



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, OLC

Introduction

This hearing dealt with applications by both the landlord and tenant pursuant to the *Residential Tenancy Act* ("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 the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to 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; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72; and
- an order requiring the landlord to comply with the *Act, regulation* or tenancy agreement pursuant to section 62;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issues to Decide

Is the landlord entitled to a monetary order as claimed?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant to a monetary order as claimed?

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on June 1, 2016 and was to be for a fixed term of one year however the tenancy ended on July 2, 2016. The tenants were obligated to pay \$3200.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1600.00 security deposit. The parties signed a tenancy agreement and the "Form K" that is required by the strata. Written condition inspection reports were conducted at move in and move out. On June 8, 2016 the landlord was advised by the building manager that the tenant was advertising and renting out the unit as an AirBnB. The landlord testified that he contacted the tenant and advised him that AirBnB were prohibited as part of the strata by-laws. The landlord testified that after some discussions the party came to an agreement on June 10, 2016 that they would mutually agree to end the tenancy on June 30, 2016; that document was signed on June 18, 2016.

The landlord testified that strata imposed a \$200.00 fine against him because the tenant breached the by-laws for renting out his unit as an AirBnB. The landlord is seeking the recovery of that amount. The landlord also testified that he is seeking one month's loss of revenue as the tenant restricted access to potential renters. The landlord testified that he requested three dates but in the end was only able to access the unit on one of those dates. The landlord testified that because of the limited access he was unable to rent the unit for the month of July and seeks \$3200.00.

The landlord is applying for the following:

1.	Loss of Revenue July 2016	\$3200.00
2.	Strata fine	\$200.00
3.	Filing fee	\$100.0
4.	- Less Deposits	1600.00
5.		

6.		
	Total	\$1900.00

The tenant gave the following testimony. The tenant testified that the landlord was not restricted access. The tenant testified that the landlord could access the unit but he didn't have his permission. The tenant testified that the landlord was intimidating and aggressive in his behaviour and that he should have the June rent of \$3200.00 returned to him for the loss of quiet enjoyment. The tenant testified that the landlord is responsible for all of the fines. The tenant testified that the landlord is manipulating and abusing the system by filing this frivolous claim and on that basis the tenant is seeking the return of double the security deposit. The tenant testified that he also feels that the landlord should pay his move in and move out fee along with the filing fee. The tenant testified that many of these issues could have been avoided if the landlord had returned his security deposit in cash on June 30, 2016 as they verbally agreed to.

The tenant is applying for the following:

Analysis

Return of June Rent in full	\$3200.00
Double the Security deposit – 1600.00 x 2	\$3200.00
Move in Move out fee	\$100.00
Filing Fee	\$100.00
Total	\$6600.00

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 arguments are reproduced here. The principal aspects of each of the claims and my findings around each are set out below.

Landlords Claim

1. Loss of Revenue - \$3400.00.

The parties agreed to end the tenancy on June 30, 2016, however the tenant chose not to relinquish the keys at the scheduled move out inspection as the landlord decided to

exercise their right by not returning the security deposit in cash as requested by the tenant. The tenant became upset that the landlords broke their verbal agreement and threatened to move back in. The parties eventually conducted the move out condition inspection on July 2, 2016. The landlord maintains that because of the tenants' actions and the limited access to show the suite, he was unable to rent it and incurred a loss of \$3400.00.

I find that in the tenants own testimony he limited the landlords' access to the unit and in turn restricted the landlord from conducting their business in a reasonable manner. I find that the landlord is entitled to a monetary award but not the amount as sought. The landlord did attempt to re-rent the unit and show the unit but didn't take all steps to mitigate the loss such as; to offer a month to month, or offer a shorter fixed term or, to decrease the rent or offer a mid-month move in. Based on the above, I find that the appropriate and reasonable amount that the landlord is entitled to is loss of revenue for two weeks in the amount of \$1600.00.

2. Strata fine - \$200.00.

The landlord provided a copy of the fine. The tenant acknowledged that he was running an AirBnB but didn't feel that he was liable for any costs as the fine is applicable to the landlord and not him. The tenant also acknowledged that he signed the "Form K" which a tenant undertakes to follow all of the rules and bylaws of the strata. Based on all of the above I find that the tenant did breach the bylaw and is responsible for this charge. The landlord is entitled to the recovery of this fine in the amount of \$200.00.

The landlord is also entitled to the recovery of the filing fee for this application. The landlords' total award is ~~\$3500.00~~-\$1900.00.

Tenants Claim

1. Return of all of June's Rent - \$3200.00.

The tenant seeks this amount on the basis that the landlord was entering the unit frequently and that he lost the quiet enjoyment of his home because of the landlords persecution and intimidation tactics, preventing the tenant having guests without cause and coercing the tenant to sign an agreement which reduces the tenants right. The landlord adamantly denied this claim. The tenant did not provide sufficient evidence to support any of the grounds he alleged. Based on the insufficient evidence before me and on a balance of probabilities I dismiss this portion of the tenants claim.

2. Return of Double the Security Deposit - \$3200.00.

The tenant acknowledged that the landlord filed his application within fifteen days of the latter of the tenancy ending or when he received the tenants' forwarding address in accordance with Section 38 of the Act. However, the tenant felt that the landlords claim lacked merit and is frivolous and a waste of time. The landlord has been successful in their claim as they have proven the merits of it. I find that the landlords acted in accordance with Section 38 of the Act and there application was not frivolous. I dismiss this portion of the tenants' application.

3. Move in Move out Fee - \$100.00.

The tenant feels that this is a cost that the landlord should bear since he only lived there for one month. The landlord stated that all tenants are required to pay that fee when they move in up front as part of the strata bylaws. The landlord testified that the tenant did live there during the month and moved in. The landlord provided a copy of the agreement that reflects this cost. Based on all of the above I dismiss this portion of the tenants claim.

The tenant has not been successful in their application.

Conclusion

The landlord has established a claim for \$1900.00. I order that the landlord retain the deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$300.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants' application is dismissed in its entirety.

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: January 09, 2017

AT THE PLACES INDICATED.

Residential Tenancy Branch