



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MASCHINCHI INVESTMENTS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC-S, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (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;
- 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.

The landlord attended the hearing via conference call and provided affirmed testimony. The tenant's agent, (the tenant) attended the hearing via conference call and provided affirmed testimony. The tenant, O.M. was unrepresented. The landlord provided undisputed affirmed testimony that each of the named tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 19, 2018 and again with the amendment to the application for dispute and the second documentary evidence package via Canada Post Registered Mail on January 9, 2019. The tenant confirmed that no documentary evidence was submitted by the tenant. Neither party raised any service issues. The landlord stated that the mailing address used was provided by the tenant's agent during the condition inspection report for the move-out for both named tenants. I accept the undisputed affirmed evidence of the landlord and find that each of the tenants were served with the notice of hearing package, the amendment to the application for dispute and the submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order 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 March 1, 2016 on a 3 year fixed term tenancy ending on February 28, 2019 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated February 14, 2016. The monthly rent was \$3,280.00 payable on the 1st day of each month and a security deposit of \$1,640.00 was paid on February 14, 2016.

The landlord seeks an amended monetary claim of \$2,610.00 which consists of:

\$265.00	Cost for Changing Locks
\$945.00	Numerous Repairs
\$1,100.00	Strata Bylaw Fines
\$300.00	Carpet Damage

The landlord claims that the tenant had sublet the rental unit without their knowledge or permission. The landlord also claims that at the end of tenancy damage was found to the rental unit. The landlord also claims that the tenant changed the locks without notification/permission of the landlord. The landlord has incurred costs to change the locks, repair and clean damage and incurred Strata Bylaw Fines because the tenant had sublet the rental unit on short term accommodations against Strata Bylaws.

In support of these claims the landlord has submitted:

- Copy of Signed Tenancy Agreement
- Copy of Signed Form "K"
- Copy of Strata Warning letters and Notification of Fine(s)
- Copy of Condition Inspection Report for the Move-Out completed without tenant

Copy of 10 Photographs showing condition of the rental unit at the end of tenancy

Both parties confirmed that the tenant had accepted the following items of claim made by landlord.

\$265.00	Cost for Changing Locks
\$945.00	Numerous Repairs
\$300.00	Carpet Damage

Both parties agreed that the only issue to be disputed is that of the Strata Bylaw Fine(s) totalling, \$1,100.00 sought by the landlord. The tenant stated that they were not given an opportunity to speak to the matter before the Strata Council to dispute the infraction(s) however, the tenant confirmed that the 4 listed infractions did take place during the tenancy.

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 tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the undisputed affirmed evidence of both parties concerning the tenant's acceptance of part of the landlord's monetary claim totalling. The tenant has agreed to \$1,510.00 based upon:

\$265.00	Cost for Changing Locks
\$945.00	Numerous Repairs
\$300.00	Carpet Damage

Although the tenant disputed the landlord's claim for Bylaw Fines imposed by the Strata, I accept the landlord's undisputed evidence that 4 Strata Bylaw Fines were imposed by the Strata totalling, \$1,100.00 as shown by the submitted copies of the warning and Fine notices imposed by the Strata. As such, I find that the landlord has established a claim for the disputed amount of \$1,100.00.

The landlord has established a total monetary claim of \$2,610.00. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$1,640.00 security deposit in partial satisfaction of the claim. The landlord is granted a monetary order for the balance due of \$970.00.

Conclusion

The landlord is granted a monetary order for \$970.00.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the 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: February 15, 2019

Residential Tenancy Branch