



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDCT, MNSD, FFT

For the landlord: MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The tenant applied for a monetary order in the amount of \$22,500.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of double their security deposit, and to recover the cost of the filing fee. The landlord applied for a monetary order in the amount of \$11,280.00 for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for unpaid rent or utilities, to retain the tenants’ security deposit, and to recover the cost of the filing fee.

The tenant and an agent for the landlord SC (“agent”) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 25, 2017 and reverted to a month to month tenancy after August 31, 2018. Monthly rent in the amount of \$7,500.00 was due on the first day of each month. The tenant paid a security deposit of \$3,750.00 at the start of the tenancy, which has accrued no interest to date and which the landlord continues to hold.

Landlord's claim

Regarding the landlord's claim, the landlord has claimed a total amount of \$11,280.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Drywall damage, broken electrical cover and cleaning costs	\$280.00
2. Strata fines incurred by tenant	\$3,500.00
3. Unpaid November 2018 rent	\$7,500.00
TOTAL	\$11,280.00

Regarding item 1, the landlord has claimed \$280.00 for costs relating to drywall damage, a broken electrical cover and cleaning costs. The parties agreed that the tenant mutually agreed to these costs and as a result, I will discuss them later in this decision in relation to section 63 of the *Act*. The mutual agreement is supported by the outgoing Condition Inspection Report submitted in evidence.

Regarding item 2, the landlord has claimed \$3,500.00, which is comprised of 7 strata bylaw fines against the tenant in the amount of \$500.00 for each fine. The landlord submitted records and correspondence from the strata to the landlord advising of the fines against the tenant for unauthorized rental of the rental unit through Air BnB. The

tenant confirmed that he rented room(s) via AirBnB during the tenancy. The tenant also confirmed that he signed the Form K at the start of the tenancy confirming that he was aware of the strata bylaws. In correspondence submitted in evidence from the strata corporation, they confirm that the tenant violated Strata Corporation Bylaw 3 which prohibits short-term rentals under 6 months without special permission from the strata, and that AirBnB rentals are not permitted. The tenant provided no evidence that he obtained permission from the strata.

Regarding item 3, the landlord has claimed \$7,500.00 for unpaid November 2018 rent. The tenant confirmed that he did not pay rent for the month of November 2018 based on a 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 17, 2018 ("2 Month Notice") with an effective vacancy date of November 30, 2018. The tenant did not dispute the 2 Month Notice. The landlord also served the tenant with a 1 Month Notice for Cause dated October 30, 2018 ("1 Month Notice") with an effective vacancy date of November 30, 2018. The tenant also did not dispute the 1 Month Notice. The landlord's position is that the tenancy ended based on the 1 Month Notice and that no compensation was required for the tenant as a result.

Tenant's claim

Regarding the tenant's claim, the tenant has claimed a total amount of \$22,500.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. 2 months of rent due to 2 Month Notice	\$15,000.00
2. Double the \$3,500.00 security deposit	\$7,500.00
TOTAL	\$22,500.00

Regarding item 1, the tenant testified that they were seeking the amount of twice the monthly rent due to being served a 2 Month Notice. The landlord's position is that the 2 Month Notice is void given that the tenancy ended based on the 1 Month Notice described above.

Regarding item 2, the tenant is seeking double the security deposit of \$3,750.00, for a total amount of \$7,500.00 due to the landlord failing to return the tenant's security deposit in accordance with section 38 of the *Act*. The agent stated that in a previous decision, the file number of which has been included on the cover page of this decision

for ease of reference, was withdrawn by the landlord prior to the hearing and that due to that decision, by the time the landlord reapplied, they were beyond the 15 day timeline to file an application towards the tenant's security deposit. The agent did not dispute that the second application made by the landlord was beyond the 15 day timeline to claim against the tenant's security deposit of \$3,750.00.

