



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to obtain an order of possession based on an undisputed 1 Month Notice for Cause dated August 30, 2018 ("1 Month Notice"), for a monetary claim of \$4,910.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee.

An agent for the landlord JB ("agent") and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed during the hearing that they had been served with the landlord's documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that they did not serve the landlord with any documentary evidence. Given the above, I find the tenant was sufficiently served with the landlord's documentary evidence in accordance with the Rules of Procedure.

Preliminary and Procedural Matters

At the outset of the hearing, the parties agreed that the tenant vacated the rental unit on September 30, 2018 which was three days after the landlord filed this application. As a result, I find an order of possession is no longer necessary as there is no dispute that the landlord has obtained possession of the rental unit back from the tenant. Therefore, I will not consider the landlord's application for an order of possession. In addition, I find the landlord's claim for liquidated damages was premature at the time the application

was made as the tenancy had not yet ended. Therefore, I dismiss the landlord's application for liquidated damages **with leave to reapply** as I find that portion of the landlord's claim to have been premature. In addition, the agent requested to withdraw the landlord's claim for October 2018 rent and as a result, that portion of the landlord's claim was **dismissed without leave to reapply**. Given the above, the hearing proceeded with consideration of the Strata fines (items 1, 2 and 3 which will be detailed below) and filing fee only.

The parties confirmed their email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to the recovery of the cost of the strata fines under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. Monthly rent in the amount of \$1,370.00 was due on the first day of each month. The tenant paid a security deposit of \$685.00 and a pet damage deposit of \$685.00 at the start of the tenancy which the landlord continues to hold.

The agent confirmed that the tenant provided their written forwarding address since vacating the rental unit on September 30, 2018. As the landlord claimed against the tenant's security deposit and pet damage deposit ("deposits") in their application dated September 27, 2018 I will deal with both deposits in this decision.

The landlord's resulting monetary claim before me after addressing the preliminary matters above and is comprised of 3 items, which total \$800.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Strata fines, Invoice 4183 (2 x \$200.00)	\$400.00
2. Strata fine, Invoice 4184	\$100.00
3. Strata fines, Invoice 4186 (1 x \$200.00 and 1 X	\$300.00

\$100.00)	
TOTAL	\$800.00

The parties agreed that the tenant signed a Form K which was reviewed during the hearing. The tenant also confirmed that they received a copy of the Strata Rules at the start of the tenancy. Bylaw 4(1) of the Strata Rules limits the size of a dog in the building to no greater than 15 inches in height from floor to shoulder or greater than 20 pounds in weight. Bylaw 4(2) of the Strata Rules requires that all authorized pets be carried while inside the building.

Regarding item 1, the landlord has claimed \$400.00 which is comprised of two Strata fines of \$200.00 due to the tenant violating Bylaw 4(1) and Bylaw 4(2) which are supported by a letter dated September 11, 2018 and Strata Plan invoice #4183. The tenant confirmed that he was aware that only his one Chihuahua was permitted in the rental unit as per the signed tenancy agreement submitted in evidence. The tenant testified that he was taking care of his girlfriend's dog ("dog") and said the dog was a "mutt" and did not deny that the dog was over the size limit for dogs in the Strata Rules. In addition, the tenant confirmed that he did not carry the dog in the hallways which is required in the Strata Rules. As a result, Strata levied a fine of \$400.00 for walking the dog without carrying the dog contrary to Bylaw 4(2) and keeping an unauthorized and oversized pet dog in the rental unit contrary to Bylaw 4(1).

Regarding item 2, the landlord has claimed \$100.00 which is comprised of one Strata fine of \$100.00 due to the tenant continuing to violate Bylaw 4(1) which is supported by a letter dated September 18, 2018 and Strata Plan invoice #4184. The tenant confirmed that he was taking care of his girlfriend's dog ("dog") which was over the size limit for dogs in the Strata Rules and although he claimed he asked the Strata Council for a hearing, the tenant failed to submit any documentary evidence to support his testimony.

Regarding item 3, the landlord has claimed \$300.00 which is comprised of two Strata fines; one for \$100.00 due to the tenant continuing to violate Bylaw 4(1) and one for \$200.00 for violating Bylaw 4(2) again which is supported by a letter dated September 25, 2018 and Strata Plan invoice #4186.

The tenant did not deny that he let his dog walk in the rental property hallway and stated that it was not a very long distance as he lived in a corner unit. The tenant also did not

deny that he did not carry his dog in the hallways and did not deny that he did not have the permission of the landlord to have a second dog in the rental unit.

The tenant stated that he should not be responsible as the landlord is on the Strata Council and in essence, fined himself as owner of the strata unit.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I afford no weight to the tenant's argument that the tenant should not be responsible for the fines as the landlord is on the Strata Council as the tenant signed the Form K and confirmed he was provided with the Strata Rules which will be discussed further below.

Secondly, based on the testimony of the tenant and landlord and the written documentation from the Strata Corporation submitted in evidence I am satisfied that the landlord has met the burden of proof. I am also satisfied that the tenant was aware of the Strata Rules having confirmed that he signed the Form K and had received the Strata Rules. Furthermore, I am satisfied that the tenant knowingly breached the Strata bylaws 4(1) and 4(2) by having his girlfriend's dog which exceeded the size restrictions permitted in the bylaws and allowed that dog to walk in the hallways without being carried.

Therefore, I find the tenant is liable for the fines under the *Act* and owes the landlord **\$800.00** as claimed.

In addition, I grant the landlord **\$100.00** pursuant to section 72 of the *Act* to recover the cost of the filing fee as the landlord's application was successful.

As the landlord continues to hold the tenant's deposits which total \$1,370.00, I **authorize** the landlord to retain **\$900.00** from the deposits, comprised of the full pet damage deposit of \$685.00 and \$215.00 of the security deposit leaving a balance owing by the landlord to the tenant in the amount of **\$470.00**.

Therefore, I order the landlord to return \$470.00 of the tenant's \$685.00 security deposit no later than **November 30, 2018 by 5:00 p.m.** pursuant to section 62(3) of the *Act*. Should the landlord fail to comply with my order, I grant the tenant a monetary order in

the amount of \$470.00 which will be of no force or effect if the landlord pays the tenant as ordered above in full no later than November 30, 2018 by 5:00 p.m.

Conclusion

The landlord's claim has merit. The landlord has established a monetary claim in the amount of \$900.00 as described above.

As the landlord continues to hold the tenant's deposits which total \$1,370.00 the landlord has been authorized to retain \$900.00 from the deposits. I find that the tenant's remaining security deposit balance owing by the landlord to the tenant of \$470.00.

The landlord has been ordered to return \$470.00 of the tenant's \$685.00 security deposit no later than November 30, 2018 by 5:00 p.m. pursuant to section 62(3) of the *Act*.

Should the landlord fail to comply with my order, the tenant has been granted a monetary order in the amount of \$470.00 which will be of no force or effect if the landlord pays the tenant as ordered above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 9, 2018

Residential Tenancy Branch