



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KERRISDALE REALTY LTD. (d.b.a. Royal LePage Westside Management) and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL, FFL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation for monetary loss or other money owed of \$5,124.00; and to recover the \$100.00 cost of his Application filing fee.

The Tenant, J.H., and two agents for the Landlord, M.Z. and V.C. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said he had received the Landlord's Application and the documentary evidence, and had reviewed it prior to the hearing. The Tenant confirmed that he had not submitted any documentary evidence to the RTB or to the Landlord.

### Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

#### Background and Evidence

The Parties agreed that the fixed term tenancy began on November 1, 2019, and ran to October 31, 2020, and then operated on a periodic or month-two-month basis. They agreed that the Landlord was required by the tenancy agreement to pay the Landlord a monthly rent of \$1,900.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$950.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the security deposit in full.

In the hearing, the Agents explained the Landlord's claim, as follows:

We were given notice by the Strata management company that on or about March 22, [2021], the building suffered a break-in to mailboxes in the lobby area of the building. They were able to discern based on fob reader – building has records of which fob is assigned to which unit - the fob to where [the Tenant] resides was used to get into the building. There is CCTV footage of the person who entered and damaged the mailboxes in the building. On other CCTV footage, they discerned that the perp took an elevator up to the floor of this unit, and accessed the unit itself. That is the association of culpability of this unit. Solid.

We notified him about the notice and in an email thread, it indicates that [the Tenant] was aware of this incident after the notice. We told him about the notice and gave him an opportunity to respond in an email thread. He declined to address or dispute this. The Strata met at a counsel meeting, as [the Tenant] had not repaired the damage, and I received an invoice for the repair from them.

The value of the work done is \$4880.00 plus \$244.00 in GST for \$5,124.00. The Strata management has made it clear that it's the obligation of the owner of this

unit to be paying that tab. So, we corresponded with [the Tenant] to notify him that this was his obligation. The email thread indicates that [the Tenant] found it remarkably expensive - how could he pay? - etc. His refusal to pay is part of email thread, ... After trying to communicate with him to at least pay it off a little at a time - establish a value each month. Do it, and do it probably to reduce the interest on the outstanding value. This didn't get settled; the amount is still owing by the tenant in our estimation.

The Landlord submitted a copy of a letter from D.B., the Strata Manager, dated March 26, 2021. This letter includes:

Dear Owner(s):

Re: Strata Plan [XXXXXX], Orca Place, Strata Lot #[XXX-XXXX]  
[residential property address],  
BC Bylaw Complaint – Damage to Common Property

We write on behalf of the Council of Owners, Strata Plan [XXX-XXXX].

The Strata Corporation has received the following complaint for which you may be responsible:

**On or about March 22, 2021 at around 3:39 am**

- **A resident or visitor of your unit vandalized the mailboxes. Please be advised that damage to the common property is not permitted (see below), and all costs to repair to the common property will be charged back to your unit.**

This Bylaw infraction appears to constitute a breach of the following Bylaw(s) of the Strata Corporation:

**3. Use of Property**

- 3 (1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that
- a). causes a nuisance or hazard to another person,
  - c). unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,
  - d). is illegal, or

e). is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

(2). An owner, tenant, occupant or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets or those parts of a strata lot which the Strata Corporation must repair and maintain under these bylaws or insure under section 149 of the Act.

The Strata Council is considering whether a fine of up to \$200.00 should be levied against the Strata Lot account for the apparent Bylaw contravention.

Pursuant to Section 135(1) of the Strata Property Act, you are granted the opportunity to answer to the complaint, including a hearing before the Strata Council, if requested. Failure to respond in writing **within 21 days of the date of this letter** will result in the Strata Council determining whether or not to impose a fine or other penalty at its next meeting. **Responses can be sent via email to [email address] or via regular mail to [property manager].**

Yours truly,  
[Agents]

The Landlord submitted a set of email exchanges between the Parties, which included the following [reproduced as written]:

Agent to Tenant dated March 26, 2021:

Here is the infraction notice that you or your visitor has breached the bylaws. Someone from your unit has vandalized the mailboxes. The strata will bill back to the owner of replacing the mailboxes. I will forward the bill to you and you will have to pay for it.

If you want to appeal, please send me a letter of explanation before the deadline. I will forward it to the strata manager

The Tenant responded to the Agent, dated March 29, 2021:

Please email me, I prefer to conduct my correspondence over email as possible. I am so sorry to hear about this notice. I am trying to figure out what happened myself. Can you provide any additional details on this matter or is this letter all

you know for the moment?

