



# 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: MNDC MNSD FF

### **Introduction:**

Both parties attended the hearing and the tenant confirmed he received the landlord's Application for Dispute Resolution by registered mail. I find that the tenant is served with the Application according to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Has the landlord has proved on a balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced Sept. 1, 2013, that monthly rent was \$1100 and a security deposit of \$550 was paid. The landlords said that the tenant cracked large windows in the suite. An invoice to replace them is in evidence. The windows were about 5 years old.

The tenant said when they moved out in February 2016, they noticed the cracked windows and were surprised. They seemed to be cracked in a way that indicated building stresses and the ceiling was cracked also which indicated the same. The landlord said there are 200 strata units and the Strata said that no others had cracked so it was unlikely that the tenants had cracked due to building stressors. She noticed the tenants had a shield on their windows. The tenant said the shield was to protect against summer sun and it was in the winter they cracked. He did internet research and it seems like stress breakage from expansion.

The tenant provided no documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

### **Analysis**

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

### **Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenancy somehow caused the damage. The tenant agreed that the cracks were not there at move-in and were there when they moved out. Although the tenant said it was likely the result of building stressors, I find this improbable as none of the other 200 units in the building have had similar issues. The Residential Tenancy Guideline #40 assigns a useful life of elements in rented premises which is designed to account for reasonable wear and tear. Windows have a useful life of 15 years. These windows were 5 years old so I find the landlord entitled to recover 66% of the cost of the replacement or \$955.06 including GST and PST.

### **Conclusion:**

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

**Calculation of Monetary Award:**

Window replacement allowance	955.06
Filing fee	100.00
Less security deposit (no interest 2009-16)	-550.00
<b>Total Monetary Order to Landlord</b>	<b>505.06</b>

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 13, 2016

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Residential Tenancy Branch