Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding At Ease RPMA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord submitted the application on July 14, 2014; the only detailed breakdown of the $1,655.24 claimed was $700.00 in strata fees. On December 11, 2014 the landlord submitted a nineteen page evidence submission to the Residential Tenancy Branch (RTB). The tenant received that evidence on December 9, 2014. This evidence should have been submitted to the respondent as the same time as the application was made; in accordance with the Rules of Procedure. The late evidence included a detailed breakdown of the claim made totaling $1,655.24.

The tenant had waited to receive evidence and then made a twenty-three page evidence submission on the same date as the landlord without the benefit of having yet seen the landlord’s submission.

The parties confirmed receipt of each other’s evidence and agreed to proceed, accepting receipt of each other’s evidence.

As the application set out a specific claim for strata fines in the sum of $700.00 I determined that portion of the application would proceed; the balance of the claim

made, in the sum of $955.22 was dismissed. A detailed calculation of the claim must accompany the application and not form part of evidence that is served outside of the required time-frame. The Residential Tenancy Branch Rules of Procedure require all evidence to be given to the respondent, with the application. In any case, evidence must not be submitted and served any later than fourteen days prior to a hearing. Evidence indicated that the additional sum claimed was for cleaning, floor repair, light bulbs and a blind.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $700.00 in unpaid strata fines?

May the landlord retain the security deposit in satisfaction of the claim?

Background and Evidence

The tenancy commenced on October 15, 2012; rent was $1,900.00. A pet deposit and security deposit in the sum of $950.00 each was paid.

A move-in condition inspection report was completed and a copy given to the tenant.

The parties met on June 30, 2014 to complete a move-out condition inspection. There was a dispute in relation to any agreed deductions to be made from the security deposit. The tenant said she agreed to only the sum that she circled on the report; $255.00. The tenant understood the total pet deposit, plus the $695.00 balance of the security deposit would be returned to her. On July 15, 2014 the tenant received $244.76. The tenant submits the landlord owes her a total of $1,400.24'representing the sum returned and the amount she agreed could be deducted.

When the tenant received the balance of the security deposit she contacted the landlord; she was upset that they had deducted more than the $255.00 she had agreed to when the inspection had been completed.

The landlord submitted that the tenant signed the inspection report agreeing to deductions for cleaning and repairs and that she disagreed with the $700.00 being withheld.

The condition inspection report supplied as evidence showed notations made in section 2, of the end of tenancy portion of the form. The report showed $950.00 notated above "security deposit", less $255.00, for a balance of $695.00; the $695.00 was circled. Another figure indicated above the "pet deposit", in the sum of $950.00 was circled. Next to that was a note, indicating $700.00 fines. The tenant said she did not trust the landlord so she had circled each of the totals she expected to have returned. When she received the report in the mail, the tenant saw the landlord had added items to the report.

Toward the conclusion of the hearing the agent did state that they added a charge to the inspection report, after the tenant had signed the document, as she knew she owed this sum. The tenant was present when the landlord made the addition to the report.

The landlord submitted a copy of a portion of the tenancy agreement; section “h” which provided:

> *The tenant must abide with all strata by-law, rules and regulations during the term of residency. Also the tenant is responsible for all fines and or penalties incurred by the tenant or any of the tenant’s guests.*

The parties each submitted a copy of a February 12, 2014 letter issued to the tenant by the property owner; setting out 7 fines imposed by the strata council. The fines were imposed as the result of disturbance caused, as follows:

- February 2013, to neighbouring occupants on multiple occasions;
- March 2013, children in the rental unit causing a disturbance;
- a 10 period in April 2013 of disturbances reported;
- April 16 to 26, 2013 disturbances;
- August 19, 2013 a dog in the unit urinating on the balcony on a regular basis, being washed onto the lower unit;
- December 5, 2013, noise caused by people jumping in the unit; and
- December 10, 2013 children having an unleashed dog on the roadway causing safety concerns.

The landlord explained in the letter that each legitimate violation of the by-laws was a breach of the tenancy agreement. The tenant was warned her tenancy could end if the issues continued.

