



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MANAGEMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FF, O

### Introduction

This hearing was convened by way of conference call concerning an Application for Dispute Resolution (the “Application”) made by the Landlord for ‘Other’ issues and to recover the filing fee.

In the details section of the Application the Landlord explains that in a previous hearing they were issued with a Monetary Order against the same Tenants which contained the incorrect rental unit address. However, the rental unit address could not be changed on the Monetary Order by the Residential Tenancy Branch as this was the address that had been mistakenly documented by the Landlord in the previous Application.

As a result, the Landlord is applying again for the same Monetary Order issued to the Landlord in a hearing that took place on March 5, 2014, the file number for which appears on the front page of this decision.

### Preliminary Issues

An agent for the Landlord and the owner appeared for the hearing and provided affirmed testimony as well as written evidence in advance of the hearing. The Landlord provided evidence that they had served the Notice of Hearing documents for this hearing by registered mail to the Tenants. However, there was no appearance by any of the Tenants or an agent for the 22 minute duration of the hearing.

I noted in the file that the Tenants had faxed the Residential Tenancy Branch with a written letter explaining that they would be out of the province for this hearing and that they would like to be advised of an alternate date for this hearing. The Landlord’s agent explained that they had received the Tenants’ letter requesting another date and time for the hearing but were not informed of any change by the Residential Tenancy Branch and wanted to proceed with the hearing without an adjournment.

Based on the written response of the Tenants requesting another date and time for this hearing, I find that the Landlords served the Tenants with the notice of this hearing in accordance with the Act.

In relation to the Tenant's request to reschedule this hearing, I turn my mind to Rule 6 of the Rules of Procedure which provides direction on when a hearing may be adjourned or rescheduled. In part, this provides for the following:

**"6.1 Rescheduling of a dispute resolution proceeding by consent more than three days in advance**

The Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from **both** the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution proceeding.

**6.2 If consent to rescheduling the dispute resolution proceeding cannot be obtained**

If a party wants to request that a dispute resolution proceeding be rescheduled to another date because that party will be unable to attend the dispute resolution proceeding due to circumstances beyond his or her control, and if the opposing party does not consent to rescheduling the dispute resolution proceeding, the dispute resolution proceeding must commence at the scheduled time and the party requesting the adjournment can ask the arbitrator to reschedule the dispute resolution proceeding by:

- a) submitting to the Residential Tenancy Branch, at least 3 business days before the dispute resolution proceeding, a document requesting that the dispute resolution proceeding be rescheduled and setting out the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding; or
- b) having an agent represent him or her attend the dispute resolution proceeding to make a request to the arbitrator to reschedule the dispute resolution proceeding and to describe the circumstances that are beyond the party's control that will prevent him or her from attending the dispute resolution proceeding".

[Reproduced as written]

I find that the Tenants have failed to provide sufficient reasoning and evidence as to why they were not available for this hearing or why an agent could not have been appointed to represent them or appear for the hearing to request the adjournment. Simply stating that a party is out of the province is not sufficient reason in this case to grant an adjournment of the proceedings, particularly when these are conducted by telephone conference call.

I find that the Tenant failed to get the consent of the Landlords in writing to re-schedule the hearing and failed to provide sufficient evidence that their inability to appear for the hearing was beyond their control.

In considering other criteria for adjourning a hearing under Rule 6, I agreed with the Landlord's oral submission that the Tenants had failed to provide any written evidence prior to the hearing or any indication of what evidence or submissions they would be or intending to rely on in response to the Application.

Based on the foregoing, I declined to adjourn or reschedule this hearing and proceeded to hear and consider the Landlord's undisputed evidence as follows.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent for July, 2013 and loss of rental income for January, February and March, 2014?
- Is the Landlord entitled to damages to the rental unit and the elevator fees?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of Landlord's monetary claim?

Background and Evidence

This tenancy started on April 1, 2013 for a fixed term of one year. Rent was established under a written tenancy agreement in the amount of \$1,600.00 payable on the first day of each month. The Landlord's agent referred to the written tenancy agreement which indicated the correct rental unit address as that documented on the Landlord's Application.

The Landlord's agent confirmed that the Tenants paid a security deposit of \$800.00 at the start of the tenancy and that the Tenants moved out of the rental unit on or about October 19, 2013.

The Landlord's agent confirmed that no move-in condition inspection was completed at the start of the tenancy but a move out Condition Inspection Report was completed and signed by both parties on November 1, 2013 which was provided in written evidence for this hearing.