Agent to Tenant dated March 29, 2021:

Here forwarded the infraction notice again.

As the strata manager told me that someone from your unit had broken into the mailboxes, took something and returned to your unit afterwards.

The strata has opened a file case with the police

As the repair cost or the replacement cost has not determined yet. He will forward the bill to me after the strata received the invoice. I will forward to you and ask you to pay for it.

If you have your friend using your fob, you are still responsible for the repair cost.

The date and time of what happened is on the notice.

When you make the appeal letter, please send in to me ASAP

Tenant to Agent dated March 30, 2021, at 11:09 a.m.:

Thanks for passing this on. I don't have any appeal letter to add, just let me know what they say with regards to the outcome and I will handle it accordingly.

Agent to Tenant dated March 30, 2021, at 11:16 a.m.

If you are not going to appeal, then the strata fine and the expense for replacing the mailboxes will put on you.

Please forward your updated cell phone number, the building also needs that for emergency.

Then on June 22, 2021, at 12:30 a.m., the Agent sent the Tenant the bill for the mailbox repairs, which was \$5,214.00, and asked him to send a cheque made out to the Landlord.

The Tenant's response dated June 22, 2021, at 9:11 a.m. was, as follows:

Thanks for sending. That is ridiculous to be honest. I don't have any knowledge of what happened with this and when you initially told me about it I was waiting for more of an explanation or correspondence from strata. How would they expect me to pay \$5000 for this?

I'll be waiting to find out a way to handle this.

Agent to Tenant dated June 22, 2021, at 9:25 a.m.:

The strata traced back someone used your fob who broke the mailbox and went back to your floor.

This is the reason why the strata put back the repair expense to your unit.

The Tenant's response to the Agent dated June 22, 2021, at 10:08 a.m.:

My vehicle was broken into parked on the street in . . . earlier this year. I find this letter from the property management company to be a little offensive to be honest. Blaming me and trying to charge me such a huge amount of money for something I did not do.

What are my options here, [Agent]? I do not have money to pay for this right now. It's been a super long and tough time with covid here, and this is just a striking blow. Can I talk to the strata?

The Agent responded to the Tenant dated June 22, 2021, at 10:26 a.m.:

Since you didn't report a fob lost at that time, it's hard to tell whether the strata accept your explanation. Also the appeal period has passed.

You may contact the strata manager, [D.B.], either through phone or email.  
[email and telephone numbers provided]

In the hearing, the Agents also noted the addendum to the tenancy agreement, which includes clause 17, which states that the Tenant agrees to abide by the provision of the bylaws and the rules and regulations of the Strata Corporation, as adopted from time to time. The Parties initialled the page containing clause 17 and signed the Addendum and dated it October 18, 2019.

The Tenant said:

Everything he said is accurate. On my standpoint, I haven't submitted any evidence, because this notice informing me that my key had been used came as a surprise to me. So, I had no knowledge of it. How would you respond in my place?

My key was used to do damage, and I asked them to put themselves in my shoes. Would she pay this amount or would she deny the allegations? How was this supposed to be my responsibility? [The Agent] asked how it happened. I explained my car was broken into.

I asked the Tenant if there had been a police report filed for his car break-in. He said:

No, I didn't file one. My experience as a [City] residence all my life. [The police] don't really do anything. I wasn't sure if the fob was in the car or not. My parents also hold a fob when they come to [the City]. Fobs are very difficult to replace and very costly. For that reason, I didn't feel the need to go to [the police] and suffer additional time loss. . .

Given everything, I feel bad for the owner, but I don't feel that I should have this bill on myself. Had it been less, maybe \$2,000.00, it just seemed like Strata hired the first service provider they found; the amount is ridiculous.

I asked the Agents if anyone filed a police report about the mailbox damage. They said that the Strata filed a police report, which they summarized in the minutes of the May 11, 2021, Strata Council meeting:

A. Broken Mailboxes

As owners / residents may already be aware, some of the mailbox panels being broken into on or about March 22, 2021, and parcels were also left in the mail room were rummaged through. A police file was also opened for the incident (Case #: VA21-[XXXXXX]). It was determined that entry into the mailroom by the individual was through the use of a fob, which was immediately deactivated. It was also the decision of Council that the costs associated to the damage caused by the individual be charged back to the unit, which the fob was assigned to. It was MOVED / SECONDED by email to have [N.O.C.] completed the repairs to three (3) modules / banks of mailboxes requiring repairs at a cost of \$4,880.00 (plus applicable taxes). CARRIED

The Agent said:

The Strata manager phoned me; he may contact the Tenant and give him his police contact number. He or his friends used the fob related to the break-in.

