



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNR, 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, 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 deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1416 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. 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 he served the tenant with the dispute resolution package on 8 January 2015 by registered mail. The landlord used the forwarding address he received on 7 January 2015 from the tenant. The landlord provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

### Preliminary Issue – Landlord's Amendment

At the hearing, the landlord asked to amend his application to include his rental loss for February. Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

Given that the tenant had vacated the rental unit by that time, I do not consider that the tenant had sufficient notice that this rental loss was part of the landlord's claim. As such, I decline the landlord's request to amend his application. This does not prevent the landlord from advancing this claim in a future application should he elect to do so.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage to the rental unit, and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit 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

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 August 2014. The parties entered into a written tenancy agreement that day. The tenancy agreement set out that the tenancy was for an initial fixed term of one year. The tenancy agreement established monthly rent of \$3,500.00. By way of an addendum dated 1 November 2014, rent was reduced to \$3,200.00. Rent was payable on the first of the month. The landlord testified that he continues to hold the tenant's security deposit in the amount of \$1,750.00 which was collected 15 June 2014.

The rental unit is contained within a strata-held, condominium-style building. Clause 20 of the addendum to the tenancy agreement sets out that the tenant must comply with the strata bylaws. Clause 22 of the addendum sets out that the names of all occupants must be provided to RC. On 15 June 2014, the landlord provided the tenant with a copy of the strata bylaws for the building.

In November or December 2014, a second occupant began occupancy of the rental unit.

On 6 December 2014 there was shouting from the rental unit. A neighbour telephoned the police. The police attended at the rental unit. On 8 December 2014, the strata corporation sent a letter to the landlord advising him that the strata corporation was considering the imposition of a fine for this disturbance. As well, on 8 December 2014,

the strata corporation sent a letter to the landlord explaining that there was an unregistered occupant in the rental unit. That letters set out that the strata may impose a fine of \$200.00 per breach. The landlord attended the January strata meeting to speak to the fines. The landlord testified that as a result of this disruption the strata council levied fines against him. The landlord did not provide me with written documentation of the fine amount or payment.

On or about 15 December 2014, the tenant or occupant was showering in the rental unit. The shower water leaked into the suite below and caused damage to that unit's ceiling. On that date plumbers arrived to investigate the leak. The plumbers investigated the area around the floor. The plumbers let the shower in the rental unit run and no further leaks were detected. The plumbers could not find a source of a leak and conclude that the cause of the leak was overflow from the shower. The landlord provided me with a report from the plumbing company that detailed their investigation. The landlord testified that the floor in the bathroom was in good repair.

The landlord provided me with a letter dated 17 December 2014 from the strata management company. That letter set out that the landlord was responsible for the cost of the repairs to the lower unit. I was provided with an invoice dated 31 December 2014. That invoice was in the amount of \$150.00 and set out that this cost was incurred to repair damage to the ceiling in the downstairs rental unit caused by water.

The landlord testified that the tenant was "always" telling the landlord that the tenant wanted to move out. The landlord would tell the tenant to put his notice in writing, but he did not do so. In December 2014, the tenant told the landlord that it was likely that he was going to move out, but did not provide the landlord with a date. On 2 January 2015 the tenant provided his notice to end the tenancy as of 2 January 2015. The letter was sent by registered mail and received by the landlord on 7 January 2015.

The landlord provided me with a receipt dated 5 January 2015. That receipt was for \$50.00. The landlord testified that this receipt was for general repairs to the rental unit. The receipt notes the following items that were repaired:

- sliding doors;
- paint wall and patchwork in living room wall;
- fix toilet holder;
- fix edging; and
- replace ceiling light in bedroom.

The landlord claims for the cost of fixing a sliding door that was loose. The landlord testified that the door worked when the tenancy began and that it was the tenant's misuse that caused the loosening. The landlord claims for the cost of painting in the living room. The landlord testified that there were marks and dents on the walls from the tenant's furniture. The landlord testified that the rental unit was repainted approximately six months before the tenancy began. The landlord testified that the toilet paper holder was broken. The landlord testified that the edging between the flooring from one room to another was lifting. The landlord testified that the edging was not like that when the tenancy began. The landlord testified that the cover for the light fixture in the master bedroom was missing.

