



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MND, MNR, MNDC, FF, SS, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was originally convened on May 6, 2015 and was attended by the landlord; the tenant and his witness. The hearing was adjourned for the landlord to submit evidence to the Residential Tenancy Branch as per the interim decision dated May 6, 2015. The reconvened hearing was held on June 22, 2015 and was attended by the landlord only.

After the original hearing was adjourned I provided an interim decision that was sent to each of the parties that included a copy of notice of hearing document that provided the time; date; and call in procedures for the reconvened hearing. The interim decision and notice of hearing documents were mailed to the landlord and the tenant directly from the Residential Tenancy Branch.

The interim decision stipulated that the tenant could submit evidence in response to the landlord's evidence up to 7 days before the hearing. I note the tenant submitted evidence to the Residential Tenancy Branch that he mailed by registered mail on June 11, 2015. As such, I find the tenant did receive the notice of hearing documents mailed from the Branch and was therefore sufficiently served with notice of this hearing.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for compensation due to strata fines and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord testified that the tenancy began on March 15, 2013 as a 1 year and 2 week fixed term tenancy that converted to a month to month tenancy on April 1, 2014 for a

monthly rent of \$1,100.00 due on the 1<sup>st</sup> of each month with a security deposit of \$550.00 and a pet damage deposit of \$550.00 paid.

The landlord testified that the tenant failed to pay rent for the month of September 2014 and that when the landlord attempted to access the rental unit in October 2014 he discovered the tenant had changed the locks and moved out of the rental unit. The landlord seeks rent for the months of September and October 2014. The landlord also seeks compensation in the amount of \$120.75 for changing the locks and he has submitted into evidence a copy of the locksmith's estimate.

The landlord has submitted several photographs recording the condition of the rental unit at the end of the tenancy. The landlord testified that he had completed a move in condition inspection report at the start of the tenancy but he did not submit this into evidence. The landlord has submitted a quote for repairs to drywall, including painting; repairs to the textured ceiling; replacement of 2 doors and 3 bi-fold doors; and carpet replacement. The quote is for \$5,061.00.

The landlord also seeks, as a result of the items left behind from the tenant, the costs to have the tenant's "junk" removed. The landlord has submitted into evidence a quote of between \$282.00 and \$386.00. The landlord testified that his actual costs were \$405.30, however he had not provided a copy of a received for this amount.

The landlord seeks compensation in the amount of \$600.00 for weekly fines imposed on him by the strata for having a tarp up on the balcony. In support of this claim the landlord has provided copies of two letters sent by the strata. The letter dated October 3, 2013 states:

"It has also been reported that you have put up some tarps or curtains surrounding the deck of the unit. These must be removed no later than Thursday, October 10, 2013 in order to avoid fines being charged to the unit."

The letter of January 28, 2014 warns the strata have received complaints about marijuana use in the rental unit and of the potential for fines being levied if the activity continues.

The landlord has also submitted into evidence a statement of account from the strata showing the landlord was charged \$50.00 per week October 23, 2013 to February 28, 2014. The landlord testified that he had provided these letters to the tenant within a week or two of receiving them himself.

The landlord also seeks \$2,759.01 that the strata has charged him (as confirmed in the statement of account) for the costs involved in repairing the unit below the rental unit after the toilet in the rental unit overflowed. The landlord testified that he was advised by the plumber that the overflow control tube of the toilet had been deliberately plugged with a piece of cloth.

## Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Based on the landlord's undisputed testimony I find the tenant failed to provide the landlord with the payment of rent or any notice to end the tenancy prior to the months of September or October 2014 and as such the tenant remains responsible for the payment of rent for these two months in the amount of \$2,200.00.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the landlord's undisputed testimony, I also find the tenant had changed the locks to the rental unit without the landlord's knowledge or the provision of a key to the landlord. As such, I accept the landlord had to have the locks changed and he has suffered a loss as a result in the amount of \$120.75.

While I accept that the landlord's photographic evidence does record the condition of the rental unit at the end of the tenancy. As such, I find that these photographs do record the furniture and other items left behind by the tenant when he vacated the rental unit. I therefore find the landlord was required to remove these belongings and he has suffered a loss as result.

As to the amount of the loss, while the landlord testified that it actually cost him \$405.30 I find that the landlord has not provided any evidence to support this amount. Rather, I find I can only rely on the amounts quoted in the estimate. Based on the photographs I find there was a substantial amount of items that required removal and award the landlord the maximum amount of the estimate or \$386.00.

While I have accepted the landlord's photographs do record the condition of the rental unit at the end of the tenancy, I find the landlord has not provided any evidence of the condition of the rental unit at the start of the tenancy. As such, I find the landlord cannot provide sufficient evidence to establish that the damage he is claiming for resulted during the tenancy. I therefore dismiss the portion of the landlord's claim for \$5,061.00 for damage to the rental unit.

I accept the landlord had been repeatedly fined by the strata in the amount of \$50.00 per week for several weeks between 2013 and 2014 for having a tarp on the deck. However, I am not satisfied that the tenant was ever truly informed that fines were being imposed or how much or how frequently they were being imposed. As such, I find the landlord cannot now claim these against the tenant and I dismiss this portion of the claim in the amount of \$600.00.

Based on the landlord's undisputed testimony I find the tenant was responsible for the damage to the unit below the rental unit by deliberately causing the toilet to overflow. I also accept that as a result the strata charged the landlord in the amount \$2,759.01 for repairs to the unit below the rental unit. I find the tenant must compensation the landlord for this amount.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$5,515.76** comprised of \$2,200.00 rent owed; \$120.75 lock replacement; \$386.00 removal of junk; \$2,759.01 flood damage and \$50.00 of the \$100.00 fee paid by the landlord for this application as he was only partially successful in his claim.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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 22, 2015

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Residential Tenancy Branch

