



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNDC

### Introduction

This hearing dealt with the landlord's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. 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 tenants confirmed that in late April 2014, they received copies of the landlord's dispute resolution hearing package sent to them by registered mail by the landlord. The tenants also confirmed that they received copies of the landlord's written and photographic evidence, the only evidence provided by either party. I am satisfied that the landlord served the above documents to the tenants in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy?

### Background and Evidence

This tenancy began on June 1, 2012, by way of a one-year fixed term Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord. Monthly rent was set at \$2,100.00, payable in advance on the first of each month. The tenants paid a \$1,050.00 security deposit on May 20, 2012, when they signed the Agreement. On or about June 21, 2013, the landlord's agent returned \$850.00 of the tenants' security deposit. The landlord continues to hold \$200.00 of the security deposit, an amount agreed to by the tenants when they ended this tenancy and vacated the rental unit on May 31, 2013.

The parties confirmed that they or their representatives participated in a joint move-in condition inspection on June 2, 2012 and a joint move-out condition inspection on May 31, 2013, the last day of this tenancy. The landlord entered into written evidence copies of the reports of the above inspections.

On June 12, 2013, the landlord sent the tenants an email identifying the following \$325.00 in deductions she proposed retaining from the tenants' security deposit:

<b>Item</b>	<b>Amount</b>
Strata Fine for Failing to Wait for the Garage Door to Close	\$50.00
Fee for Having the Apartment Cleaned Professionally	150.00
Replacement Paid for Damaged Key Fob	100.00
Unreturned Visitor's Parking Pass	25.00
<b>Total of Above Items</b>	<b>\$325.00</b>

By way of a June 15, 2013 email, Tenant DP (the tenant) notified the landlord of the tenants' agreement to allow the landlord to keep \$200.00 of their security deposit. This amount was to compensate the landlord for \$150.00 of professional cleaning required at the end of this tenancy and a \$50.00 fine applied by the Strata Corporation for one of the tenant's failure to wait for the garage door to close. However, the tenant disagreed with the landlord's request for compensation for the replacement of the key fob, noting as he did at the hearing that the key fob was functional, although a corner of the fob had broken over time as a result of wear and tear. The landlord subsequently accepted the tenants' explanation regarding the visitor's parking pass and did not pursue this issue further.

The landlord's application for a monetary award of \$500.00 included the following items:

<b>Item</b>	<b>Amount</b>
Damaged Fob Key	\$100.00
Moving Late Charges Imposed by Strata (\$100.00 + \$100.00 = \$200.00)	200.00
Damaged Hallway	100.00
Registered Mailing Costs	50.00
Recovery of Filing Fee	50.00
<b>Total Monetary Order Requested</b>	<b>\$500.00</b>

The landlord's agent (the landlord) testified that the hole in the tenant's key fob was damaged such that it no longer fit on a key ring. As she considered this fob damaged to the extent that she could not give it to the new tenant in this rental unit, she applied for the costs she said she incurred in obtaining a new key fob from the strata. She said

that the strata representatives informed her that they could not repair this key fob. The landlord did not provide a receipt for the \$100.00 cost of replacing the key fob.

The landlord testified that the tenants were late in vacating their rental unit on May 31, 2013 because they were unprepared for their move. She said that they did not vacate the rental unit by 1:00 p.m. as required and continued to remove items from the rental unit until 6:30 p.m. The new tenants who were scheduled to move into the rental unit on May 31, 2013 were prevented from doing so until the tenants had vacated the premises. The new tenants were unable to complete their move to the rental unit until 9:30 p.m. due to the tenants' delay in vacating the rental unit. The landlord entered into written evidence a copy of the June 17, 2013 letter from the agent for the Strata Council outlining the details of the strata's \$200.00 fine imposed for both moves occurring after the required 9:00 a.m. until 6:00 p.m. set out in the strata's bylaws. The landlord also provided sworn testimony and written evidence that the strata imposed a \$100.00 fine for damaging a wall in the hallway which the strata maintained occurred during the course of the tenants' move from the rental unit. Although the landlord said that the strata fines have not yet been paid, she entered into written evidence a copy of the August 12, 2013 Statement of Account issued by the strata requiring the payment of \$300.00 in strata fines for this rental unit.

