



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order in the amount of \$5,050.00 for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenant's security deposit, and to recover the cost of the filing fee.

An agent for the landlord EC ("landlord agent"), an agent for the tenant company MJ ("tenant agent") and a support person for the tenant agent SA ("support person") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However; only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The parties confirmed that they were served with documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

At the outset of the hearing, the parties were advised that the landlord's application for damages was being refused, pursuant to section 59(5)(c) of the Act, because their

application for dispute resolution did not provide sufficient particulars of their claim for compensation, as is required by section 59(2)(b) of the *Act*.

I find that proceeding with the landlord's monetary claim for damages at this hearing would be prejudicial to the tenant, as the absence of particulars that set out how the landlord arrived at the amount of \$2,250.00 makes it difficult, if not impossible, for the tenant to adequately prepare a response to the landlord's claim for damages. The landlord failed to specify a detailed breakdown of their monetary claim, including the amount of each item and what each item being claimed represents.

The landlord is at liberty to reapply for their claim for damages; however, are reminded to provide a detailed breakdown of their monetary claim and are encouraged to use the Monetary Worksheet available at www.rto.gov.bc.ca under "Forms" when submitting a monetary claim. The landlord may include any additional pages to set out the details of their dispute in their application, as required. As a result of the above, I will only deal with the landlord's claim for unpaid strata fines of \$2,800.00, the status of the tenant's security deposit, and the filing fee at this hearing.

In addition, the parties confirmed their email address at the outset of the hearing and their understanding was confirmed that they understood that the decision would be emailed to both parties.

Issues to be Decided

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

Background and Evidence

The landlord agent referred to a ledger which refers to \$2,800.00 in unpaid strata fines related to "unauthorized rental" between February 8, 2019 and June 2019. The tenant vacated the rental unit on July 2, 2019.

The tenant agent confirmed that they signed the Form K; however, the landlord did not provide a copy of the Form K for my consideration. Furthermore, the landlord failed to submit any of the letters from the strata counsel for any of the fines totaling \$2,800.00.

The tenant agent stated that they believe the fines were related to the landlord altering the rental unit and that the issue was between the landlord and the strata counsel. The tenant confirmed that they had not received any of the letters from the strata counsel regarding the \$2,800.00 in fines, only a claim from the landlord to pay the \$2,800.00 in strata fines. The tenant denies that they are responsible for the \$2,800.00 in strata fines.

Regarding the security deposit, the landlord continues to hold the tenant's \$820.00 security deposit, which has accrued no interest under the *Act*. The security deposit will be addressed below.

Analysis

Based on the documentary evidence, the oral testimony of the parties, 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 landlord 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 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.

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.

Firstly, I find the landlord has failed to meet the burden of proof as the landlord failed to provide any of the letters from the strata counsel regarding the \$2,800.00 in strata fines. As a result, I find the landlord has provided insufficient evidence to support parts one and two of the four-part test for damages or loss described above. Therefore, I dismiss the landlord's claim for the \$2,800.00 in strata fines due to insufficient evidence, without leave to reapply.

Regarding the tenant's security deposit of \$820.00, and pursuant to section 62(3) of the *Act*, I order the landlord to return the tenant's security deposit of \$820.00 within 15 days of October 28, 2019, the date of the hearing. Should the landlord fail to comply with my order, the tenant is at liberty to apply for compensation under the *Act*.

As the landlord's claim has failed, I do not grant the filing fee.

Conclusion

The landlord's claim is dismissed due to insufficient evidence, without leave to reapply.

The landlord has been ordered to return the tenant's full security deposit of \$820.00 which has accrued no interest, within 15 days of October 28, 2019. The tenant's written forwarding address is included on the cover page of this decision for ease of reference.

Should the landlord fail to comply with my order, the tenant is at liberty to apply for compensation under the *Act*. The filing fee is not granted as noted above.

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: October 29, 2019

Residential Tenancy Branch