



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MOSAIC DRF SEVEN LIMITED  
PARTNERSHIP and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, MNRL-S, FF

### Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, 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 tenant pursuant to section 72.

The landlord's agent, A.R. (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on February 6, 2020. The landlord also stated that an online search of the Canada Post online tracking system shows that the tenant signed in receipt of the package on February 10, 2020. I accept the undisputed affirmed evidence of the landlord and find that the tenant was sufficiently served as per sections 88 and 89 of the Act. Although the tenant did not attend the conference call hearing, I find that the tenant is deemed served as per section 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage for money owed or compensation 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.

The landlord stated although a signed tenancy agreement was entered into with the tenant, a copy of the agreement was not submitted in evidence. The landlord provided affirmed testimony that the tenancy started on May 1, 2019 on a fixed term tenancy ending on April 30, 2020. The monthly rent was \$2,150.00 and the tenant paid a \$1,075.00 security deposit and a \$1,075.00 pet damage deposit.

The landlord seeks a monetary claim of \$2,944.90 which consists of:

\$150.00	Moving Out Fee, Strata
\$2,650.00	Liquidated Damages Fee
\$2,150.00	Unpaid/Loss Rent, February 2020
\$20.00	Riverclub Fee, Amenity
\$75.00	Parking Fee
\$39.90	Cleaning Fee
\$10.00	Replacement Cost, 2 lightbulbs
\$100.00	Filing Fee

The landlord provided undisputed affirmed testimony that the tenant provided written notice to end the tenancy on January 16, 2020 to end the tenancy on January 31, 2020. The landlord stated that the tenant vacated the rental unit on January 31, 2020 where it was discovered that the tenant failed to pay the Strata Move-Out Fee of \$150.00 as required by the completed Form K document signed by the tenant; left it dirty requiring cleaning for a cost of \$39.90 and vacated the rental leaving it with two lightbulbs that were burnt out for cost of \$10.00.

The landlord also stated that a liquidated damages clause exists in the tenancy agreement for \$2,650.00. The landlord stated that this was equal to the monthly rent of \$2,150.00 plus a \$500.00 charge for the cost of re-renting. The landlord seeks this claim as the tenant breached the fixed term tenancy by pre-maturely ending it on January 31, 2020 instead of April 30, 2020.

The landlord seeks \$2,150.00 for the loss of rental income for February 2020 as the landlord immediately advertised the unit on social media on January 17, 2020 but was unsuccessful in re-renting the unit until March 2020.

The landlord also seeks compensation of \$20.00 for a "Riverclub Fee" for February 2020 which is a monthly amenities membership which the tenant had registered in.

The landlord also seeks compensation of \$75.00 for February 2020 which is from a separate parking agreement which the tenant had entered into.

In support of these claims the landlord has submitted copies of:

Early Termination by Tenant form dated January 16, 2020

Completed Condition Inspection Report for the Move-In (May 1, 2019) and the Move-Out (January 31, 2020)

An Excel Spreadsheet of the landlord's claims labeled as "Tenant Ledger".

### 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 onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that the landlord has established a monetary claim. However, the landlord's claim for liquidated damages of \$2,650.00, I find without merit. The landlord did not provide a copy of the signed tenancy agreement for the liquidated damages clause. The landlord was unable to provide any details of the liquidated damages clause only stating that the amount was based on the monthly rent plus \$500.00. The landlord was unable to provide any evidence concerning any genuine pre-estimate of costs to re-rent the unit. I find on this basis, that the landlord's liquidated damages claim is dismissed.

The landlord has established a claim for the remaining items listed:

\$150.00	Moving Out Fee, Strata
\$2,150.00	Unpaid/Loss Rent, February 2020
\$20.00	Riverclub Fee, Amenity
\$75.00	Parking Fee
\$39.90	Cleaning Fee
\$10.00	Replacement Cost, 2 lightbulbs
\$100.00	Filing Fee
\$2,544.90	Total

I authorize the landlord to retain the \$1,075.00 security and the \$1,075.00 pet damage deposits in partial satisfaction of this claim.

#### Conclusion

The landlord is granted a monetary order for \$394.90.

This order must be served upon the tenant. Should the tenant fail to comply with this 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: July 3, 2020

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Residential Tenancy Branch