



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD

### Introduction

This reconvened 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; and 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.

At the original hearing date, on May 20, 2015, the tenant did not attend the hearing and the landlord sought an adjournment. The landlord's application to adjourn was granted on the basis of the landlord's sworn submissions that the tenant has been served with his evidence package from October 20, 2014 and that the materials were previously submitted to the Residential Tenancy Branch ("RTB"). The materials were not available for review at the original hearing and, based on the landlord's testimony, provided significant evidence to consider in determining any monetary award.

The tenant did not attend the reconvened hearing. The landlord attended the reconvened hearing and was permitted an opportunity to make reference to his documentary evidence, provide testimony and make submissions with respect to his application. At the reconvened hearing, the landlord's materials were available for review. I note those materials were submitted to the RTB on June 2, 2015.

The interim decision in this matter stated that the landlord personally served the tenant with the landlord's original Application for Dispute Resolution Hearing package on October 24, 2014 as the tenant vacated the rental unit. However, the landlord clarified in his testimony at the reconvened hearing, supported by the documentation made available, that the tenant was served with the landlord's amended application on December 4, 2014. The original application sought \$1870.75 from the tenant. The amended application sought a total amount of \$5428.25 (an additional \$3557.50 beyond the original monetary amount).

In the interim decision with respect to this matter, I stated that this is not an acceptable means of service under the service provisions of the *Act*, and therefore I am unable to consider the amended application at this time. With the clarifying sworn testimony of the

landlord and the supporting evidence, I find the tenant was duly served with the landlord's amended claim on December 4, 2014.

With respect to service of the original Application for Dispute Resolution, I accept the sworn, undisputed testimony of the landlord supported by a witness statement to prove service that the tenant was duly served with the Application for Dispute Resolution hearing package. Rule 10.1 of the Dispute Resolution Rules of Procedure regarding the commencement of a hearing provides as follows:

The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

(emphasis added)

Given that I find the tenant was duly served with the landlord's Application for Dispute Resolution including Notice of Hearing and that the previous hearing lasted approximately 34 minutes, this hearing was conducted in the absence of the tenant.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage or loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

#### Background and Evidence

The landlord testified that this tenancy began in May 2013 and that the tenant vacated the rental unit on or about December 4, 2014. The rental amount of \$2300.00 was payable on the first of each month. The landlord testified that he continues to hold a security deposit of \$1150.00 paid by the tenant on April 15, 2013. The landlord testified that, over the course of the tenancy, the tenant was responsible for damage to the garage door of the rental complex and that many months were spent attempting to come to some agreement with the tenant about payment for this damage to the strata corporation at the premises.

The landlord testified that there were several incidents where damage was done to the residential property by the tenant and her guests. He testified that, beyond the damage to the garage door, there was a time when the tenants asked for repair of the air conditioning unit but it did not require a repair. The service call was charged to the landlord. The landlord testified that he believed the call for service was made out of spite and should be compensated. He had no further evidence in relation to that issue.

The landlord testified that the tenants were in arrears in the amount of \$2350.00 prior to abandoning the residence. The landlord testified that the tenant had provided written authorization to pay for certain damage, including the garage door damage and to allow the landlord to retain the security deposit from this tenancy.

The landlord provided documentary evidence to support his claim as follows;

<b>Landlord Monetary Claim</b>	<b>Amount</b>
Damage to Gate on Premises (Invoice from Strata Corp – 2984.63 reduced to \$16343.63 – tenant agrees to pay \$817.00)	\$1634.63
Unpaid Rent (December 2014 – returned ck \$2400.00)	2350.00
NSF Fee	25.00
Move-In Fee	100.00
“Liquidated Damages” Fee	1230.00
Less Security Deposit	-1150.00
<b>Total Monetary Request by Landlord</b>	<b>\$4189.63</b>

The landlord submitted several pieces of correspondence from the Strata Corporation to both the owner/landlord of the rental unit and the tenant to indicate that the tenant was in violation of the Strata regulations. The letters referred to photographic and video evidence to show that the tenant drove through the gate to the underground parking; receipts and demands for payment to repair the gate; other violation notices with respect to garbage and driving within the parking garage; notification of move-in fees and Strata Documents to indicate the standard move-in and liquidated damages fees.

