



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sunstar Realty Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the landlord – MNSD, MNDC, FF

For the tenant – MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order permitting the landlord to keep all or part of the tenant's security and fob deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover the security and fob deposit and to recover the filing fee from the landlord for the cost of their application

The hearing went ahead as scheduled; the landlord dialed into the conference call and the line remained open for the duration of the hearing; however, no one for the tenant dialed into the call. Based on the above I find that the tenant has failed to present the merits of their application and the application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on February 19, 2014. Canada Post tracking numbers were provided by the landlord in verbal testimony. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered. .

#### Issue(s) to be Decided

- Is the landlord entitled to a monetary award for money owed or compensation for damage or loss?
- Is the landlord permitted to keep part of the security deposit?

#### Background and Evidence

The landlord testified that this tenancy started on January 01, 2013 for a fixed term tenancy which ended on January 31, 2014. The rent for this unit was \$1,490.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$745.00 and a fob deposit of \$100.00 on December 14, 2012.

The landlord testified that the tenant damaged a grate on the gas stovetop. The tenant was given the opportunity to repair or replace this grate but failed to do so. The landlord obtained quotes for the replacement costs of the grate and went with the cheaper quote of \$180.81 which includes tax and pick up. The landlord has provided a copy of the invoice, a copy of the inspection reports and photographic evidence showing damage to the grate.

The landlord testified that the landlord was given fines by the Strata Council for noise violations by the tenant. Several warning letters were sent to the landlord concerning complaints made against the tenant by a neighbour and the landlord forwarded these letters onto the tenant. The tenant had the opportunity to respond to these complaints in writing to the Strata Council or to request a hearing take place with the Strata Council concerning these complaints.

The landlord testified that the tenant responded by email to the Strata manager denying the noise complaints but did not request a hearing. The landlord refers to their documentary evidence showing warning letters were sent on October 08, October 16, October 30, 2013. On November 06, 2013 a fine letter was sent by the Strata Council in which the landlord was fined \$50.00 for the tenant's noise infractions.

The landlord testified that other complaints letters were received from the Strata Council concerning the tenant and further noise complaints on November 08, November 18, 2013 and January 08, and January 27, 2014. The landlord testified that the landlord's account had two fines imposed; one for the first \$50.00 noise violation fine and one for a \$200.00 noise violation fine. On January 30, 2014 the landlord received an email from the Strata Manager in which the Strata Manager stated that a fine of \$200.00 will be assessed against the unit.

The landlord testified that they returned \$214.19 to the tenant from the security and fob deposit on February 14, 2014. The landlord testified that the balance of \$630.81 was retained for the repair to the grate on the stove and for the \$450.00 Strata fines.

The landlord seeks an Order to permit the landlord to retain \$630.81 of the security deposit and requests a Monetary Order to recover the \$50.00 filing fee.

### Analysis

I have carefully considered the landlord's documentary evidence and sworn testimony before me. I am satisfied that the tenants caused damage to the grate on the stove top which was not repaired or replaced prior to the tenancy ending. I therefore find in favour of the landlord's claim to recover the replacement costs for this grate of \$180.81.

With regard to the landlord's claim to recover \$450.00 in Strata fines; the landlord has provided sufficient evidence to show that a fine of \$50.00 was imposed November 06, 2013 by the Strata Council for noise violations coming from the tenant's unit. I further find the landlord's account was also charged an additional \$200.00 for noise violations

from the tenant's unit as shown by the email from the Strata manager dated January 30, 2014. However; I have no evidence to satisfy me that a further fine of \$200.00 has been imposed by the Strata Council for further noise violations from the tenant's unit.

I therefore find the landlord is entitled to retain the amount of \$180.81 for damage to the stove and \$250.00 for the Strata fines imposed. The landlord is entitled therefore to retain these amounts from the tenant's security and fob deposits held in trust by the landlord.

The landlord is entitled to recover the \$50.00 filing fee from the tenant and may retain that amount from the security deposit. The balance of the security deposit of \$150.00 must be returned to the tenant.

#### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. I ORDER the landlord to retain the amount of \$480.81 from the security and fob deposit.

The balance of the security deposit must be returned to the tenant. A copy of the tenant's decision will be accompanied by a Monetary Order for \$150.00. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court 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: June 09, 2014

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Residential Tenancy Branch

