



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONE WEST PROPERTIES CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR, MNDC, MNSD, FF

Introduction

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

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

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) provided undisputed affirmed testimony that the tenants were served with the notice of hearing package and the 27 pages of submitted documentary evidence in person on March 30, 2016. The tenants confirmed receipt of the landlord's notice of hearing package and the initial 27 pages of documentary evidence. The tenants confirmed that no documentary evidence was submitted by the tenants. As both parties have confirmed receipt of the notice of hearing and the submitted 27 pages of documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue

The landlord submitted a late evidence package of 4 pages on August 12, 2016 just 5 days prior to the scheduled hearing date. The landlord stated that this was additional evidence that was not served to the tenants. The landlord was unable to provide any compelling reason why the documents should be considered or why they were submitted late. I find that these 4 pages of additional evidence have been submitted in violation of the Rules of Procedure as the tenants were not provided copies of or given notice of these documents. As such, these 4 pages are excluded from consideration in this hearing. The landlord provided no issue or dispute regarding the late evidence.

At the end of the hearing it was noted that the tenants have since vacated the rental unit and that a new mailing address was required to provide the tenants with a copy of the decision. The tenant, S.B provided his work address for delivery of any mailings.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2014 on a fixed term tenancy ending on August 31, 2015 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated August 11, 2014. The monthly rent was \$2,100.00 payable on the 1st day of each month and a security deposit of \$1,050.00 was paid on August 11, 2014.

The landlord seeks a monetary claim of \$3,628.25 which consists of:

\$2,100.00	Unpaid March Rent	
\$1,628.25	\$200.00	Strata By-Law Fine
	\$1628.25	Cleaning Chargeback imposed by Strata for Exterior Glass

The landlord provided undisputed affirmed evidence that the tenants failed to pay rent of \$2,100.00 for March rent.

The tenants confirmed that the March rent was not paid in dispute of the strata fines. The tenants stated that no permission from the landlords was given to withhold rent nor was a finding made by the Residential Tenancy Branch authorizing the tenants to withhold rent.

The landlord stated that the Strata Council imposed a bylaw fine of \$200.00 and a cleaning charge of \$1,328.25 for cleaning windows and balconies of the neighboring suites caused by the tenants dumping water off their balcony while watering plants and cleaning their balcony. The tenants confirmed that the Strata Council has imposed these charges upon the owner as a result of their tenancy.

The landlord has also submitted in support of the claim copies of:

A letter dated February 25, 2016 from the tenants to the landlord with notice to end the tenancy on March 30, 2016 and their intent to withhold March 2016 rent.

A letter dated October 14, 2015 from the Strata Property Management Company referencing another letter October 8, 2014 referencing a window and balcony cleaning cost imposed by the Strata Council.

A copy of an invoice dated October 10, 2014 for Cleaning and Scraping of Windows dirtied by deck cleaning for a cost of \$1,328.25.

A copy of an email dated October 2, 2015 of an incident in which the tenants were cautioned to not wash their balcony as water was flowing off of the balcony down onto other units.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenants caused the damage or loss and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Both parties have confirmed that the tenants washed the balcony using water that resulted in a complaint to the Strata Council. Both parties confirmed that the Strata Council imposed a fine of \$200.00 and a charge back fee of \$1,328.25 for cleaning. This is confirmed with the landlord's submitted documentary evidence. I find based upon the undisputed affirmed evidence of both parties that the landlord has established a claim of \$1,328.25 for cleaning charged by the strata as shown by the submitted invoice dated October 10, 2014.

Both parties have also confirmed that the tenants withheld the monthly rent of \$2,100.00 for March Rent in a dispute over the Strata Fine and Cleaning Charge. The tenants confirmed that this was withheld without the permission of the landlord or without a finding from the Residential Tenancy Branch authorizing the rent to be withheld. As a result of the undisputed affirmed evidence of both parties the landlord has established a claim for unpaid March rent of \$2,100.00.

The landlord has established a total monetary claim of \$3,628.25.

The landlord applied to keep the tenant's \$1,050.00 security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,735.00 under the following terms:

Item	Amount
Unpaid March Rent	\$2,100.00
By Law Fine	\$200.00
By Law Cleaning Charge	\$1,328.25
Offset Security Deposit	-1,050.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$2,678.25

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

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: August 17, 2016

Residential Tenancy Branch