



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OASIS APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF, O, (Tenant's Application)
 MNDC, MNSD, FF (Landlord's Application)

Introduction

This hearing convened as a result of Cross Applications. In the Tenant's Application for Dispute Resolution, filed November 10, 2015, the Tenant sought a Monetary Order for \$890.00, recovery of the filing fee and an Order "removing fines for \$500.00". In the Landlord's Application for Dispute Resolution filed November 19, 2015 the Landlord sought a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the Regulation or tenancy agreement, authority to retain the Tenant's pet damage deposit and security deposit and recovery of the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Is the Tenant entitled to monetary compensation from the Landlord?

3. What should happen with the Tenant's security deposit?
4. Should either party recover the filing fee paid for their respective applications?

Background and Evidence

J.B. testified on behalf of the Landlord. He stated that the tenancy began September 1, 2013. He confirmed that when the tenancy began rent was initially paid in the amount \$850.00; at the time the tenancy ended the rent was payable in the amount of \$890.00. The Tenant paid a security deposit of \$425.00 and a pet damage deposit in the amount of \$425.00 for a total of \$850.00 in deposits paid.

Previous Hearing

On November 5, 2015 the parties attended a hearing before Arbitrator. The parties reached an agreement whereby the tenancy would end at 1:00 p.m. December 31, 2015; in furtherance of this agreement the Landlord was granted an Order of Possession.

Arbitrator also advised the parties as follows:

- *The tenant is responsible for the November and December rent.*
- *If the landlord applies any monies paid to the strata fines before the rent and then serves the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent and the tenant does not agree with that allocation of her payment she should file an application disputing the notice to end tenancy within the time limit for doing so.*
- *The landlord may apply to the Residential Tenancy Branch claiming recovery of the strata fines from the tenant.*
- *The landlord may not deduct anything from the security deposit or pet damage deposit without the written consent of the tenant or an arbitrator's order.*
- *If the tenant should move out of the unit before December 31 she is still responsible for the December rent but the landlord is obligated to try to re-rent the unit as soon as possible.*

[Reproduced as Written]

J.B. testified that the Landlord performed a move in and move out condition inspection. A copy of the move in condition inspection report, dated August 23, 2013, was tendered in evidence.

A copy of a "Security Deposit Report" was also provided in evidence which set out the amounts claimed by the Landlord. The Tenant did not sign this document, having disagreed with the contents. J.B. confirmed that the Landlord sought the amounts noted on the Security Deposit Report as well as the filing fee as follows:

Suite cleaning	\$140.00
Carpet cleaning	\$160.00
December rent	\$890.00
Strata fines	\$500.00
Filing fee	\$50.00
TOTAL CLAIMED	\$1,740.00

J.B. testified that the cleaners spent four hours cleaning the rental unit at a charge of \$35.00 per hour for a total of \$140.00. He also confirmed the cleaners are "in house" and that no receipt was provided in evidence. He also confirmed that the Landlord seeks \$160.00 for carpet cleaning as that is the standard charge that all renters are charged if they do not provide record of carpet cleaning in the suite. The Landlord failed to submit any photos of the rental unit to confirm its condition.

The most contentious issue in the hearing was the Landlord's claim for \$500.00 for fines levied by the Strata on the Landlord as a result of the Strata's belief that the Tenant had another occupant in the rental unit without a signed Form K.

J.B. testified that the Tenant was provided a copy of the strata bylaws when she moved in as they were attached to the tenancy agreement. Those bylaws were not provided to me in evidence. As well, J.B. claimed the letters to the Landlord regarding these fines were also provided to the Tenant; again, aside from one letter described in more detail in this my Decision, those letters were not in evidence. I did, however, have the benefit of the invoices as they were provided in evidence; J.B. stated that they were also provided to the Tenant.

J.B. testified that he had email communication with the Tenant regarding the Landlord's request that her roommate sign the Form K. J.B. testified that the Tenant refused to sign the Form K and he claimed that he was unaware of her reasons for not signing the Form K.

The Landlord, K.B., also testified. He confirmed that he performed a move out condition inspection with the Tenant, but he did not complete the report as required by the *Residential Tenancy Act* and the Regulations. He said that he understood this was erroneous.

