



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELLER WILLIAMS VALLEY REALTY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to retain the security and pet damage deposits as offset to their monetary claims.

Both parties attended the hearing and were each given opportunity to settle their dispute, discuss the dispute, present relevant evidence, and make relevant submissions. The parties acknowledged receiving the provided evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be determined

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed evidence in this matter is that the tenancy started April 01, 2012 as a written tenancy agreement. At the outset of the tenancy the parties executed a tenancy agreement inclusive of 2 addends identified as *form K and Schedule A* with a copy of Bylaws pertaining to the strata residential property. Also at the outset of the tenancy the landlord collected a security and pet damage deposit in the sums of \$925.00 which the landlord retains in trust.

It is further undisputed that in a telephone communication on April 08, 2013 the landlord informed the tenant they were in contravention of the Bylaws in allowing unauthorized items to be stored on their balcony and risking a fine in accordance with the Bylaws. The tenant testified they removed some of the unauthorized items leaving some on the

balcony – specifically a metal headboard. A week following the telephone conversation the landlord incurred a \$100.00 fine and incurred weekly fines up to June 17, 2013 to the sum of \$1000.00. The tenant testified that on May 20, 2013 they removed the metal headboard from the balcony. The parties agree that after May 20, 2013 the tenant continued storing some “stacked benches” on their balcony which the Strata determined were not in compliance with the Bylaws, but which the tenant argues may have been permitted by the Bylaws as *summer furniture*. The landlord provided a photograph into evidence of the purported “stacked benches”. The landlord seeks to be compensated for the fines incurred in the amount of \$1000.00.

The landlord also seeks to recover a \$100.00 *move-out* charge imposed by the Strata to which the tenant agreed as part of the tenancy agreement ‘A’ addendum. The tenant claims they were not required to pay the move-in charge, therefore should not be responsible for the similar charge at the end of the tenancy. The landlord clarified that at the start of the tenancy the landlord paid the move in charge.

Analysis

In this matter the burden of proving claims of loss and damage rests on the claimant (landlord) who must establish, on a balance of probabilities that they have suffered a loss due to the tenant’s neglect, or failure to comply with the Act. And, if so established, did the landlord take reasonable steps to mitigate or minimize the loss? Section 7 of the Act outlines the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

I find the evidence is that the landlord provided the tenant with the respective bylaws at the outset of the tenancy, the landlord communicated with the tenant about contraventions of the Bylaws prior to the first fine being imposed, the tenant acknowledges they allowed unauthorized items to remain on the balcony until May 20, 2013 and continued to store other items which were purportedly unauthorized for a period of time following. In respect to those fines levied after May 20, 2013 for “stacked benches”, I find the landlord’s evidence, on balance of probabilities, is sufficient to establish the tenant continued to store unauthorized items on the balcony to causing the landlord to incur additional fines and resulting loss. On the balance of probabilities I find the landlord has met the test for loss in respect to the Strata fines totaling **\$1000.00** and I award this amount in compensation to the landlord.

I find the tenant agreed to pay the move out charges imposed by the Strata as part of the tenancy agreement, and as a result, I grant the landlord **\$100.00** for this portion of the landlord’s claim. As the landlord was successful in their application they are entitled to recover their filing fee of \$50.00 for a total award of **\$1150.00**. The security deposit will be off-set from the award made herein.

Conclusion

I Order that the landlord retain the security and pet damage deposits totalling \$925.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the *Act* for the balance due of **\$225.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: November 20, 2013

Residential Tenancy Branch