On February 13, 2014 an agent for the strata wrote the landlord in relation to a complaint regarding a daycare run out of the tenant’s unit. Other occupants were being disturbed daily and children were seen outside playing in the driveway and parking area between 3 and 5:30 p.m. Dogs were also seen unleashed; contrary to the by-laws. The landlord was warned he could be fined and that he had the right to a hearing.

On April 10, 2014 the strata agent sent the landlord a letter indicating they would levy fines totalling $400.00 and that the fines would be increased to $200.00.

The tenant stated she did not agree with the fines, as the complaints were in relation to the sound of normal day-to-day living, during the day-time hours. The tenant said the sounds were not unreasonable and that just dropping something on the wood floors could likely be heard in the unit below. The tenant said the person living below her unit was home during the days. The tenant submitted she was not allowed to defend herself at any strata meeting and that there is no evidence fines have been paid.

The tenant submitted an April 4, 2014 letter from the person who lived next to her; stating she would never hear the tenant, outside of around 8:30 a.m. The neighbour states the tenant was respectful and that she never had any problems with her.

The tenant submitted a strata plan statement of account to August 19, 2013 showing $300.00 payable by the owner. The statement had a hand-written notation "plus $200.00 (fines) for current fines."

The tenant supplied copies of 3 emails sent by the landlord's agent to the agent for the strata.

On March 21, 2013 the landlord's agent emailed the strata council's agent, acknowledging the latest complaint letter issued March 12, 2013. The landlord's agent pointed out that the complaints were in relation to normal day-to-day sounds of living. They reminded the strata agent that the tenant could be writing daily letters about her neighbour who has a baby that frequently cries, but she has not done so, as these noises are to be expected.

The landlord's agent pointed out that the tenant was not operating a business; that when caring for 3 or fewer children she did not require a licence. The agent pointed out that their tenant was not doing anything to warrant fines or eviction.

On May 5, 2013 the landlord's agent sent the strata's agent another email in response to fines imposed by way of an April 15, 2013 letter. The tenant had assured the agent she would not impede anyone else's driveway or use traffic cones. The tenant would be reminded to have the children use the grassed areas to play. All other complaints were the result of daytime sounds of children; the email went to state:

> *" we have address this many times previously & I don't feel we should have to address this again. This is normal living noises, during the day, never at night & children should & must be allowed to play. Just as the neighbours baby should be allowed to cry with no complaints during the day."*
>
> *(*reproduced as written)

The agent suggested that if the strata council wished to have the tenant evicted that they notify the landlord in writing, so a Notice could be issued to the tenant, so that the tenant could take her case against the strata and not the landlord.

The tenant supplied a copy of an email sent by the landlord's agent, to the strata's agent, dated June 10, 2013. The message indicated that the tenant would not vacate as she could not be evicted as the result of:

- normal everyday noises, i.e. children playing;
- that the strata bylaw must comply with local City bylaws and the tenancy Act;
- that if evicted the tenant could file requesting moving costs; and

- that the tenant was advised not to pay fines issued as the result of noise caused by children during the day.

The landlord's agent explained to the strata's agent that she should cease sending letters and fines regarding day time noise and that all fines and letters be removed from the file so the tenant could be free to enjoy her home. The agent mentioned that the tenant had good relationships with neighbours and some had even approached her to ask for child care services. The landlord's agent confirmed the tenant would not be caring for children during the summer months.

The property owner said that he did intervene on a number of occasions, by speaking with the strata representative, in order to reduce the fines being imposed. The tenant would have faced many more fines had he not made attempts to communicate with the strata.

During the hearing the landlord said that the noise was the result of the tenant running a daycare in the unit. The tenant was warned to cease this activity. The landlord spoke with the tenant in the hope that the disturbances would change. The tenant said that the emails demonstrate the landlord's agent was aware of the childcare she was providing, that she was not breaching local bylaws and that no noise was occurring, outside of normal sounds of day-to-day living.

The landlord said at one point he saw 4 or 5 children in the unit. The tenant said that her children would occasionally have friends over after school and that other children who lived in the building would come over to play.

