



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 8, 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;
- an order granting authorization to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord's Agent, M.W. attended the hearing at the appointed date and time, and provided affirmed testimony.

M.W. testified that she served the Landlord's Application and documentary evidence package to the Tenant by registered mail on March 14, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 72 of the *Act*?

3. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on January 1, 2016. Rent in the amount of \$2,200.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,050.00, as well as a pet deposit in the amount of \$1,050.00, which the Landlord continues to hold. The tenancy ended on February 28, 2019 as a result of a One Month Notice to End Tenancy for Cause, as the Tenant had been operating a short term vacation rental in his rental unit. The Tenant provided the Landlord with his forwarding address on March 6, 2019.

The Landlord is claiming \$8,400.00 in relation to strata fines that the Landlord has incurred as a result of the Tenant operating a short term vacation rental in his rental unit. M.W. stated that the Landlord has incurred over \$20,000.00 in fines to date; however, is only claiming compensation for \$8,400.00 in strata fines.

The Landlord submitted copies of the Notice of Decisions which outlined strata fines amounting to \$8,400.00 in support. The copies of the strata fines refer to incidents in which the Tenant operated a short term vacation rental on the following dates; October 27, November 30, December 3, 5, 28, 2018, January 14 and 16, 2019.

M.W. stated that the Landlord sent the Tenant an email on January 25, 2019 cautioning the Tenant against operating the short term vacation rental as it was a contravention of the strata bylaws which were resulting in fines. M.W. stated that the short term vacation rental continued until February 5, 2019.

The Tenant responded and stated that his employment requires that he travel out of the country for extended periods of time. As a result, the Tenant requested that his sister maintain his rental unit while he was away for work. The Tenant stated that he was unaware that his sister was operating the short term vacation rental. The Tenant confirmed that he received an email from the Landlord on January 25, 2019 advising him that the strata had levied fines against the Landlord in relation to the operation of the short term vacation rental. The Tenant stated that his sister cancelled the advertisement and discontinued the short term vacation rental immediately.

Analysis

Based on the 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.

In this case, I accept that the parties agreed that the Tenant was operating a short term vacation rental out of the rental unit. The Landlord submitted several strata fines in support which indicate that the Tenant operated a short term rent on; October 27, November 30, December 3, 5, 28, 2018, January 14 and 16, 2019.

I accept that the parties agreed that the Landlord sent the Tenant an email on January 25, 2019 cautioning the Tenant about operating a short term vacation rental which has resulted in fines being levied by the strata. The Tenant stated that he instructed his sister to remove the short term vacation rental advertisement immediately.

I find that the Notice of Decisions containing the information relating to the strata fines refers to previous strata meetings held to discuss the incidents, as well as previous letters sent to the Landlord prior to the fines being administered. I find that in one Notice of Decision document dated January 15, 2019 indicates that the Landlord received a letter dated November 19, 2018 advising the Landlord of the details surrounding the operation of the short term rental witnessed on October 27, 2018.

In light of the above, I find that the Landlord has provided insufficient evidence to demonstrate that they mitigated their loss by waiting until January 25, 2019 to address the short term rental situation which was resulting in fines being levied against the Landlord as a result. I find that the Landlord submitted insufficient evidence to demonstrate that the Tenant continued to operate the short term vacation rental after being cautioned by the Landlord on January 25, 2019.

As such, I dismiss the Landlord's claim for monetary compensation without leave to reapply. As the Landlord was unsuccessful with their Application, I find that they are not entitled to the return of the filing fee.

Pursuant to section 38 and 72 of the Act, I find the Tenant is entitled to the return of their security deposit in the amount of \$2,100.00.

Conclusion

The Landlord provided insufficient evidence to demonstrate that they mitigated their loss. The Landlord's Application was subsequently dismissed without leave to reapply. The Tenant is entitled to the return of his security and pet deposits in the amount of \$2,100.00. This order must be served on the Landlord as soon as possible. If the Landlord 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 8, 2019

Residential Tenancy Branch