K.B. stated that the rental unit did not require a lot of cleaning. He stated that carpet cleaning is mandatory for bed bug control. He also testified that to have the carpet in an apartment cleaned "in town" it is \$240.00; however, the Landlord has all the necessary equipment and only charge \$160.00 to their renters. K.B. stated that half of the renters opt to have the Landlord clean the carpet because it is less expensive. He confirmed that the Tenant did not clean the carpets as required and as such they requested compensation in the amount of \$160.00.

K.B. stated that the Tenant was provided with the letters from the strata corporation regarding the fines charged for her not signing the Form K. Introduced in evidence was a letter from the Strata to the Landlord dated October 1, 2015 wherein the Strata fined the Landlord \$100.00 and confirmed they would continue to do so in 7 day intervals should the situation not be rectified. Notably, this letter does not provide the Landlord, nor the Tenant the opportunity to dispute the allegations or the amounts charged.

The Landlord also provided the invoices as follows:

- Invoice 3375 dated September 30, 2015;
- Invoice 3396 dated October 7, 2015;
- Invoice 3400 dated October 14, 2015;
- Invoice 3403 dated October 21, 2015;
- Invoice 3411 dated October 28, 2015;

TOTAL: \$500.00

The Landlord also provided a copy of the cheque written to the strata dated November 6, 2015 in the amount of \$500.00 representing payment of the above invoices.

The Tenant testified as follows. She stated that she did not receive the Strata bylaws when she moved into the rental unit.

She also stated that she did not agree to the charge for cleaning the rental unit. She stated that she hired a professional cleaner to clean the rental unit and disagreed with the amount charged by the Landlord for cleaning.

The Tenant confirmed that she did not have the carpets professionally cleaned when she moved out.

The Tenant initially stated that she did not receive any letters from the strata, but she acknowledged receiving invoices from the Landlord for fines levied for five “overnight visits”. She claimed that at no time did she receive any correspondence offering her an opportunity to dispute the amounts charged.

The Tenant confirmed that she lived in the rental unit for two years on her own. She stated that her friend, J.P., stayed at the rental unit on occasion, but he did not have any personal belongings at the rental unit and at all material times he maintained his own residence. She stated that she told the Landlord this but she did not tell the Strata as she didn’t know how to get a hold of them.

At the conclusion of the Tenant’s testimony, she confirmed that she did, in fact, receive the letters from the strata, and that she believed the evidence was submitted in the previous hearing. As noted, those letters were not available to me. The Tenant sought an Order cancelling the fines levied by the Strata on the Landlord.

The Tenant confirmed during the hearing that she sought return of double the deposits paid as the Landlord failed to complete the move out inspection report in accordance with the *Residential Tenancy Act* and the *Regulations*.

The Tenant did not make any submissions in relation to the Landlord’s claim for unpaid rent for December 2015.

Analysis

On the basis of the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows.

In the Decision dated November 10, 2015, Arbitrator found the Tenant liable for the November and December 2015 rent. This was based on the fact the parties reached an agreement that the tenancy would end on December 31, 2015.

As such, this matter has already been decided and I am precluded by the legal principle, *Res Judicata*, from deciding this issue. *Res judicata* (“the matter is judged”) is

an equitable principle that, when its criteria are met, precludes re-litigation of a matter. There are a number of preconditions that must be met before this principle will operate:

1. the same question has been decided in earlier proceedings;
2. the earlier judicial decision was final; and
3. the parties to that decision (or their privies) are the same in both the proceedings

I find, that the question as to the Tenant's responsibility for payment of the December rent meets the above criteria and I therefore find, on the basis of the Kernaghan Decision, that the Tenant is responsible for the December 2015 rent in the amount of **\$890.00**.

The Tenant disputed the Landlord's claim that the rental unit required cleaning. The Landlord failed to provide any photos to confirm the condition of the rental at the end of the tenancy. Further, the Landlord failed to complete the move out condition inspection report which would have provided evidence of the condition of the rental and any required cleaning. The Landlord bears the burden of proving this claim and on the basis of the foregoing, I am unable to find that the rental unit required cleaning and I therefore dismiss the Landlord's claim for \$140.00.

Residential Tenancy Policy Guideline 1. Landlord & Tenant—Responsibility for Residential Premises provides that a Tenant is responsible for steam cleaning or shampooing the carpets after a tenancy of one year. The Tenant confirmed she did not clean the carpets and as such I find the Landlord is entitled to the **\$160.00** claimed for cleaning the carpets.