I haven't heard anything else - just a bill from the Strata. And the amount of the mailbox repair is posted to this account – it's outstanding.

The Tenant said:

No one had contacted me until ... decision and actions had already been made. I became a bit offended, per my emails.

I had no knowledge of this. It is possible that they rummaged through my car... nothing on the key ring.

Stratas can be difficult to replace fobs, so didn't go that route.

In their last statements before the hearing ended, the Agents said:

I'd like to summarize from our perspective. What we discern, having received the notice ... our understanding of circumstances and chronology. He had his vehicle in ... in early 2021. He was a victim of a break-in. It appears that [the Tenant] was able to discern that the key must have been stolen from that break-in. That was early in January 2021, and the break-in into the building was around March 2021 – so three months later.

Regarding the email thread, he only let us know in June that his car had been broken into. Unfortunately, in other management experiences I've had, Strata would say it's ill-advised to keep a remote or a fob in a car. One loses control when they're not in the car with that fob.

In other cases, I've had a tenancy that had to pay the distribution of new fobs to an entire building for the expedient way to gain security. It was clear that the tenant had left the fob in their vehicle. We tell everyone to not leave these in your car. But the rogue fob is a security breach in the building. The Tenant in this other experience was on the hook for a significant amount of cash.

Slightly different facts to here, but a tenant left a fob in their car. It was broken



into and stolen. He has a responsibility to report the loss to us, but that didn't happen. We represent an owner incurring over \$5,000.00 in charges for something that he had nothing to do with.

I empathize with [the Tenant], but it's still his obligation to settle this tab. He was responsible and it was a breach of security losing the fob....

The Tenant's last statements were, as follows:

I appreciate everything that [the Agent] said, and I sympathize with the owners.

Someone has to pay this bill. It's unfortunate that the cost is this high. It would have been favourable to say someone has to pay. It's not fair to the owner and not to me. May we meet in the middle and settle this together? You are responsible for this entire amount. You were not consulted in the process. I don't know how your decision will go, but in a court, the person who has the allegations, it should be beyond a reasonable doubt.

In these proceedings, I don't feel as if I am the one who should be 100% responsible for this. I was not able to find a resolution. I replied late, because they were not cooperative. There is no onus on anyone but me.

They didn't have much to say, until they filed for arbitration.

I feel it is unfair. I appreciate the tenancy. I would hope to have some type of resolution that sees everyone involved.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I advised that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;

2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

(“Test”)

I find from the evidence before me, that the mailboxes at the residential property were damaged in March 2021. I find from the evidence before me that the Tenant did not initially deny the accusation that he or his visitors had done this damage. Rather, he asked for more information. Ultimately – months later - he said that his fob was stolen from his car in early 2021. However, the Tenant did not report this loss to the police or to the Landlord or to the Strata.

Based on common sense and ordinary human experience, I find that in a situation in which property has been damaged in a residential property, the accused tenant is more likely than not to vehemently deny any involvement from the start, if that tenant were not, in fact, involved. Rather, in March 2021, the Tenant said that he was trying to figure out what happened and that he would “handle it accordingly”. I find this does not equate to a denial of responsibility.

However, in June 2021, when the cost of the repairs was apparent, the Tenant denied his involvement for the first time. In the hearing, he said: “...but I don’t feel that I should have this bill on myself. Had it been less, maybe \$2,000.00..., it just seemed like Strata hired the first service provider they found; the amount is ridiculous.” Why would the Tenant agree to pay anything for this damage, if he was not responsible?

Based on the evidence before me, I find on a balance of probabilities that the Tenant is responsible for the damage claimed by the Landlords. I find that the Tenant breached section 32 (3) of the Act, by not repairing the damage he or his visitor caused to the residential property.

I, therefore, award the Landlords with recovery of \$5,124.00 for the cost of repairing the damage to the residential property, pursuant to sections 32 and 67 of the Act. Given their success in this matter, I also award the Landlord with recovery of their \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act.

Accordingly, I grant the Landlord a Monetary Order from the Tenant of **\$5,224.00**.

Conclusion

The Landlord is successful in their Application for compensation from the Tenant, as the Landlord provided sufficient evidence to establish that the Tenant is more likely than not responsible for the damage to the mailboxes of the residential property.

Given their success, I also award the Landlord with recovery of the \$100.00 Application filing fee from the Tenant.

I, therefore, grant the Landlord a Monetary Order of **\$5,224.00** from the Tenant. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 01, 2022

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Residential Tenancy Branch