The landlord submitted the Residential tenancy agreement which provided details of the tenancy including a \$25.00 insufficient or non-payment fee and a liquidated damages fee explained. The landlord submitted a copy of the addendum to the rental agreement and the Notice of Tenant’s Responsibilities pursuant to the *Strata Property Act* both signed by the tenant.

The liquidated damages clause within Residential Tenancy Agreement dated April 14, 2014 as follows:

*If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral or by conduct of an intention to breach*

*this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term the tenant will pay to the landlord the sum of \$1230...liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.*

The landlord submitted receipts for damage to the gate and accounting documents providing what the tenant had paid towards that damage. The landlord also submitted a series of emails between the landlord and the tenant to provide evidence of the tenant's agreement to pay a portion of the damage to the gate.

### 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.

With respect to the damage to the garage door, the landlord has provided sufficient testimony and supporting documentation to show that the tenant is responsible for this damage and that she agreed to pay the amount of \$817.00 towards the gate repair. I find that the landlord is entitled to \$817.00 as proven owing and proven agreed by the tenant. While the landlord's bill for this damage may be more than \$817.00, this is the agreement that was made between the parties. The evidence of the landlord justifies clearly the amount of \$817.00.

The landlord made reference in testimony to a tenant request to repair the air conditioning within the rental unit and presented an invoice that there was in fact no repair needed. However, the landlord has failed to prove a clear connection between any costs to service the facilities of the tenant and a contravention of the *Act* or the rental agreement by this tenant in these particular circumstances. I find the landlord is not entitled to the air conditioning service bill.

I find that the landlord has provided sufficient documentary evidence to show, on a balance of probabilities, that the tenant has contravened the residential tenancy

agreement and is therefore responsible for the cost of move-out and the liquidated damages fee that are clearly outlined as consequences within the agreement and as accepted by the tenant in signing that agreement. I find that the landlord is entitled to \$1230.00 in liquidated damages and the \$100.00 move-out fee.

With respect to the rental arrears, I find that the landlord has provided undisputed sworn testimony and documentary evidence to show that the tenant has failed to pay \$2350.00 in the month of December 2014. The landlord submitted a copy of the tenant's returned rental cheque in the amount of \$2400.00. I find the landlord is entitled to recover both the \$2350.00 in unpaid rent while the tenant still resided in the rental unit and the \$25.00 NSF fee for that returned rental cheque.

I also note that I find that the landlord provided evidence in both testimony and documentation to show that the landlord mitigated any loss of rental income or liquidated damages costs by attempting to re-rent the unit as soon as possible, including testimony and documentation of advertising and the landlord's explanation of the course of duties of re-renting.

Pursuant to section 72(2) of the *Act* as partially reproduced here, I find the landlord is entitled to retain the tenant's security deposit to partially recover the monetary amount owed.

**72** (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted...

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I find that the landlord is entitled to a monetary order as follows;

Items	Amount
Damage to Gate on Premises (Invoice from Strata Corp – 2984.63 reduced to \$16343.63 – tenant agrees to pay \$817.00)	\$817.00

Unpaid Rent **	2350.00
NSF Fee	25.00
Move-In Fee	100.00
"Liquidated Damages" Fee	1230.00
Less Security Deposit	-1150.00
<b>Total Monetary Order to Landlord</b>	<b>\$3372.00</b>

*\*\*I note that the landlord provided evidence that the rental cheque returned in December 2014 by the tenant was in the amount of \$2400.00 and the landlord's compensation for this returned cheque is in the amount of \$2350.00. The testimony of the landlord is that rent for the premises was \$2350.00, the landlord is being compensated for the insufficient funds with the agreed-upon fee of \$25.00 and finally the landlord testified that the \$50.00 amount was to be applied towards the gate damage. The gate damage, in the amount agreed between parties is being fully recovered by the landlord.*

### Conclusion

I issue a monetary order in favour of the landlord in the amount of \$3372.00.

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: August 4, 2015

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Residential Tenancy Branch