



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant and the property manager (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the landlord's application for dispute resolution was served on the tenant via registered mail on April 23, 2019. The tenant testified that she could not recall on what date she received the landlord's application for dispute resolution but confirmed that she did receive it. I find that the tenant was served with the landlord's application for dispute resolution on April 28, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issues 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 a Monetary Order for damage, pursuant to section 67 of the *Act*?

3. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on December 15, 2013 and ended on March 31, 2019. Monthly rent in the amount of \$1,420.00 was payable on the first day of each month. A security deposit of \$650.00 and a pet damage deposit of \$650.00 were paid by the tenant to the landlord. The landlord returned \$279.90 of the tenant's deposits to the tenant on April 15, 2019. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenant e-mailed the landlord her forwarding address on March 21, 2019. The landlord testified that tenant provided her forwarding address to the landlord in person on March 21, 2019. The landlord applied for dispute resolution on April 15, 2019. Both parties agree that on November 22, 2013 the tenant signed the *Strata Property Act* Form K Notice of Tenant's Responsibilities with the Strata Bylaws attached.

The landlord is seeking the following damages arising out of this tenancy:

Item	Amount
Strata move out fee	\$50.00
Strata by-law fine	\$200.00
A/C service call	\$170.10
Insurance deductible	\$500.00
Filing fee	\$100.00
Total	\$1020.10

Strata Fee and Fine

Both parties agree that the Strata Bylaws state that there is a \$50.00 move out fee and that the tenant did not pay this fee. The tenant testified that she owes the landlord \$50.00 for the move out fee.

The landlord testified that in the summer of 2018 the tenant stored items in her parking stall contrary to Strata Bylaw 3(1)(a) and (e). The landlord testified that she received two warning letters from the Strata regarding the contravention of the above bylaw and drafted letters to the tenant regarding those strata warnings. The landlord testified that the tenant did not remove the items she stored in her parking stall and the landlord was issued a \$200.00 fine. The landlord drafted a letter to the tenant requesting she pay the landlord the \$200.00 fine. The above letters and invoice from the strata corporation in the amount of \$200.00 were entered into evidence. The Strata Bylaws were entered into evidence.

The tenant agreed that she stored items in her parking stall but does not agree with the fine because other people were storing items in their parking stalls and did not receive fines. The tenant agreed that she received the two warning letters from the landlord.

A/C Service Call

Both parties agree that in September of 2017 the tenant requested the landlord to send an air conditioner technician to the subject rental property to repair the air conditioner. Both parties agree that the technician attended at the subject rental property in September of 2017. The landlord testified that there was nothing wrong with the air conditioner and that it stopped working because the tenant had blocked the return air vent.

The landlord entered into evidence an invoice in the amount of \$170.10 which states:
Room is full of several items, so was unable to access bottom section of the unit.
Return air vent was shut, causing no air flow through unit. Opened vent and tested. Unit is running well with 20* air temperature and a suction pipe temperature of 58*

The landlord testified that she is seeking the tenant to pay the cost of the service call because the tenant's actions necessitated the technician's visit and the air conditioner was otherwise in good working order.

The tenant testified that when the technician left the air conditioner was working properly but that it continued to have problems. The tenant testified that she did not inform the landlord of ongoing problems but had a friend come over and fix it. The tenant testified that the air conditioner had more wrong with it than just the blocked vent. The tenant did not enter any evidence in support of her testimony.

Insurance Deductible

Both parties agree that the tenant accidentally flooded her bathtub which caused substantive water damage to the subject rental building. The landlord testified that the landlord's insurance paid for the completion of the repair, but the landlord had to pay a \$500.00 insurance deductible. The landlord is seeking this amount from the tenant. The tenant agreed that she owed the landlord \$500.00 for the cost of the insurance deductible.

Analysis

Strata Fee and Fine

As both parties agree that the tenant owes the landlord \$50.00 for the move out fee, I award the landlord \$50.00.

Section 3(1)(a) and (e) of the Strata Bylaw states:

An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that:

(a) causes a nuisance or hazard to another person

(e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

The tenant signed the *Strata Property Act* Form K Notice of Tenant's Responsibilities which states in part:

If a tenant or occupant of the strata lot, or a person visiting the tenant or admitted by the tenant for any reason, contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, denial of access to recreational facilities, and if the strata corporation incurs costs for remedying a contravention, payment of those costs.

I find that the tenant breached section 3(1)(e) of the *Act* by storing items in her parking stall. I find that the tenant was provided with two warning letters by the landlord. I find that the tenant failed to remove the stored items. I find that the tenant, pursuant to the Form K she signed, is responsible for the fine levied against the landlord in the amount of \$200.00. Whether or not other people were fined is not relevant.

A/C Service Call

Both parties agree that the service call was initiated by the tenant and was necessitated because the tenant blocked a vent. I find that the tenant has failed to prove, on a balance of probabilities, that the air conditioner was defective in any way. I find that it was the tenant's actions, blocking the vent, which necessitated the service call. Since the service call was otherwise unnecessary, I find that the tenant is responsible for the cost of the service call.

Insurance Deductible

As both parties agree that the tenant owes the landlord \$500.00 for cost of the flood insurance deductible, I award the landlord \$500.00.

Filing Fee

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

Security and Pet Damage Deposits

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) of the *Act* 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 \$1,020.10 of the tenant's security and pet damage deposits in satisfaction of the landlord's monetary claim.

Conclusion

The landlord is entitled to retain \$1,020.10 from the tenant's security and pet damage deposits.

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 23, 2019

Residential Tenancy Branch