



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Interlink (2008) Realty Corporation
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes MNDCT, FFT

Introduction

On December 19, 2018, the Tenants applied for dispute resolution under the *Residential Tenancy Act* ("Act") for a monetary claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of their security deposit, and to recover the cost of their application filing fee.

In a Decision dated May 14, 2019, I awarded the Tenants \$4,525.00 in compensation from the Landlord. This was set off against the Landlord's award for \$200.00 for recovery of fines imposed on the Tenants by the Strata Council at the residential property ("Strata"). The Tenants were granted a monetary order in the amount of \$4,325.00 after set off.

The Tenants applied for a review consideration of the Decision, based on new evidence that the Strata Council had cashed the Tenants' cheque dated November 23, 2018 for the fines imposed on them. The Review Consideration Arbitrator granted a new hearing for me to consider this new evidence.

The evidence now before me indicates that further to the April 11, 2019 hearing of these matters, the Landlord gave the Strata a cheque from the Tenants in the amount of \$200.00 to cover the fines imposed on the Tenants by the Strata. This cheque was number 213, dated November 23, 2018, and the Tenants said they gave it to the Landlord at the end of the tenancy in November 2018. A note on the cheque states: "Pay Strata garbage fees invoice LMS doc 23rd Nov."

The Tenants, M.B. and B.R., appeared at the second review hearing teleconference and gave affirmed testimony. No one attended on behalf of the Landlord or the owner. The teleconference phone line remained open for over twenty minutes and was monitored throughout this time. The only people to call into the hearing were the two

Tenants, who indicated that they were ready to proceed. I confirmed file records, which indicate that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Tenants, M.B. and B.R.

The Tenant, M.B., said that he served his application for the Review Consideration and documentary evidence on the Landlord via registered mail. In response, the lawyer of the property manager Landlord submitted statements saying that his client would not attend the July 22, 2019 hearing, as they were wrongly named by the Tenants as the Landlord of the premises. This is despite the property management firm having signed the tenancy agreement on behalf of the owner. The lawyer identified the registered owner of the rental unit, as S.Y.L. The lawyer also said that his client's agency agreement with the owner was terminated on April 2, 2019. However, the definition of "Landlord" in the Act includes the following:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
 - ...
 - (d) a former landlord, when the context requires this;
- [emphasis added]

Further to the Tenants' request, and pursuant to section 64 of the Act, I have amended the Tenants' application to include the rental unit owner as a Respondent.

During the hearing, the Tenants were given the opportunity to provide their affirmed evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a monetary order, and if so, in what amount?

- Are the Tenants entitled to recovery of the \$50.00 filing fee for the Review Consideration?

Background and Evidence

The Parties attended an RTB teleconference hearing on April 11, 2019, and I made a Decision in that matter dated May 14, 2019. The Tenants filed an application for a review of the Decision on May 28, 2019, based on the ground that they had new and relevant evidence that was not available at the time of the hearing. Another arbitrator reviewed the Tenants' submissions in this regard and determined that a new hearing was warranted, based on the new evidence.

In their original application, one of the Landlord's claims was for a monetary order of \$200.00 to cover the cost of fines imposed on the Tenants by the Strata. Based on the evidence before me at the time, I accepted the Landlord's version of events in this matter and granted the Landlord a monetary order of \$200.00 to cover the Strata fines.

In their Review consideration, the Tenants submitted a copy of cashed cheque number 213 that M.B. wrote to the Strata in the amount of \$200.00, dated November 23, 2018. This cheque was cashed on April 18, 2019. The Tenants said they gave the Landlord this cheque at the end of the tenancy to pass to the Strata, but that the Strata did not cash it until after the original hearing five months later. The Tenants said that the Landlord has, effectively, "double-dipped" by getting an award for Strata fees for which the Tenants had already paid via cheque number 213.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Based on all the evidence before me, and in the absence of any explanatory submissions from the Landlord in this matter, I find I agree with the Tenants. I find that in November 2018, the Tenants provided the Landlord with a cheque to cover the fines imposed on the Tenants by the Strata. Accordingly, I cancel the Landlord's award of \$200.00 in this matter and reissue the monetary order to remove the \$200.00 deduction from the Tenants' award. Further, I award the Tenants recovery of the \$50.00 Review Consideration filing fee. All other matters in the original Decision remain the same.

Pursuant to section 67 of the Act, I grant the Tenants a total monetary award of **\$4,575.00**.

Conclusion

The Tenants were successful in their application for a review of the original Decision dated May 14, 2019. Based on new evidence presented by the Tenants, I found that the Landlord misrepresented the amount owing by the Tenants to the Strata Council in the amount of \$200.00. Therefore, I cancel the amount awarded to the Landlord in this matter, and I increase the Tenants' monetary order by this amount. The Tenants are also awarded recovery of the \$50.00 Review Consideration filing fee.

Pursuant to section 67 of the Act, I grant the Tenants a new order dated July 24, 2019, to replace the order dated May 14, 2019, in the amount of \$4,575.00. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 24, 2019

Residential Tenancy Branch