



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      MND, MNDC, MNR, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord’s attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on November 28, 2014, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord’s agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### **Issues to be Decided**

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

The parties entered into a fixed term tenancy which began on July 1, 2013 and was to expire on June 30, 2014. Rent in the amount of \$1,150.00 was payable on the first of each month. The tenant paid a security deposit of \$575.00. The tenancy ended on February 15, 2014

The landlord claims as follows:

a.	Loss of rent for March 2014 and April 2014	\$2,300.00
b.	Strata fines	\$1,250.00
c.	Cleaning fees and repairs	\$ 650.25
d.	Filing fee	\$ 50.00
	Total claimed	\$4,700.25

### **Loss of rent for March 2014 and April 2014**

The landlord's agent testified that the tenant breached the tenancy agreement when they vacated the rental unit on or about February 15, 2014. The agent stated that the tenant gave them no prior notice that they were vacating the premises.

The landlord's agent testified that as soon as they were aware the tenant had vacated the rental premises they immediately advertised the rental unit for rent on several popular websites; however, they were unable to find a new renter until late April 2014 and the new renter's tenancy commenced May 1, 2014. The agent stated that they seek to recover loss of rent for March 2014 and April 2014, in the amount of \$2,300.00.

### **Strata fines**

The landlord's agent testified that the tenant signed a form K, which indicated they would abide by all strata rules. The agent stated that the tenant received strata fines for smoking in the premises, using the common area for injecting drugs, and for damaging a mirror in the common area. The landlord seeks to recover the strata fines in the amount of \$1,250.00. Filed in evidence is a statement of account.

### **Cleaning fees and repairs**

The landlord's agent testified that the tenant did not clean the rental unit. The agent stated that all the kitchen appliances need to be cleaned, the walls needed to be spot cleaned, the bathrooms required to be cleaned, the windows needed to be washed and the floors required to be cleaned. The landlord seeks to recover the cost of cleaning in the amount of \$280.00. Filed in evidence is an invoice for cleaning.

The landlord's agent testified that the tenant did not leave the remote for the ceiling fan and as a result they had to hire an electrician to alter the fan so it could be used without

the remote. The agent stated that the electrician also repaired the garburator as it was damaged by the tenant as they had placed glass and metal in it. The landlord seeks to recover the cost of the repairs in the amount of \$105.00. Filed in evidence is a receipt for repairs.

The landlord's agent testified that the tenant was provided two fobs at the start of the tenancy and failed to return any of the fobs when they vacated. The landlord seeks to recover the cost to replace the fobs in the amount of \$50.00. Filed in evidence is a receipt for replacement.

The landlord's agent testified that during the tenancy the tenant changed the locks without their permission. The agent stated as a result they had to hire a locksmith who had to drill a hole in the door to remove the existing lock. The landlord seeks to recover the cost to replace the lock and to fix the door in the amount of \$141.75.

The landlord's agent testified that they had to bring a plumber in to augur the clogged toilet as the tenant purposely clogged the toilet and let it over flow onto the hardwood causing the flooring to lift. The agent stated they the plumber found the toilet clogged with metal. The landlord seeks to recover the plumbers invoice in the amount of \$73.50. Filed in evidence is a receipt for services provided.

### **Analysis**

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) of the Act states a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

### **Loss of rent for March 2014 and April 2014**

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice

*45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*  
*(a) is not earlier than one month after the date the landlord receives the notice,*  
*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*  
*(c) is the day before the day in the month, or in the other period on which the tenancy is based,*

...

In this case, the evidence of the landlord's agent was that the tenant breached the fixed term tenancy by vacating the rental unit in February 2014, which no prior notice was provided. However, under the Act the tenant was not entitled to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breached section 45(2) of the Act as the earliest date they could have legally ended the tenancy was June 30, 2014, as stated in the tenancy agreement.

Since the tenant failed to comply with the Act by ending the tenancy earlier than the Act allowed. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, the evidence of the landlord's agent was that they immediately started to advertise the rental unit for rent on several popular websites and were unable to find a new renter until the end of April 2014 and the tenancy commenced May 1, 2014. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for March 2014 and April 2014, in the amount of **\$2,300.00.**

### **Strata fines**

I accept the undisputed evidence of the landlord's agent that the tenant signed a form K, acknowledging that they would abide by the strata rules. I further accept the undisputed testimony of the agent that the tenant failed to comply with the rules, by smoking in the premises, using drugs in the common area and damaging strata property. I find the tenant breached the Act, when they failed to comply with the form K and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover the strata fines in the amount of **\$1,250.00**.

### **Cleaning fees and repairs**

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept the undisputed evidence of the landlord's agent that the tenant did clean the rental unit at the end of the tenancy and this caused losses to the landlord. I find the tenant breached the Act when they failed to clean the items described by the landlord at the end of the tenancy. Therefore, I find the landlord is entitled to recover the cost of the cleaning in the amount of **\$280.00**.

I further accept the undisputed evidence of the landlord's agent that the tenant failed to leave the rental unit undamaged at the end of the tenancy and this caused losses to the landlord. I find the tenant breached the Act, when they failed to return the remote to the ceiling fan, when they changed the locks to the rental unit and did not provide a key to the landlord, when they clogged the toilet and damaged the garburator. Therefore, I find the landlord is entitled to recover the cost for the above repairs in the amount of **\$370.25**.

I find that the landlord has established a total monetary claim of **\$4,250.50** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of \$575.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$3,675.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

**Conclusion**

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: July 08, 2015

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Residential Tenancy Branch

