



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Realstar Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, OLC, FFT

### Introduction

This hearing dealt with the tenant's amended application pursuant to the Residential Tenancy Act (the "Act") for the following orders:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 of the Act
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act

SA and DE, the tenants, attended the hearing. BW attended the hearing as agent for the corporate landlord.

The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

As both parties were in attendance, I confirmed that there were no issues with service of the Notice of Dispute Resolution Proceeding package and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other's application materials.

## Preliminary Matters

### Amendment

At the outset of the hearing, the parties confirmed that the landlords listed on the tenants' application are the previous property managers. BW provided the correct name and spelling of the corporate landlord. Based on section 64(3)(a) of the Act, I amend the tenant's application to correct the name of the corporate landlord.

### Witnesses

The parties made witnesses available to provide statements on their behalf at the hearing. However, I have determined that I do not require witness testimony to determine the outcome of this application. Therefore, I decline to hear from the parties' witnesses at the hearing and have not adjourned the matter to reconvene at a later date for this reason.

Below is my final and binding decision regarding this application.

## Issues to be Decided

Are the tenants entitled to a monetary order for damage or loss under the Act, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

## Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties agreed that this tenancy began on July 1, 2003. Monthly rent is \$1,414.50, due on the first day of the month. The landlord collected a security deposit in the amount of \$400.00 which they continue to hold in trust.

SA testified that on September 9, 2022, they were served with an eviction notice by the previous property manager. The eviction notice alleged that DE had stolen a mail package. SA testified that they were advised that the property managers had video

footage of DE stealing the package; however, the property managers would not show SA the footage.

SA applied to dispute the notice. The police investigated the theft and requested the video footage from the property managers. SA testified that they did not hear anything in relation to the investigation.

However, approximately 10 days before their scheduled hearing, SA and DE were served with another eviction notice. SA testified that the eviction notice alleged that they had engaged in threatening behaviours toward the property managers. SA testified that the police attended their residence regarding these allegations.

SA testified that the arbitration regarding the allegation of theft took place in February 2023, and the notice was cancelled by the Arbitrator because the landlord's agent did not provide sufficient evidence to support the claim.

SA testified that they spoke with the police who advised them that they had closed the investigation in October because there was not enough evidence to proceed with charges against DE for theft. SA noted that this information was available to the property managers long before the hearing which took place in February 2023. SA testified that the property managers proceeded to the hearing knowing that they would lose and submitted fraudulent documents as evidence.

SA testified that the property managers did not attend the second hearing with regard to the allegation of their threatening behaviour. SA testified that the notice was cancelled on that basis. Further, SA testified that they obtained the police report in which the police determined that there was insufficient evidence to proceed with charges in relation to the property managers' complaint against them.

SA testified that the tenants have been through hell. The property managers produced fraudulent pictures and made fraudulent statements which amounts to harassment. SA testified that they want to ensure that the landlord does not serve them with any future fraudulent eviction notices.

SA testified that they chose to make a monetary claim in the amount of \$34,900.00 because that is maximum amount they can claim. SA testified that they want the property managers to know that if they continue to harass them with fraudulent notices, it will cost them. SA testified that they are seeking the monetary compensation for harassment and stress.

DE testified that they have been unable to go downstairs for fear the property manager is following them. DE testified that they have been unable to eat and have been significantly impacted by the stress the two eviction notices caused.

In response to the tenants' testimony, BW testified that the two previous property managers who issued both notices are no longer employed by the landlord. BW testified that the eviction notices were issued for valid reasons. BW noted that no other tenant had any complaint about the previous property managers. BW testified that they refute all allegations of fraud against the previous property managers. BW testified that the two notices were served in the proper manner, the tenants had the opportunity to dispute those notices and the matters have been dealt with. BW argued that those matters have been previously dealt with by the Residential Tenancy Branch and should not be further be reconsidered.

BW further testified that they tenants have not put forward any evidence to support their claim of harassment. The tenants have never written to the landlord or to the property managers to discuss their concerns. The tenants could have made a complaint to the district manager and have not done so.

### Analysis

#### **Are the tenants entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?**

SA testified that they want to ensure that the landlord does not serve them with any future fraudulent eviction notices. However, I find that I have no authority under the Act to preclude a landlord from giving a tenant notice to end that tenancy if that landlord believes they have cause to do so.

I further find that a reconsideration of the previous notices would be inappropriate on the basis of *res judicata*. *Res judicata* is a legal doctrine which means that a matter that has been adjudicated by a competent court may not be pursued further by the same parties. In this case, both previous notices referred to by the tenants have been previously adjudicated by a Residential Tenancy Branch Arbitrator and, on that basis, I find I have no authority to reconsider or re-examine these matters.

Based on the foregoing, the tenants' application for an order requiring the landlord to comply with the Act, regulation or tenancy agreement are dismissed without leave to reapply.

**Are the tenants entitled to a monetary order for damage or loss under the Act, regulation or tenancy agreement?**

SA testified that they are seeking \$34,900.00 in monetary compensation for harassment and stress inflicted upon them by the landlord having issued two previous eviction notices. SA submitted that they are seeking the maximum amount they are able to claim because they want the landlord to understand that if they serve another fraudulent eviction notice it will cost them.

Under section 67 of the Act, the Director may order that a party compensate the other party if damage or loss results from that party's failure to comply with the Act, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the Act, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The party seeking a monetary award bears the burden of proving their claim.

I have considered the testimony and evidence of the parties and for the following reasons, I find that the tenants have not met the burden which is upon them to prove their claim.

While I acknowledge the tenants believe the two previous notices were issued and pursued fraudulently or in bad faith, I find the tenants have failed to prove this on a balance of probabilities. The consistent evidence before me is that the two previous notices were served in accordance with the Act and lawfully disputed by the tenants. Therefore, while the tenants may have found this experience stressful, I find that they have not established that the landlord failed to comply with the Act, Regulation or Tenancy Agreement or that any non-compliance on the part of the landlord resulted in a loss or damage.

Furthermore, the purpose of compensation under the Act is to put the person who suffered the damage or loss in the same position as if the damage or loss had not

occurred. In this case, I find it is evident to me, that the tenants are not seeking reparation but rather they are seeking punitive damages. For that reason, even if I were to determine a loss and that it was the result of the landlord's non-compliance, I find that the tenants have not proven the amount of or value of the damage or loss. Rather, the tenants claim is based on an arbitrary amount chosen to cause the landlord the greatest financial loss possible.

For these reasons, I dismiss the tenants' claim for a monetary order for damage or loss under the Act, regulation, or tenancy agreement without leave to reapply.

**Are the tenants entitled to recover the filing fee for this application from the landlord?**

As the tenants were not successful in this application, they are not entitled to recover the filing fee paid for this application based on section 72 of the Act.

Conclusion

The Tenant's application is dismissed in its entirety without leave to reapply.

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: September 01, 2023

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Residential Tenancy Branch