



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ORCA REALTY INC and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 14, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation;
- a monetary order for unpaid rent;
- to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on July 2, 2019 as a teleconference hearing. S.W. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 17 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that S.W. and I were the only persons who had called into this teleconference.

S.W. testified the Application and documentary evidence package was served to the Tenant by registered mail on March 18, 2019 to the Tenant's forwarding address which he had provided to the Landlord on the condition inspection report. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on March 23, 2019, the fifth day after their registered mailing. The Tenant submitted some documentary evidence in response to the Application; however, did not appear at the time of the hearing.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to retain the security deposit, pursuant to Section 38 and 72 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

S.W. testified that the tenancy began on March 1, 2016. S.W. stated that the Tenant paid rent in the amount of \$5,100.00 which was due to the Landlord on the first day of each month. S.W. stated that the Tenant paid a security deposit in the amount of \$2,500.00, as well as a pet deposit in the amount of \$2,500.00, both of which the Landlord continues to hold. S.W. stated that the tenancy ended on March 2, 2019 after the tenant returned the keys and completed the condition inspection report.

S.W. testified that the Landlord is seeking monetary compensation in the amount of \$5,100.00, relating to unpaid rent for the month of March 2019. S.W. stated that the Tenant renewed his tenancy on January 25, 2018, entering into a new fixed term tenancy commencing on March 1, 2018, until February 28, 2019. S.W. stated that the tenancy was meant to continue on a month to month basis thereafter, as indicated on the tenancy agreement signed by both parties. The Landlord submitted a copy of the tenancy agreement in support.

S.W. stated that the Tenant moved out of the rental unit on February 28, 2019 without providing the Landlord with any notice. As a result, the Landlord was unable to re-rent the rental unit in March 2019 and is therefore seeking compensation for the lost rent.

S.W. testified that the Landlord is also seeking monetary compensation in the amount of \$10,400.00 relating to strata fines that the Tenant had incurred throughout the term of his tenancy. S.W. stated that the majority of the fines relate to parkade gate infractions, in which the Tenant was observed not waiting for the gate to close completely prior to leaving the parking lot, which contradicts the strata bylaws. S.W. stated that the Tenant

has also incurred fines relating to noise and use of property infractions. The Landlord submitted a ledger as well as a copy of each fine in support.

S.W. stated that the Tenant and Landlord were notified of the strata infractions caused by the Tenant immediately after each incident. S.W. stated that the Tenant did respond to the strata; however, was unsuccessful in having the fines overturned. S.W. stated that the Landlord has paid the fines and is now seeking compensation from the Tenant in the amount of \$10,400.00. S.W. stated that several requests have been made by the Landlord to the Tenant to pay the outstanding strata fines; however, the Tenant has not yet paid this amount.

Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to Section 45 of the *Act*, A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that;

- (a) *is not earlier than one month after the date the landlord receives the notice,*
- (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) *is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

Section 26 of the *Act* explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this *Act*, the Regulations or the Tenancy Agreement, unless the Tenant has a right under this *Act* to deduct all or a portion of the rent.

The Landlord is claiming \$5,100.00 in relation to lost rent for the month of March 2019. The Landlord submitted a tenancy agreement between the parties which indicates that the parties renewed their tenancy agreement which took effect on March 1, 2018. The fixed term tenancy was meant to end on February 28, 2019 and continue on a month to month basis thereafter. I accept S.W. testimony that the Tenant did not provide the Landlord with any notice that he intended to end his tenancy on February 28, 2019. As a result the Landlord was unable to re-rent the rental unit for the month of March 2019.

I find that the Tenant was not entitled to end the tenancy without providing the Landlord with written notice to end the tenancy in accordance with Section 45 of the *Act*. In light of the above, I find that the Landlord has established an entitlement to monetary compensation in the amount of \$5,100.00.

The Landlord is also seeking monetary compensation in the amount of \$10,400.00 for strata fines which the Tenant has incurred throughout the term of the tenancy. S.W. stated that the fines relate to parkade gate, noise, and use of property infractions. S.W. stated that both the Landlord and Tenant were notified of the infractions and fines immediately after each incident. I accept that the Tenant made attempts to dispute the fines; however, he was unsuccessful. I accept that the Landlord has incurred a loss of \$10,400.00 over the term of the tenancy. S.W. stated that the Tenant has yet to make any payments towards the outstanding fines.

I find that the Landlord has provided sufficient evidence to demonstrate an entitlement to monetary compensation in the amount of \$10,400.00 relating to the strata fines incurred by the Tenant.

Having been successful, I find the Landlord is entitled to recover the filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain the security and pet deposits held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$10,600.00, which has been calculated as follows:

Claim	Amount
March 2019 Rent:	\$5,100.00
Strata Fines	\$10,400.00
Filing fee:	\$100.00
<i>LESS</i> security and pet deposit:	-(<i>\$5,000.00</i>)
TOTAL:	\$10,600.00

Conclusion

The Tenant has breach the Act by not providing the Landlord with notice to end tenancy. The Tenant has also failed to pay the balance of strata fines incurred throughout the term of the tenancy. The Landlord is granted a monetary order in the amount of \$10,600.00. This order must be served on the Tenant as soon as possible. If the Tenant fails to comply the monetary order it may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 08, 2019

Residential Tenancy Branch