



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, MNRL-S, FFL

Introduction

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

- an Order of Possession for cause, pursuant to sections 47 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:16 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that she personally served the tenants with the notice of dispute resolution package on October 20, 2018. I find that the tenants were deemed served with this package on October 20, 2018, in accordance with section 89 of the *Act*.

The landlord testified that the tenants moved out of the subject rental property on November 1, 2018; therefore, the landlord withdrew her application for an Order of Possession for cause. The landlord testified that the tenants moved out pursuant to a 10 Day Notice to End Tenancy for Unpaid rent and an Order of Possession the landlord received in a directed request decision dated November 7, 2018. The landlord provided the file number for the November 7, 2018 decision. That decision also provided the

landlord with a Monetary Order for unpaid rent in the amount of \$1,480.00 plus \$100.00 for the recovery of the filing fee. As the landlord already received a Monetary Order for unpaid rent, she withdrew her application for a Monetary Order for unpaid rent.

The landlord's application seeks to recover \$600.00 in unpaid strata fines from the tenants. The landlord testified that the strata fines have now increased to \$1,400.00. The landlord testified that she is seeking to amend her application to recover the \$1,400.00 in strata fines levied against the subject rental property while the tenants occupied it.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that it could reasonably be anticipated that the landlord would seek to recover monies from the tenants for all of the strata fines levied against the subject rental property while the tenants occupied it. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all of the strata fines, totaling \$1,400.00.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on November 1, 2017 and ended on November 1, 2018. Monthly rent in the amount of \$1,480.00 was payable on the first day of each month. A security deposit of \$740.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenants did not provide the landlord with their forwarding address in writing.

The landlord testified that the strata corporation for the subject rental property issued the tenants 13 letters regarding breaches of strata bylaws. The 13 letters were entered into evidence. The landlord testified that the letters were sent to both the tenants and herself. The landlord testified that seven of the by-law breach letters resulted in fines that she is ultimately responsible for, as outlined in the table below:

Date of Letter	Date of Occurrence	Issue	Penalty
September 5, 2018	May 10, 2018	Tenant failed to stop and wait for parking gate to close before proceeding	\$200 fine
September 5, 2018	June 2, 2018	The dog belonging to the tenant defecated in the elevator corridor and the tenant failed to clean it up	\$200 fine
September 5, 2018	July 23, 2018	Dog urine was reported flowing off the tenants' balcony on to balconies below	\$200 fine
September 5, 2018	August 5, 2018	Water was reported flowing off the tenants' balcony on to balconies below	\$200 fine
October 3, 2018	August 10, 2018	Dog urine and water was reported flowing off the tenants' balcony on to balconies below	\$200 fine
October 3, 2018	August 11, 2018	Water was reported flowing off the tenants' balcony on to balconies below	\$200 fine
October 3, 2018	August 15, 2018	Tenant allowed dog to urinate in the parkade	\$200 fine
Total			\$1,400.00

The landlord testified that after she received each strata fine she called the tenants on the telephone and they agreed to pay all of the fines except for the fine for allowing their dog to urinate in the parkade, which the tenants denied. The landlord testified that the tenants did not pay any of the strata fines.

The landlord testified that she spoke with security and reviewed some of the security footage and confirmed that the tenant allowed his dog to urinate in the parkade.

Analysis

Policy Guideline 16 states that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Based on the landlord's undisputed testimony and evidence, I find that the landlord received \$1,400.00 in strata fines as a result of the conduct of the tenants. I find that the landlord is entitled to recover the \$1,400.00 in strata fines from the tenants so as to put her in the same position as if the loss had not occurred.

Section 38 of the *Act* states that 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.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$740.00 in part satisfaction of her monetary claim against the tenants.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Strata fines	\$1,400.00
Filing Fee	\$100.00
Less security deposit	-\$740.00
TOTAL	\$760.00

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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.

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: November 26, 2018

Residential Tenancy Branch