



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MND MNSD MNDC FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, dated May 12, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation for damage to the unit, site, or property;
- a monetary order for compensation for monetary loss or other money owed;
- an order permitting the Landlord to retain the security deposit in partial satisfaction of the claim;
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by D.I. The Tenants were represented at the hearing by J.D.P. Both parties provided a solemn affirmation.

The Landlord testified the Notice of a Dispute Resolution Hearing and evidence was served on the Tenant by registered mail on May 16, 2016. J.D.P. acknowledged receipt on behalf of the Tenants. However, D.I. testified the Landlord's evidence package was not sent to the Tenant and the Residential Tenancy Branch until Friday, October 21, 2016. The Tenant confirmed receipt but submitted the Landlord's evidence should not be considered for failing to comply with the Rules of Procedure.

Residential Tenancy Branch Rule of Procedure 3.14 states:

*Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.*

Further, Residential Tenancy Branch Rule of Procedure 3.17 states:

*The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonable prejudice one party or result in a breach of the principles of natural justice.*

In this case, the Landlord's documentary evidence was not submitted to the Residential Tenancy Branch and served on the Tenants in accordance with Rule of Procedure 3.14. The Tenant objects to the admission of the Landlord's evidence. Pursuant to the Rules of Procedure noted above, I find that accepting the late evidence submitted by the Landlord would unreasonably prejudice the Tenants, who have not had an opportunity to consider and respond to it. I assisted in my conclusion by the amount of time that passed between filing the Application and service of the Landlord's documentary evidence. Accordingly, I decline to accept the Landlord's documentary evidence, which has not been considered further in this Decision.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

#### Issues to be Decided

1. Is the Landlord entitled to a monetary order for compensation for damage to the unit, site, or property?
2. Is the Landlord entitled to a monetary order for compensation for monetary loss or other money owed?
3. Is the Landlord entitled to an order permitting the Landlord to retain the security deposit in partial satisfaction of the claim?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties confirmed the tenancy began on September 28, 2006 and ended on April 30, 2016. At the end of the tenancy, rent was \$2,689.00 per month. The Tenants paid a security deposit of \$1,275.00 at the beginning of the tenancy. On behalf of the Landlord, D.I. says the Landlord now holds a security deposit of \$1,315.28, including interest, pending the outcome of this hearing.

On behalf of the Landlords, D.I. provided oral testimony in support of the Landlord's claims. First, the Landlord claims \$400.00 for strata fines for noise complaints that occurred on or about October 9, 2014 and November 18, 2014.

In reply, and on behalf of both Tenants, J.D.P. directed me to a copy of a letter he wrote to F.Y., the senior strata agent, dated October 16, 2014. In it, J.D.P. described a history of no noise complaints until a new owner moved in below the tenants. Although he acknowledged small children in the rental unit, he suggested their presence had minimal impact given the family's work and daycare schedule. In addition, J.D.P. testified that the strata fines appear to be little more than a cash grab that only arose after the Tenants gave notice to vacate the rental unit. The Tenants disagree with this aspect of the Landlord's claim.

Second, the Landlord claimed \$25.00 to clean the oven at the end of the tenancy. D.I. testified that the rental unit was new at the beginning of the tenancy but that there were many issues at the end of the tenancy. However, D.I. confirmed the Landlord is only seeking to be reimbursed \$25.00 for cleaning.

On behalf of the Tenants, J.D.P. testified that although there were difficulties with the oven during the tenancy, a professional cleaner was hired to clean the rental unit at the end of the tenancy. The Tenants disagree with this aspect of the Landlord's claim.

Third, the Landlord claimed \$648.52 for to replace two broken floor tiles in the rental unit. According to D.I., a contractor advised that the tiles appear to have broken when something fell on them.

In reply, J.D.P. acknowledged tiles may have cracked but suggested this was likely due to the rental property shifting after construction. He testified there was a "clean inspection report" by the Landlord at the end of the tenancy, a copy of which was included with the Tenants' documentary evidence. D.I. acknowledged the tiles were not

noticed until after the condition inspection report was completed. The Tenants disagree with this aspect of the Landlord's claim.

Fourth, the Landlord claimed \$200.00 for a move-out fee required by the strata by-laws. D.I. testified the Tenants signed a Form K acknowledging acceptance of the strata by-laws.

On behalf of the Tenants, J.D.P. disagreed with this aspect of the Landlord's claim, which was not set out in the Landlord's Application. He also suggested this aspect of the Landlord's claim should be borne by the owner of the rental unit.

Finally, D.I. advised that \$150.00 for access fobs is no longer being claimed by the Landlord.

The Landlord claimed the \$100.00 filing fee paid to make this Application.

### Analysis

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

Section 67 of the *Act* permits me to order a party to pay compensation for damage or loss to the other for failing to comply with the *Act*, the regulations or a tenancy agreement.

In addition, section 37 of the *Act* requires vacating tenants to leave rental units reasonably clean and undamaged, except for reasonable wear and tear. Further, Policy Guideline 1 clarifies the responsibilities of a landlord and tenant regarding maintenance, cleaning, and repairs of residential properties. A tenant is required to maintain "reasonable health, cleanliness and sanitary standards", and is generally responsible for cleaning and repair costs when the property does not meet that standard at the end of a tenancy.

On behalf of the Landlord, D.I. provided oral testimony describing cleaning costs and damage to the rental unit. D.I. also described strata fines and move-out fees owed by the Tenants.

The tenant disagreed with all aspects of the Landlord's claim and submitted the claims are not supported by documentary evidence.

In light of my finding with respect to the Landlord's documentary evidence, described above, I find there is insufficient evidence for me to conclude the Landlord is entitled to a monetary award in the amounts sought.

The Landlord's Application is dismissed, without leave to reapply. As the Landlord has not been successful, I decline to award recovery of the filing fee.

The Landlord is ordered to return the security deposit to the Tenants forthwith.

### Conclusion

The Landlord's Application is dismissed, without leave to reapply.

The Landlord is ordered to return the security deposit to the Tenants forthwith.

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: October 31, 2016

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Residential Tenancy Branch