent a copy of their amended application for dispute resolution to the tenant by regular mail on March 31, 2014. This amended application increased the amount of the landlords' requested

monetary award to \$5,000.00. Although the tenant testified that he did receive this amended application the day before this hearing, he was uncertain as to the breakdown of the landlords' requested monetary award.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;..*

The landlords have not served the tenant in a manner required by section 89(1) of the *Act*. I also note that Rule 2.5 of the Residential Tenancy Branch's (the RTB's) Rules of Procedure establish that "A copy of the revised application must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding." In considering whether to allow the landlords' application for an increased monetary award, I am also mindful of Rule 1.2 of the RTB's Rules of Procedure, which establishes that "The object of the Rules of Procedure is to ensure a consistent, efficient and just process for resolving disputes." While there is undisputed sworn testimony that the tenant did receive the amended application on the day before this hearing, I find that the landlords' late service of this amended application in a method not permitted under section 89(1) of the *Act* left the tenant in a position whereby it was difficult for him to know the case against him and properly prepare for an application for a significantly increased monetary award.

The landlord testified that the reason for the landlords' delay in revising the original application resulted from the changed circumstances when the tenant vacated the rental unit on February 21, 2014, after the landlords had submitted their original application for dispute resolution. After gaining access to the rental unit, the true magnitude of the damage and repairs required became apparent. However, even now, the landlords have only estimates regarding the required repairs and have not yet undertaken the repair work. The landlord also testified that the rental premises were re-rented as of

March 1, 2014 to new tenants who are paying the same \$1,350.00 in monthly rent paid by the tenant/respondent.

Under these circumstances, I find that the landlords' amended application for dispute resolution was not served in accordance with section 89(1) of the *Act* and was not actually received by the tenant within the timeframes established under the RTB's Rules of Procedure. I also find that to proceed with a consideration of the landlord's amended application would not lead to a just process for either party. The landlords' application for a monetary award for damage and losses incurred would seem premature with respect to damage that has not yet been repaired in this rental unit. For these reasons, I advised the parties that I was only willing to consider the landlords' original claim for a monetary award of \$1,350.00, the amount identified in the landlords' original application for dispute resolution, which was properly served to the tenant. This amount included the landlords' request for \$675.00 in unpaid rent owing for February 2014, and \$675.00 for damages associated with strata fines resulting from this tenancy.

I dismiss the landlords' application for physical damage arising out of this tenancy with leave to reapply, as this damage was not specifically identified or quantified in the landlords' original application for dispute resolution.

#### Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to a monetary award for damages arising out of this tenancy? Are the landlords entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

This one-year fixed term tenancy for a strata unit commenced on July 10, 2013. Monthly rent was set at \$1,350.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$675.00 security deposit paid on May 7, 2013.

The parties agreed that no joint move-in condition inspection was conducted at the beginning of this tenancy. Although the landlord testified that she created a report of the February 21, 2014 joint move-out condition inspection of these premises, she did not enter this document into written evidence.

The tenant confirmed the landlord's allegation that he did not pay one-half of his February 2014 rent, \$675.00. The tenant also confirmed that he did not return a key fob, resulting in the landlords' undisputed request for the \$50.00 recovery of this item.

The landlords' written evidence included documents regarding a series of \$200.00 fines imposed by the strata council, most of which were issued as a result of noise complaints arising from this tenancy. The landlords also submitted a request for the recovery of a February 14, 2014 fee of \$407.93 fee charged by the strata council for an inspection of a water leak investigation due to water damages sustained from the bathroom of this rental unit. The landlords maintained that these costs charged to the landlords by the strata council should be assumed by the tenant.

The tenant gave sworn testimony that he wrote to the strata council about the noise complaints. He gave undisputed testimony that the strata council agreed to cancel the noise complaints of November 10, 16 and 18, 2013. He also said that the strata council sent him a February 12, 2014 letter in which it agreed to waive all strata fines for noise originating from this rental unit prior to that date. He maintained that he was only responsible for a strata council fine of \$200.00 for an incident on February 16, 2014.

The tenant also testified that the strata council's February 14, 2014 letter regarding the \$407.93 invoice for a water technician noted that the landlords could contact their insurance company or broker to determine if this expense was covered by the landlords' insurance policy. At the hearing, the landlord testified that they did contact their insurance company, but no determination has yet been made as to whether their request for reimbursement from their insurance policy would be approved.

### Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenant was in breach of his fixed term tenancy agreement because he vacated the rental premises prior to the June 30, 2014 date specified in that agreement. As such, the landlords are entitled to compensation for losses they incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay \$675.00 of his rent for February 2014. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the landlords did attempt to the extent that was reasonable to re-rent the premises, as they were successful in re-renting the premises as of March 1, 2014. As such, I am satisfied that the landlords have discharged their duty under section 7(2) of the *Act* to minimize the loss of rent resulting from the premature end to this fixed term

tenancy. I issue a monetary award in the landlords' favour in the amount of \$675.00 for unpaid rent owing from February 2014.

Based on the undisputed evidence before me, I allow the landlords' request for the recovery of the \$50.00 key fob charge applied against the tenant.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

There is undisputed testimony that the landlords are entitled to at least a monetary award of \$200.00 in strata fines, resulting from a noise complaint of February 16, 2014. The strata council's February 27, 2014 letter to the landlord noted that the strata council had decided to assess fines totalling \$400.00 for noise infractions on January 25, 2014 and February 16, 2014. Although I have given regard to the tenant's sworn testimony that all fines associated with noise complaints that occurred prior to February 12, 2014 had been waived by the strata council, he did not enter a copy of the letter he claimed to have received from the strata council to that effect. I find that the best and most recent evidence in this regard is the February 27, 2014 letter entered into written evidence by the landlords. For this reason, I find that the landlords are entitled to a monetary award of \$400.00 in strata council fines for noise complaints arising out of this tenancy.

I have also considered the landlords' application for a monetary award for the recovery of the February 14, 2014 invoice from the strata council for the investigation of water damage in this rental unit. As the landlords have an outstanding request with their insurance company and or broker to have this \$407.93 covered through the landlords' insurance policy, the landlords have not demonstrated any actual losses arising out of the tenant's actions. Under these circumstances, I dismiss this portion of the landlords' application with leave to reapply.

As outlined earlier in this decision, I have also declined to consider the landlords' claim for damage arising out of this tenancy that the landlords hoped to have included in the current application for dispute resolution by way of their amended application for dispute

resolution. I allow the landlords leave to apply for a monetary award for physical damage arising out of this tenancy that became apparent after this tenancy ended. This leave to reapply does not extend to any fines issued by the strata council, other than as noted above for the \$407.93 charge specified in the strata council's letter.

I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlords have been successful in their application, I allow them to recover their \$50.00 filing fee.

### Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent, damages and the filing fee, and to retain the tenant's security deposit:

| <b>Item</b>                                 | <b>Amount</b>   |
|---|-----------------|
| Unpaid February 2014 Rent                   | \$675.00        |
| Unreturned Fob Key                          | 50.00           |
| Strata Fines for Noise Complaints           | 400.00          |
| Less Security Deposit                       | -675.00         |
| Recovery of Filing Fee for this Application | 50.00           |
| <b>Total Monetary Order</b>                 | <b>\$500.00</b> |

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlords' application for an end to this tenancy and an Order of Possession are withdrawn.

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 14, 2014

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Residential Tenancy Branch