The Landlord's agent was invited to explain the monetary claim for this Application. I have only documented evidence and submissions that were relevant to the Landlord's monetary amount claimed. The Landlord's agent explained that they had submitted and provided the same documentary evidence for the previous hearing held on March 5, 2014 and that while they had sought monetary relief in the previous hearing for a total amount of \$9,254.61, in this hearing they were only seeking a Monetary Order in the

amount that had been awarded to them for the previous hearing (\$5,620.00). The Landlord's agent provided a copy of the previous decision and relied on this evidence as a summary of the previous proceedings.

The Landlord claims **\$1,220.00** for unpaid rent for July 2013. The Landlord's agent explained that the Tenants had been successful in obtaining an order to deduct \$380.00 from the July, 2013 rent after a hearing was held on November 1, 2013, the file number for which is referenced on the front page of this decision. However, instead of the Tenant making this deduction, the Tenant withheld the entire July 2013 rent. In the previous decision the Tenants acknowledged that July 2013 rent had not been paid.

The Landlord's agent testified that according to the previous Arbitrator's decision they had failed to advertise the rental suite for the months of November and December, 2013 after the Tenants had vacated the rental suite. The Landlord's agent accepted this finding. Therefore, the Landlord only seeks to recover lost rent for the months of January, February and March 2014 in the amount of **\$4,800.00** due to the Tenants' breaking of the fixed term tenancy which was due to expire at the end of March 2014.

The Landlord's agent provided submissions that they had not at any point in the tenancy agreed to mutually end the tenancy as claimed by the Tenants in the previous hearing.

In relation to the Landlord's claim for damages to the rental suite, the Landlord's agent referred to the move out Condition Inspection Report which shows the rental suite was not cleaned at the end of the tenancy and the Tenants signed the report to this effect. The Landlord claims **\$150.00** for his own time in cleaning the rental suite after the Tenants had vacated.

The Landlord's agent referred to the previous Arbitrator's decision in which the Tenants agreed that they had caused **\$200.00** of damage to a wall in the rental unit.

The Landlord also claims **\$50.00** for an elevator fee charged to them by the strata which the Tenants were responsible for when they moved out of the rental suite. The Landlord provided a copy of the strata invoice detailing this charge.

### Analysis

Section 26(1) of the Act states that a Tenant must pay rent when it is due under a tenancy agreement whether or not the Landlord complies with the Act.

I accept the Landlord's undisputed evidence that the Tenants failed to pay rent for July 2013 and only had the authority to make a deduction of \$380.00. Therefore, I find that the Landlord is entitled to **\$1,220.00** for unpaid rent for July 2014.

The Act does not allow either a Tenant or a Landlord to break a fixed term tenancy. If it is broken, then a party is responsible for mitigating their loss under the Act and once this is demonstrated, the respondent may be awarded for any subsequent loss under the Act.

Based on the evidence provided by the Landlord's agent, I find that the Tenants breached the fixed term tenancy and ended the tenancy prematurely in violation of the Act. The Landlord accepted that they had not mitigated their loss for the November and December, 2014 rent but had started to advertise the suite for re-rental and were unable to rent it out for the following three months. As a result, I find that the Landlord is entitled to the lost rent claimed for the three months in the amount of **\$4,800.00**.

Section 37(2) of the Act requires a Tenant to leave a rental suite reasonably clean and undamaged at the end the tenancy. In addition, Section 21 of the Residential Tenancy Regulation states that a Condition Inspection Report can be used as evidence of the state of repair and condition of the unit, unless a party has a preponderance of evidence to the contrary.

Based on the foregoing, I find that the Tenants failed to clean the rental suite at the end of the tenancy, as evidenced by the Condition Inspection Report and I award the Landlord **\$150.00** in the cleaning costs claimed. I also award the Landlord **\$200.00** based on the Tenant's admission that they caused damage to a wall in the rental unit.

Section 7(1) (f) of the Residential Tenancy Regulation allows a Landlord to charge the Tenant a move out fee imposed by the strata corporation to the Landlord. I accept the undisputed evidence of the Landlord that the Tenants were responsible for the move out elevator fee of **\$50.00** at the end of the tenancy.

The Landlord applied to recover the filing fee for the cost of this Application. However, I deny this portion of the Landlord's claim because the Landlord made a mistake in completing the correct rental unit address on the initial Application and the Tenants should not be held responsible for this cost.

Therefore, the total amount payable by the Tenant to the Landlord is **\$6,420.00**. As the Landlord already holds the Tenants' **\$800.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4)

(b) of the Act. As a result, the Landlord is awarded a total amount of **\$5,620.00** in monetary compensation.

Conclusion

For the above reasons, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$5,620.00**. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The Landlord's Application to recover the filing fee is dismissed.

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: December 22, 2014

---

Residential Tenancy Branch