Analysis

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

Test for damages or loss

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 in sections 7 and 67 of the *Act*. Accordingly, 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 instance, the burden of proof is on the applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's claim

Item 1 - The landlord has claimed \$280.00 for costs relating to drywall damage, a broken electrical cover and cleaning costs. As the parties agreed that the tenant will compensation the landlord a total of **\$280.00** for this item during the hearing, I order the parties to comply with their mutually settled agreement pursuant to section 63 of the *Act*. The parties are advised that their mutually settled agreement is binding and that they arrived at this mutual agreement under their own free will and were not pressured in any way.

Item 2 - The landlord has claimed \$3,500.00, which is comprised of 7 strata bylaw fines against the tenant in the amount of \$500.00 for each fine. As the tenant signed the Form K and based on the correspondence from the strata, and the fact that the tenant admitted to using AirBnB to rent room(s) in his unit, I find the landlord has met the burden of proof and that the tenant breach the strata bylaw section 3 and section 135 of the *Strata Property Act* by violating the strata bylaws. Therefore, I find the tenant is responsible for all **\$3,500.00** in fines incurred. Consequently, I grant the landlord the full amount claimed of \$3,500.00 for this item.

Item 3 – The landlord has claimed \$7,500.00 for unpaid November 2018 rent. I have reviewed both the 2 Month Notice and the 1 Month Notice and I find the tenancy ended by way of the 1 Month Notice as both notices were undisputed and end on the same date. Therefore, I find the tenant is not entitled to any compensation under the *Act* for having been served a 2 Month Notice. Therefore, I find the tenant breached section 26 of the *Act*, which requires that tenants pay rent on the date that is it due. The tenant confirmed that he did not pay November 2018 rent. Therefore, I find the landlord has met the burden of proof and is owed **\$7,500.00** for unpaid November 2018 rent.

As the landlord's claim had merit, I grant the landlord the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Tenant's claim

Item 1 - The tenant testified that they were seeking the amount of twice the monthly rent due to being served a 2 Month Notice. Consistent with my finding above, I find the tenancy ended in accordance with the 1 Month Notice and as a result, the tenant is not entitled to any compensation under the *Act* related to the 2 Month Notice. As are result, I dismiss this item without leave to reapply, due to insufficient evidence.

Item 2 - The tenant is seeking double the security deposit of \$3,750.00, for a total amount of \$7,500.00 due to the landlord failing to return the tenant's security deposit in accordance with section 38 of the *Act*. I have reviewed the previous decision and have confirmed that the landlord withdrew their application. Therefore, I find that by the time the landlord reapplied on May 17, 2019, the landlord was beyond the 15 day timeline provided under section 38 of the *Act* to file an application to claim against the tenant's security deposit. Consequently, I find the landlord breached section 38 of the *Act*. Therefore, I find the tenant has met the burden of proof and is entitled to **\$7,500.00**, which is comprised of double the original security deposit of \$3,750.00.

As the tenant's claim had merit, I grant the tenant the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the *Act*.

I find that the landlord has established a total monetary claim of **\$11,380.00** comprised of \$280.00 for item 1, \$3,500.00 for item 2, \$7,500.00 for item 3, plus the \$100.00 filing fee. I find the tenant has established a total monetary claim of **\$7,600.00** comprised of \$7,500.00 for item 2, plus the \$100.00 filing fee. As the landlord's claim is greater than the tenant's claim, I offset the tenant's claim from the landlord's claim and grant the landlord a monetary order for the balance owing by the tenant to the landlord in the net amount of **\$3,780.00** pursuant to sections 67 and 72 of the *Act*.

Conclusion

The landlord's application was fully successful.

The tenant's application was partially successful.

As the landlord's monetary claim is greater than the tenant's monetary claim, I offset the tenant's claim from the landlord's claim and grant the landlord a monetary order for the balance owing by the tenant to the landlord in the net amount of **\$3,780.00** pursuant to sections 67 and 72 of the *Act*. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord for service on the tenant.

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 3, 2019

Residential Tenancy Branch