



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding UNIQUE REAL ESTATE ACCOMODATIONS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPB, OPN, MNDC, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for Pursuant to section 55;
- a monetary order for unpaid rent 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;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony the tenants were both served with the notice of hearing package via email to the tenants on July 27, 2017. The landlord stated that the tenants were again served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 10, 2017 to a new mailing address provided by the tenants. The landlord stated that he has been in email contact with the tenants throughout the process and was recently told that they were currently in Vietnam on an extended trip, but was aware of the hearing time and date. I accept the landlord's undisputed affirmed testimony and find that the tenants were properly served as per sections 88 and 89 of the Act.

At the outset the landlord clarified that an order of possession was not required as the tenants had vacated the premises on June 30, 2017. As such, these portions of the landlord's application require no further action. The hearing shall proceed on the landlord's monetary claim of \$7546.98.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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

This tenancy began on July 15, 2016 on a fixed term tenancy ending on July 31, 2017 as shown by the submitted copy of the signed tenancy agreement dated June 24, 2016. The monthly rent was \$5,950.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$2,975.00 was paid on June 21, 2016.

The landlord seeks an amended monetary claim of \$7,536.98 from \$7,546.98 which consists of:

\$5,950.00	Loss of Rental Income, July 2017
\$1,000.00	Strata Fine
\$315.00	Cleaning
\$3.98	Missing Mail Box Key
\$168.00	Plumbing, Clogged Toilet

The landlord stated that he had withdrawn the \$10.00 charge for replacing a light bulb from the monetary claim.

The landlord provided undisputed affirmed testimony that the tenant gave notice to end the tenancy on April 28, 2017 in a letter to end the tenancy on May 31, 2017. However, the tenants instead ended the tenancy on June 30, 2017 due to renovation schedules from the purchase of their new home.

The landlord stated that advertising and marketing began right away to re-rent the premises which are shown in the submitted copy of a "Calendar Entries" as proof of the landlord's efforts to re-rent the premises as soon as possible. The landlord stated that the rental was not successful re-rented until September 1, 2017 and that the tenants

were responsible for the loss of rental income of \$5,950.00 for July 2017 as per the signed tenancy agreement.

The landlord claims that the tenants had incurred a \$1,000.00 strata fine for breaching the strata bylaws for moving-out of the building on June 24, 2017 without any notification or booking of the elevator. The landlord stated that the tenants were advised of the breach and were given an opportunity appeal the decision in a hearing on August 29, 2017 initiated by the tenants, which was dismissed. The landlord has submitted a copy of the strata notification letter(s) dated June 27, 2017 and again on September 8, 2017.

The landlord claims that the tenants vacated the premises leaving it dirty, requiring cleaning as noted in the completed condition inspection report for the move-in dated June 30, 2017 and the submitted invoice dated July 5, 2017 for \$315.00.

The landlord claims that the tenants failed to return all of the keys to the rental unit incurring a replacement cost of \$3.98 for a missing mail box key. The landlord stated that this was noted in the completed condition inspection report for the move-out on June 30, 2017 and the submitted copy of the invoice dated July 10, 2017 for \$3.98.

The landlord claims that the tenants failed to properly maintain the toilet in the rental premises during the tenancy which incurred a plumber's invoice for \$168.00 date September 15, 2016. The landlord provided undisputed affirmed testimony that the tenants had reported a clogged toilet and upon inspection by a plumber it was determined that there was no fixture malfunction, but clogged with toilet paper. The landlord stated that the tenant has always disputed and refused to pay for this claim during the tenancy.

### 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. In this case, the landlord has provided undisputed affirmed testimony that the tenants breached the fix term tenancy by pre-

maturely ending on June 30, 2017 instead of July 31, 2017. The landlord reasonably attempted to re-rent the unit without success and incurred a loss of rental income for July 2017. The landlord has submitted undisputed evidence regarding the strata fines which were not paid by the tenants for moving out without booking an elevator; vacated the rental unit leaving it dirty; failed to return a mail box key; and failed to maintain the toilet causing it to be clogged as noted by the plumbers invoice. On this basis, I find that the landlord has established a total monetary claim of \$7,436.98.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$2,975.00 security deposit in partial satisfaction of this claim and I grant the landlord a monetary order for the balance due of \$4,561.98.

### Conclusion

The landlord is granted a monetary order for \$4,561.98.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 17, 2018

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Residential Tenancy Branch