



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advent Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain a portion of the tenant's pet damage and security deposits (the deposits) in satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:12 a.m. in order to enable him to connect with this teleconference hearing scheduled for 11:00 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions. The corporate landlord's agent (the agent) testified that she sent the tenant a copy of the landlords' dispute resolution hearing package by registered mail on September 6, 2013. She provided the Canada Post Tracking Number to confirm this registered mailing. She said that this package was returned to her, but she subsequently contacted the tenant by email and scanned a copy of the hearing package to him, which he confirmed he received. She said that she communicated with the tenant recently and he was aware of the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed to have been served with the landlords' dispute resolution hearing package on September 11, 2013, five days after its registered mailing.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for losses arising out of this tenancy?
Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy for a strata unit in a high rise building commenced on September 1, 2012. The tenancy was scheduled to end on August 31, 2013, the day that the tenant vacated the rental unit. The agent testified that prior to August 1, 2013, the tenant provided his notice to end this tenancy by August 31, 2013. Monthly rent was set at \$1,425.00, payable in advance on the first of each month. The tenant paid a \$717.50 security deposit and a \$712.50 pet damage deposit on August 29, 2012.

The agent testified that within 15 days of the end of this tenancy, she applied for dispute resolution to keep a portion of the pet damage and security deposits (the deposits) and returned \$575.00 to the tenant.

The landlords applied for a monetary award of \$800.00, plus the recovery of the landlord's \$50.00 filing fee. The landlords' application included a claim for the recovery of three strata fines of \$200.00 each for contraventions of strata bylaws with respect to dog urine and feces having been washed over the side of the tenant's balcony, an issue for those living in suites below the tenant. The landlords provided copies of letters confirming the imposition of these strata fines and a fourth \$200.00 strata fine resulting from an incident relating to the noise created by the tenant's barking dog. The landlords also entered into written evidence copies of emails and other documents relating to this matter.

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.

Based on the landlords' undisputed sworn oral testimony and written evidence, I find that the landlords are entitled to a monetary award of \$800.00 to recover losses incurred when strata fines were imposed against the landlord(s). I also allow the landlords to recover the \$50.00 filing fee for this application.

I allow the landlords to retain a total of \$850.00 from the tenant's deposits. No interest is payable on the tenants' deposits.

Conclusion

I issue a monetary award in the landlords' favour in the amount of \$850.00 to compensate the landlords for losses arising out of the strata fines imposed against this rental unit while this tenancy was in place and to recover the landlords' filing fee. In order to implement this monetary award, I order the landlords to retain the \$850.00 they continue to hold from the tenant's deposits. The landlord has already returned the remaining \$575.00 from the tenant's deposits in September 2013.

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: December 20, 2013

Residential Tenancy Branch

