



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF

### Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- 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 pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:58 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on August 28, 2014. She provided a Canada Post Tracking Number to confirm this registered mailing and her sworn testimony that the hearing package and the enclosed written evidence package were delivered to the tenant on September 2, 2014. Based on this evidence and in accordance with sections 88, 89(1) and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package and written evidence on September, 2, 2014, five days after their registered mailing.

At the hearing, the landlord referred to a written evidence package that had not been forwarded to me in advance of this hearing. The landlord gave sworn testimony that this written evidence was attached to the original application for dispute resolution and included in the registered mail sent to the tenant on August 28, 2014. I advised the

landlord that I would consider this written evidence if she were to deliver a copy to the Residential Tenancy Branch (the RTB) by noon hour the following day. The landlord agreed to take this action and the landlord's written evidence was resubmitted to the RTB the following morning. I have taken this written evidence into consideration in reaching my decision, but have not considered four pages of new written evidence that the landlord attached to the original material provided to the tenant.

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses or damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

The landlord testified that this tenancy began on January 15, 2014, as a 3 ½ month fixed term tenancy. At the expiration of this initial term, the tenancy continued as a periodic tenancy in which the tenant made monthly payments of \$1,900.00, payable on the first of each month. The landlord continues to hold the tenant's \$900.00 security deposit and \$250.00 pet damage deposit, both paid on January 10, 2014. The landlord testified that the tenant vacated the rental unit on August 25, 2014.

The landlord's application for a monetary award of \$2,250.00 included the following:

<b>Item</b>	<b>Amount</b>
Strata Fines for Contravention of Strata Bylaws	\$1,000.00
Recovery of Insurance Deductible for Damage Arising out of this Tenancy	1,000.00
Cleaning Fees	150.00
Filing Fee	50.00
<b>Total of Above Items</b>	<b>\$2,200.00</b>

At the hearing, the landlord reduced the application for the recovery of strata fines from \$1,000.00 to \$800.00. She did so as she testified that the strata had decided to withdraw the first of a series of five \$200.00 strata fines imposed against the landlord for the contraventions of strata bylaws on five separate occasions. She said that one of the strata fines was for improper trash disposal. The other four strata fines originally issued by the strata were for a series of contraventions of the strata noise bylaws for incidents in early June 2014. She said that some of these noise infractions resulted from the tenant's failure to keep three dogs in the rental unit from barking on an ongoing basis

those days. Some of the other noise infractions were for excessive noise at night stemming from partying at the tenant's rental unit. The landlord said that the strata representative spoke with the tenant before any of the fines for noise violations were issued to the tenant. The landlord also said that the landlord's representatives also raised concerns about these issues with the tenant. Although the tenant assured these representatives that the noise would not continue, the incidents did recur, prompting the strata council to issue the fines to the landlord.

The landlord provided undisputed sworn testimony supported by written evidence that a flooding incident arose during the course of this tenancy in which flooding stemming from the tenant's bathroom damaged rental units below this rental unit. Although the strata's insurance policy covered the repairs, the landlord was issued a bill from the strata council for the strata's \$1,000.00 insurance deductible costs. The landlord testified that the landlord paid the insurance deductible and the \$800.00 fine for bylaw violations issued by the strata to the landlord.

The landlord entered into written evidence a copy of the joint move-in condition inspection report of January 15, 2014 and a copy of the landlord's August 26, 2014 move-out condition inspection report. The landlord testified that she conducted the move-out condition inspection herself after the tenant failed to attend for a joint move-out inspection. These reports showed that the rental unit was clean at the beginning of this tenancy, but needed considerable cleaning after the tenancy ended. The landlord testified that the cleaning was conducted on August 28, 2014.

The landlord testified that the tenant signed a provision in his residential tenancy agreement requiring him to pay \$125.00 for the cleaning of this one bedroom rental unit in the event that it was not cleaned satisfactorily by the end of this tenancy. This was a pre-set amount established before the tenancy began. The landlord requested an additional \$25.00 because the rental unit was in poorer shape than anticipated at the end of this tenancy and required extra work to clean and remove food, clothing and garbage from the rental unit.

### 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 a 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.

In this case, I am satisfied by the undisputed sworn testimony and written evidence submitted by the landlord that the landlord did suffer a loss of \$800.00 as a result of strata fines imposed against the tenant for the period when this tenancy existed. I issue a monetary award to the landlord to enable the landlord to recover these losses.

The landlord has provided undisputed evidence that the landlord also suffered a loss of \$1,000.00 as a result of a flooding incident that led to the landlord's assumption of the \$1,000.00 insurance deductible for the strata's insurance claim. In the absence of any evidence from the tenant contesting the validity of the landlord's claim for the recovery of this deductible payment, I issue a monetary award in the landlord's favour of \$1,000.00 for this item.

After comparing the reports of the joint move-in condition inspection and the move-out condition inspection, I am satisfied that cleaning and the removal of food, clothing and garbage was required at the end of this tenancy. I allow the landlord's application for a monetary award of \$125.00, the pre-set amount for cleaning established at the beginning of this tenancy, plus a further \$25.00 for the removal of food, clothing and garbage from the rental unit.

I order the landlord to retain the tenant's deposits in partial satisfaction of the above-noted monetary awards. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

### Conclusion

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

Item	Amount
Strata Fines for Contravention of Strata Bylaws	\$800.00
Recovery of Insurance Deductible for Damage Arising out of this Tenancy	1,000.00
Cleaning Fees	150.00

Less Security& Pet Damage Deposits (\$900.00 + \$250.00 = \$1,150.00)	-1,150.00
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$850.00</b>

The landlord is 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.

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: March 24, 2015

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Residential Tenancy Branch