The landlord provided me with various receipts for repair supplies.

The landlord testified that when the tenant vacated the rental unit he left it in a mess. The landlord testified that it appeared that the tenant only took his essential belongings and left the remainder. The landlord provided me with a receipt for cleaning. That receipt was for \$150.00. The receipt was dated 5 January 2015.

I was not provided with condition move in or move out inspection reports.

The landlord testified that the tenant did not return one fob. The landlord testified that the fob cost \$75.00 to replace.

The landlord testified that he was able to find a new tenant as of 1 March 2015.

I was not provided with receipts or proof of payment for the following:

- plumbing repairs;
- entry fob; and
- strata fines.

The landlord did not provide any documentary evidence that establishes the condition of the rental unit at the beginning or end of the tenancy.

The landlord claims for \$4,484.03:

Item	Amount
Unpaid January Rent	\$3,200.00
Repairs to Downstairs Unit	150.00
Plumbing Cost Estimate	600.00
Maintenance Repairs	50.00

Cleaning	150.00
Materials	59.03
Entry Fob	75.00
Strata Fine (noise)	200.00
Strata Fine (occupant)	200.00
<b>Total Monetary Order Sought</b>	<b>\$4,684.03</b>

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not vacate the rental unit until 2 January 2015. Accordingly, he was liable for rent due 1 January 2015. The landlord has proven his entitlement to \$3,200.00 for January's rent.

The landlord provided testimony that the tenant's improper use of the shower caused water damage to the lower unit. The landlord provided me with a report from the plumbing company that detailed their repair work.

Subsection 32(3) of the Act requires a tenant to repair damage caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains. I find, on a balance of probabilities, that the tenant's or occupant's misuse of the shower caused the damage to the lower unit's ceiling.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlord has provided an invoice in the amount of \$150.00 for the repairs to the lower unit's ceiling. I find the landlord has proven his entitlement to this amount. The landlord has not provided any invoice or proof of payment for the plumbing costs in the

amount of \$600.00. As such, the landlord has failed to substantiate this claim and is not entitled to recover this amount from the tenant.

Subsection 32(4) of the Act provides that the tenant is not responsible for making repairs for reasonable wear and tear. The repairs set out in the repairperson's invoice, in part, relate to items that are characterised as wear and tear. In particular, the landlord has failed to show that the touch up paint and repairs required to the living room wall were anything more than wear and tear, the landlord has failed to show that the edging lifting is anything more than wear and tear, the landlord has failed to show that the toilet paper holder repair was anything more than wear and tear, and the landlord has failed to show that the loose sliding doors were anything more than wear and tear. Accordingly, the landlord is not entitled to recover for the cost of these repairs.

The landlord has not provided me with a copy of any condition move in or move out inspection report. These reports are the best evidence of the condition of the rental unit at move in and move out. Further, the landlord has failed to provide me with any documentary evidence, such as photographs of the rental unit that substantiate his claim for cleaning and repairs. As the landlord has failed to provide this evidence, I find, on a balance of probabilities, that the landlord has failed to substantiate his claim for cleaning and the replacement of the light fixture.

The landlord has not provided me with a receipt or proof of payment for the replacement cost of the fob. Accordingly, the landlord has failed to substantiate his loss as required by section 67 of the Act and is not entitled to recover this claimed amount.

The landlord has provided me with letters that show that the strata corporate was considering issuing a fine, but nothing that shows that the strata corporation actually did levy any fines. As such, the landlord has failed to substantiate his loss as required by section 67 of the Act and is not entitled to recover the amounts of the strata fines.

As the landlord has been mostly successful in his application, I order that he is entitled to recover his filing fee for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,650.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid January Rent	\$3,200.00
Repair Costs	150.00
Offset Security Deposit Amount	-1,750.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,650.00</b>

The landlord is provided with this order 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 this order, this order may be filed in the Small Claims Division of the Provincial Court and 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 subsection 9.1(1) of the Act.

Dated: July 02, 2015

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Residential Tenancy Branch