The majority of the hearing dealt with the Landlord's claim for compensation for the \$500.00 in strata fines. Initially the Tenant denied receiving any correspondence from the Strata, save and except for the invoices. At the conclusion of her evidence she admitted she had received these letters and that they had been submitted in evidence at the November 5, 2015 hearing. As noted, these letters were not provided to me. The only letter which was provided was a letter dated October 1, 2015 wherein the Strata informed the Landlord that they intended to levy a fine of \$100.00 every seven days. This letter did not provide the Landlord, or the Tenant an opportunity to dispute the allegations or the fines.

The Tenant claims that the fines relate to her friend staying over at her rental unit on a few occasions. The Landlord claims this other person meets the definition of occupant and as such the Tenant was required to provide a signed Form K to the Strata.

The Landlord testified that the Strata Bylaws were provided to the Tenant at the time the tenancy commenced. Those bylaws were not provided in evidence. There was also no signed Form K in evidence relating to the Tenant.

A review of the tenancy agreement confirms that there is no mention of the Strata Bylaws. Paragraph 31 references “Rules and Regulations”, which were purportedly delivered with the tenancy agreement. Again, these Rules and Regulations were not in evidence, nor is there any indication they relate to the Strata Bylaws.

Had the Landlord intended the Strata Bylaws to form part of the tenancy agreement, it was incumbent on him to ensure the tenancy agreement made specific mention of the Strata Bylaws as part of the tenancy agreement or as an addendum and that the Tenant signed a Form K—Notice of Tenants Responsibilities confirming her agreement to follow the Strata Bylaws.

Unless the residential tenancy agreement specifically provides that the Tenant is to be bound by the Strata Bylaws, and those Bylaws are provided to the Tenant, issues between the Landlord and the Strata are not part of the tenancy. Whether the fines were properly levied is an issue between the Landlord and the Strata. Accordingly, I dismiss the Landlord’s claim for compensation in the amount of \$500.00 for fines levied by the Strata.

I will now turn to the Tenant’s claim for return of her security deposit.

Section 38 of the *Residential Tenancy Act* provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Residential Tenancy Policy Guideline 17—Security Deposit an Set Off provides the following additional guidance:

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and

- to file a monetary claim

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The Landlord claimed against both deposits for unpaid rent, strata fines, and cleaning of the rental unit.

By failing to perform an outgoing condition inspection report in accordance with the *Residential Tenancy Act* and the *Regulations*, the Landlord has extinguished their right to claim against the security deposit and the pet damage deposit *for damage to the rental unit*, pursuant to section 36(5) of the Act.

A Landlord can only make a claim against a pet damage deposit for *damage*. As the Landlord had no right to claim against the pet damage deposit, the Landlord was required to return those funds to the Tenant at the conclusion of the tenancy pursuant to section 38(1)(c). While the Landlord made an application within two days of the end of the tenancy, they had no right to claim against the pet damage deposit; accordingly, their only option was to return the funds to the Tenant. In failing to do so, the Landlord has breached section 38(1).

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$850.00**, comprised of double the pet damage deposit (\$425.00).

As the parties have enjoyed divided success I Order that they each bear the cost of their filing fee.

The amount awarded to the Tenant (\$850.00) is to be offset against the amount awarded to the Landlord in the amount of \$1,050.00 (\$890.00: December rent; and \$160.00: carpet cleaning) such that the Landlord is entitled to the sum of **\$200.00**. Pursuant to section 38, I authorize the Landlord to retain \$200.00 of the Tenant's security deposit.

The balance of security deposit, in the amount of **\$225.00**, is to be returned to the Tenant. The Tenant is granted a Monetary Order for this amount and must serve the Order on the Landlord. If necessary the Tenant may file and enforce the Monetary Order in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord's claims for unpaid rent for December 2015 as well as their claim for the cost to clean the carpets are granted. The Landlord's claims for compensation for the cost of cleaning the rental unit and for the fines levied by the Strata are dismissed. The Landlord is permitted to retain \$200.00 of the Tenant's security deposit.

The Tenants claim for return of her deposits is granted in part. The Tenant is entitled to return of double the pet damage deposit as the Landlord extinguished their right to claim against these funds by failing to perform a move out condition inspection report in accordance with the *Residential Tenancy Act* and the *Regulations*.

The amounts awarded to each party are offset against the other such that the Tenant is granted a Monetary Order in the amount of **\$225.00**.

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: June 29, 2016

Residential Tenancy Branch