



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON MAX REALTY AND PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF; MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain a portion of the tenants' security deposit, pursuant to section 38;
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- authorization to obtain a return of their security deposit, pursuant to section 38;
- authorization to recover the filing fee for their application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 25 minutes. The landlords' two agents, "landlord WL" and "landlord AF" (collectively "landlords") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord WL confirmed that he was the property manager and landlord AF confirmed that she was the leasing agent, both working for the landlord company named in this application. Both agents confirmed that they had authority to speak on behalf of both landlords named in this application at this hearing.

The landlords confirmed that the tenants were served with the landlords' application for dispute resolution hearing package on February 9, 2017 by way of registered mail, and written evidence package on June 22, 2017 by way of registered mail. The landlord provided two Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the

landlords' application on February 14, 2017 and written evidence package on June 27, 2017, five days after each of their registered mailings.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenants, I order the tenants' entire application dismissed without leave to reapply.

Issue to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords entitled to retain a portion of the tenants' security deposit?

Are the landlords entitled to recover the filing fee for their application?

Background and Evidence

The landlords testified regarding the following facts. This tenancy began on May 1, 2016 and ended on January 26, 2017. Monthly rent in the amount of \$1,650.00 was payable on the first day of each month. A security deposit of \$1,650.00 was paid by the tenants and the landlords returned a total of \$1,450.00 to the tenants and retained \$200.00 from the security deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. A move-in condition inspection report was completed on May 1, 2016 and a move-out condition inspection report was completed on January 26, 2017. Copies of both reports were provided for this hearing. The tenants provided a written forwarding address to the landlords on the move-out condition inspection report on January 26, 2017. The tenants provided written permission for the landlords to keep the strata company fine from the security deposit in the move-out condition inspection report but no amount was indicated in the report because it was not released by the strata company to the landlords until February 2017.

The landlords' application to retain a portion of the tenants' security deposit was filed on February 8, 2017.

The landlords seek to retain \$200.00 from the tenants' security deposit and to recover the \$100.00 application filing fee from the tenants.

The landlords said that the tenants failed to book the elevator at the rental property when they were moving from the rental unit. They said that the strata company fined the owners \$200.00 for this violation and the owners paid this amount on behalf of the tenants. The landlords provided a letter, dated February 17, 2017, indicating that the tenants failed to book the elevator and the strata company became aware through surveillance imaging in the elevator. The landlords provided another letter, dated January 24, 2017, indicating the violation under the strata corporation's bylaws section 38, which requires booking the elevator for moves between certain hours with notice.

Originally, the landlords said that the tenants were charged an additional \$200.00 for damaging the elevator, but this fine was later revoked by the strata company because there was no clear surveillance photograph showing the tenants causing the damage; the landlords' confirmed that they were no longer seeking the damage amount.

Analysis

The landlords provided undisputed evidence, as the tenants did not attend this hearing. I find that the tenants are responsible for paying the strata company fine of \$200.00 to the landlords, who paid the strata company on their behalf. I find that the landlords showed, on a balance of probabilities, that the tenants failed to book the elevator for their move and they violated the strata corporation bylaws, which resulted in the fine of \$200.00. The landlords noted this violation in the move-out condition inspection report. Although the tenants disputed this fine in their application, they did not appear at this hearing in order to present their submissions.

The landlords continue to hold \$200.00 from the tenants' security deposit. No interest is payable on the deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I find that the landlords are entitled to retain \$200.00 from the tenants' security deposit in full satisfaction of the monetary award for the strata company fine.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 application filing fee from the tenants.

Conclusion

I issue a monetary Order in the landlords' favour in the amount of \$100.00, against the tenant(s) for the application filing fee. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' entire application is dismissed without leave to reapply.

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: July 31, 2017

Residential Tenancy Branch