At the conclusion of the hearing I requested the landlord submit the original inspection report. The tenant was asked to supply an original copy of her evidence as not all pages were before me during the hearing. The landlord confirmed the number of pages they had received from the tenant. These documents were to be submitted no later than December 18, 2014. The tenant made her evidence submission; a copy of the original inspection report was not before me by December 22, 2014.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The tenant has received the sum of $244.76 from the total of $1,900.00 in pet and security deposits paid. From the evidence before me and, in the absence of a condition inspection report that I can rely upon, I find, on the balance of probabilities that the

tenant agreed to a deduction in the sum of $255.00 only. The agent stated during the hearing that the tenant had not agreed to the strata fine deduction, therefore the landlord should have returned at least $944.76. I have come to this conclusion given the changes that were made to the inspection report after the tenant had signed the report and what I found was reliable testimony of the tenant; that she had circled the sums she expected to be returned. This testimony had the ring of truth. It is difficult to reply upon a document that has been altered after the tenant had signed, agreeing to a specific deduction from her deposit.

Therefore, I find that the landlord had obtained the tenant's written permission to retain $255.00 from the security deposit, in accordance with the Act. The landlord would then be holding a pet deposit in the sum of $950.00 and a security deposit in the sum of $695.95.

I have considered the claim for strata fines levied between February 5 and December 10, 2013. The strata council has no authority over the tenant; they communicate with the property owner, who then must communicate with the tenant. From the evidence before me the landlord's agent strongly disagreed with the fines and communicated that stance to the strata agent. There was no evidence before me setting out the response of the strata council other than a February 2014 letter containing more complaints of the same nature. There was no evidence before me of any hearing requested by the landlord, to dispute the fines, which I find were rather arbitrary and quickly assigned with no evidence of any reasonable investigation.

The sounds of children playing during the day are not unreasonable, but the sounds of normal day-to-day living. A single infraction for something such as a dog off-leash should result in a warning vs. a $100.00 fine with no opportunity to respond by the tenant. There was no evidence before me the tenant's dog was urinating on the balcony.

Section 6(3) of the Act provides:

> *3) A term of a tenancy agreement is not enforceable if*
> *(a) the term is inconsistent with this Act or the regulations,*
> *(b) the term is unconscionable, or*
> *(c) the term is not expressed in a manner that clearly communicates the rights and obligations under i*

The term of the tenancy agreement the landlord is relying on, imposing fines on the tenant should the tenant not abide by rules, by-laws and regulations is broad. The tenant is responsible for all fines incurred by the tenant or her guests. In fact, fines are levied against the property owner; not a tenant. However, I have considered the fines imposed, against the evidence before me and find that the fines appear to have been levied with no investigation, imposed for what appears to have been the normal sounds of day-time living and that they were not the result of the tenant operating a business.

In the absence of any evidence of a hearing before the strata council; challenging the nature of the fines, the sums they levy and the absence of investigation, I find that the term of the tenancy agreement support an unconscionable process. It is not reasonable to simply impose a fine based on a complaint without investigating the complaint. Levying a fine is simple; ensuring that the complaint is founded takes time and should include a non-biased investigation of the facts. There was no evidence before me this occurred and, in fact, the landlord's agent was opposed to the fines and expressed displeasure to the agent for the strata. I agree that the bulk of the complaints were made in response to the sounds of normal day-to-day living. The tenant did not possess the right to request a hearing before the strata council; that responsibility falls to the property owner.

Therefore, as I have found the term of the tenancy imposing strata fines to be unconscionable, based on the method of imposing the fines, I find that the claim for strata fines is dismissed.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. Therefore, I find that the tenant is entitled to return of the balance of the security deposit and the pet deposit in the sum of $1,400.24. The tenant is entitled to $1,645.00; less the sum previously returned, $244.76.

Based on these determinations I grant the tenant a monetary Order in the sum of $1,400.24**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is dismissed.

The tenant is entitled to return of the balance of the security deposit and the pet deposit; less the sum previously returned.

This decision is final and binding 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: December 22, 2014

Residential Tenancy Branch