



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES BC  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL MNDCL-S

### Introduction

This hearing was scheduled to convene at 1:30 p.m. this date by way of conference call concerning an application made by the landlord seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for in excess of 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Application for Dispute Resolution and notice of this hearing (the Hearing Package) by registered mail on April 4, 2019 and has provided copies of a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for strata fines and moving fees?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this fixed term tenancy began on March 1, 2019 and expires on August 31, 2019, and the tenant still resides in the rental unit. Rent in the amount of \$2,700.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,350.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant has rented the rental unit on Air BNB, and the strata sent a letter to the owner of the rental unit, a copy of which has been provided for this hearing. It is dated March 22, 2010, and the landlord's agent testified that is a typing error and should read March 22, 2019. It states, in part: "In total, \$4,000 in move in fees & fines will be charged to your strata lot account. Please cease use of your unit as a short term rental immediately or fines will continue."

The landlord replied to the strata indicating that the landlord would ensure that the practice of renting on Air BNB discontinues. The landlord sent an email to the tenant, a copy of which has been provided, advising the tenant that he is responsible for the payment of \$4,000.00. The tenant did not respond to the email, but has taken down the advertisement, and the landlord does not believe the tenant is renting on Air BNB anymore.

The tenancy agreement specifies that subletting is not permitted without the written consent of the landlord, and the landlord did not give consent to renting. Further, short-term rentals are not permitted by the strata by-laws so the landlord would not give consent to renting on Air BNB.

The landlord has not paid the fines, and seeks a monetary order in the amount of \$4,000.00, recovery of the \$100.00 filing fee, and to keep the \$1,350.00 security deposit in partial satisfaction.

### Analysis

In order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;

2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any such damage or loss.

In this case, I accept the undisputed testimony of the landlord's agent that the tenant has rented the rental unit on Air BNB, which is contrary to the strata by-laws causing the owner to incur fines and moving costs to the strata. I also find that subletting without the landlord's written consent is contrary to the tenancy agreement. The strata letter confirms the amount of such fines and moving expenses charged to the owner for the breach is \$4,000.00. The tenant signed the tenancy agreement, agreeing to the terms of it, and I find that the landlord's due diligence in ensuring that the term is in the tenancy agreement so as not to be in breach of the strata by-laws is mitigation in itself.

I find that the landlord has established a monetary claim in the amount of \$4,000.00. Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$1,350.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlord for the difference in the amount of \$2,750.00.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,350.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,750.00. This order is final and binding and may be enforced.

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: June 20, 2019

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Residential Tenancy Branch