



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW CENTURY REAL ESTATE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

Only the landlord/applicant attended this hearing and provided sworn testimony that they served the tenants with the Application/Notice of Hearing by registered mail on March 9, 2016 but the tenants did not claim it although the landlord told them it was at the Post Office when they called about their security deposit on March 15, 2016. I find the Application is deemed to be received pursuant to section 90 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for:

- a) A monetary order pursuant to Sections 7 and 67 for damages (for fines);
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant violated the strata bylaws and the resulting cost to the landlord? Is the landlord entitled to recover the filing fee?

Background and Evidence:

The tenant did not attend the hearing although served with the Application/Notice of Hearing. The landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The landlord stated that the tenancy commenced March 1, 2015 and the tenants vacated on February 28, 2016. Monthly rent was \$2300 and a security deposit of \$1150 was paid. The landlord said the tenants had violated the Strata Bylaws by operating an Air bnb. They were caught twice by the Strata concierge because their Air bnb guests approached the concierge for passes or other items. The tenants had provided a Form K to the Strata and they were also aware of this potential violation because a Notice was posted on the Strata Bulletin Boards. The landlord saw the unit advertised on the Air bnb site with many feedback comments.

The Strata imposed fines on the landlord for the violation of the Bylaws as follows:

1. \$1000: 2x500 for each time they were caught running the Air bnb.

2. \$400: \$200 x 2 for failure to provide a Form K from the Air bnb persons
3. \$400: \$200 x 2 for move in/move out fees. The landlord explained that the strata bylaws require a move in/move out fee even to furnished units and they considered the Air bnb guests were moving in and out.

The landlord said the Strata only fined for the two times the tenants were caught and she actually calculated that they may have broken the Bylaws about 60 times over the summer based on the feedback on the Air bnb site.

The tenant provided no documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find the tenants violated their tenancy agreement and the Strata Bylaws by operating an Airbnb which was not permitted. As a result of their violation, I find the landlord incurred damages of \$1800 from fines imposed by the Strata. Pursuant to sections 7 and 67 of the Act, I find the tenants liable for this cost suffered by the landlord.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Fines imposed by Strata	1800.00
Filing fee	100.00
Less security deposit (no interest 2015-16)	-1150.00
Total Monetary Order to Landlord	750.00

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: April 21, 2016

Residential Tenancy Branch