



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL, MNDL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on November 10, 2018 wherein the Landlord sought monetary compensation from the Tenant in the amount of \$450.00 for charges levied by the strata relating to the tenancy as well as recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on March 14, 2019. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:52 p.m. Additionally, 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.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he served the Tenant with the Notice of Hearing and the Application on November 16, 2018 by registered mail to the address provided by the Tenant after the tenancy ended. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of November 21, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the Tenant moved out of the rental unit on June 30, 2018. The Tenant failed to make arrangements with the strata to move such that the Landlord was charged \$350.00.

The Landlord stated that when the Tenant moved in he had to go to considerable effort to make arrangements for her to move in on the date she desired. The Landlord stated that due to this the Tenant was keenly aware of the strata building rules with respect to moving *out*. Further, the Tenant also acknowledged this in communication with the building manager (a copy of which was provided in evidence). Despite the building manager's information to the Tenant that moving out on June 30th was not possible, the Tenant moved out on that date such that the Landlord was charged by the strata.

The Landlord also provided in evidence copies of communication with the Tenant and the building manager as well as communication with the Tenant and the Landlord

regarding her move out date and the requirement that she obtain consent for her proposed date.

The Landlord also testified that on the date she moved out, her movers spilled something resembling ground beef on the entryway rug which resulted in a carpet cleaning charge to the Landlord.

The Landlord confirmed that he was charged \$350.00 by the strata for fines relating to her move as well as the cost of carpet cleaning; in support he provided in evidence copy of the invoices from the strata. .

The Landlord stated that he was also charged a further \$200.00 from the strata for renting the unit for less than a year (as the contract with the Tenant was only seven months); he confirmed that he was not seeking compensation for this amount as he acknowledged it was his responsibility to follow the strata rules in this regard.

The Landlord also sought recovery of the filing fee for a total of \$450.00 claimed.

Analysis

In this section reference will be made to the *Residential Tenancy Act, Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at: www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

After consideration of the Landlord's undisputed testimony and evidence and on a balance of probabilities I find as follows.

I find the Tenant moved from the rental unit without making appropriate arrangements with the strata such that the Landlord was charged a fine from the strata. The evidence submitted by the Landlord confirms the Tenant was aware of this charge and moved in spite of the likelihood of receiving a fine. This amount is therefore recoverable from the Tenant.

I also accept the Landlord's testimony that during the move out the Tenant, or persons hired on behalf of the Tenant dropped a substance on the entry way carpet such that the Landlord was charged by the strata for the related cleaning. The photos and video evidence submitted by the Landlord support a finding that the Tenant is responsible for this charge.

As the Landlord has been successful in his claim, I find he is also entitled to recover the \$100.00 filing fee, pursuant to section 72 of the Act, for a total of \$450.00 awarded.

Conclusion

The Landlord's Application for compensation for fines levied by the strata, carpet cleaning and recovery of the filing fee is granted.

In furtherance of this my Decision, the Landlord is granted a Monetary Order in the amount of **\$450.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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: March 20, 2019

Residential Tenancy Branch