The tenants disputed the extent of the damage to the key fob. They gave undisputed sworn testimony that the fob was still fully functional, but for the damage to the key ring, a photo of which was provided by the landlord. The tenant testified that he believed the tenants had completed their move by 6:00 p.m., but recognized that this would not have allowed the new tenants an opportunity to move into the rental unit within the permitted time period established by the strata council. He did not object to the landlord's claim for the \$100.00 charge stemming from the late move-in of the new tenants. The other tenant testified that the tenants did not damage the wall and that the mark referred to by the strata and the landlord was very small and was not caused by the tenants.

### Analysis

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 landlord 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.

Section 37(1) of the *Act* requires a tenant to vacate a rental unit by 1 p.m. on the day the tenancy ends unless there is prior agreement between the parties to the contrary. By the tenants' own admission, they did not vacate the rental unit by 1:00 p.m. In this case and on a balance of probabilities, I find that the tenants' failure to vacate the rental unit on time led to losses applied against the landlord. I am satisfied that charges were applied against the landlord by the strata council resulting from the tenants' failure to move out of the rental unit in a timely fashion. I find that the landlord is entitled to a monetary award of \$200.00 for the tenants' late move from the rental unit as I find on a balance of probabilities it more likely than not that the landlord has suffered this loss as a result of the tenants' actions in contravention of the *Act*.

Although I have given the landlord's application for the recovery of a \$100.00 fee charged by the strata council for damage arising out of this tenancy careful consideration, I find that the landlord has provided insufficient evidence with respect to this loss to enable the landlord to recover this charge. No photographs of the alleged damage were provided, no sworn testimony was received from a representative of the strata, and the tenant testified that the mark was extremely small and was not caused by the tenants. This damage occurred in a common area of the strata property where damage could have been caused by any number of residents or visitors. I dismiss this aspect of the landlord's claim without leave to reapply.

I have also considered the landlord's application for the recovery of the losses the landlord claimed for the replacement of the key fob. I accept that the key fob was not returned in the same condition at the end of this tenancy. Although the key may have worked, the absence of a hole for the key ring on the fob rendered this key fob unsuitable for conveying to a new tenant. While the landlord did not produce a receipt for the \$100.00 expenditure claimed, I do accept that the landlord did incur costs that she has not recovered regarding the replacement of this key fob. However, I also find that the tenant made a valid observation in that the hole in a key fob is subject to reasonable wear and tear. Over time, the condition of a key fob will deteriorate. In this case, I heard no evidence from the landlord as to the age of the key fob provided to the tenant. I can only assume that this key fob was not new when the tenancy began. Under these circumstances, I find that the landlord is entitled to a monetary award of \$50.00, an amount designed to allow the landlord to recover one-half of the cost she said she incurred to replace the key fob.

I allow the landlord's application to recover her \$50.00 filing fee from the tenants, an amount included in the Details of the Dispute identified in the landlord's application for dispute resolution. I dismiss the landlord's application to recover her registered mailing costs without leave to reapply as the only cost a claimant can recover with respect to the preparation for a hearing is the filing fee paid for the application.

### Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover losses arising out of this tenancy and the filing fee:

<b>Item</b>	<b>Amount</b>
Damaged Fob Key	\$50.00
Moving Late Charges Imposed by Strata (\$100.00 + \$100.00 = \$200.00)	200.00
Recovery of Filing Fee	50.00
<b>Total Monetary Order Requested</b>	<b>\$300.00</b>

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

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: August 28, 2014

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Residential Tenancy Branch

