



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BIRDS NEST PROPERTIES and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC-S, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent, J.L. (the landlord) attended and clarified that he is an agent of a property management company, Birds Nest Properties who acts as an agent for the owner, M.R. The landlord's agent had a co-worker, A.C. attend and represent the landlord on his behalf.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via email (as per substitute service order) on August 2, 2019. The tenant confirmed that no documentary evidence was submitted. Neither party raised any service issues. I accept the undisputed affirmed testimony of both parties and that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, the landlord clarified that they are now seeking a reduced monetary claim of \$3,700.00. The hearing shall proceed on this amended amount.

During the hearing the tenant provided a new email address in which to receive a copy of the decision. The email address was confirmed with the tenant and the Residential Tenancy Branch File shall be updated.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 1, 2017 on fixed term tenancy ending on April 30, 2018 as per the submitted copy of the signed tenancy agreement dated April 7, 2017. The monthly rent was \$2,950.00 that was payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,475.00 was paid on April 7, 2017. A 1 page addendum with 15 conditions were signed and dated on April 7, 2017.

The landlord seeks an amended monetary claim of \$3,700.00 which consists of:

\$3,500.00	Strata Fine, Breach short term rentals settlement
\$200.00	Missing TV

The landlord stated that during the course of the tenancy, the tenant breached the agreement by allowing short term rentals with Airbnb. The landlord submitted copies of online advertisements in confirmation as well as emails between the landlord and the tenant. The landlord argues that this is in contravention of the addendum to the signed tenancy agreement and the "form k" that was signed by the tenant.

The landlord states that the tenant began the tenancy by failing to pay the Strata move-in fee of \$250.00 which remains outstanding as of the date of this hearing. The landlord provided a copy of a letter dated June 24, 2019 issued by the Strata to the owner which details 63 incidents of violations between November 1, 2017 and May 2019. The letter refers to a charge of \$200.00 per incident. The landlord claims that a total of bylaw fines imposed by the Strata exceed \$17,000.00. The landlord stated that a settlement

was reached in which the Strata with the owner agreed to a reduced \$3,500.00 fine to litigate this matter.

The tenant disputes the landlord's claim arguing that at no time has she ever been informed of any bylaw fines by either the strata or the landlord. The tenant also argued that no short term rentals took place and that all of these issues came about at the end of tenancy when she was complying with the landlord's 2 month notice for sale of the rental unit. The tenant also argued that no "form k" was signed by her.

The landlord has referred to emails:

- July 16, 2018 in which the tenant was contacted regarding a \$200.00 bylaw infraction
- September 14, 2018 referring to a statement of account regarding a \$250.00 move in fee and \$200.00 for unauthorized rentals
- October 15, 2018 a follow up email for the September 14, 2018 email
- November 14, 2018 a second follow up email for the September 14, 2018 email
- December 13, 2018 a third follow up email for the September 14, 2018 email
- December 20, 2018 a fourth follow up email for the September 14, 2018 email

The tenant further argued that no such emails were received. Both parties confirmed that the email used in the emails was provided by the tenant and that the same email was used in contacting the tenant for this hearing. The tenant stated that this was a seldom used email, but that she did check it occasionally and did so for this hearing when she was looking for documents.

The landlord seeks \$200.00 for the cost of a missing television that was part of the furnishings of the rental unit. The landlord stated that at the end of tenancy there was a television missing from the rental premises. The landlord stated that the original estimated cost was \$1,000.00 but that the television was 6 years old and has used a depreciation calculator for a \$200.00 current value. Both parties confirmed that on July 31, 2019 the tenant emailed the landlord informing them of an issue with the television regarding it missing. The tenant stated in part that the television stopped working during the tenancy and was disposed of by the tenant. The tenant replaced the television without notifying the landlord about the old television. The tenant further argued that the landlord has failed to provide evidence of the original televisions value. The landlord confirmed that no evidence has been provided to establish the original value of the television.

## Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find that the landlord has established a claim for compensation of \$3,500.00 based upon the strata settlement. The landlord has stated that a settlement of \$3,500.00 was agreed to between the landlord and the Strata in an effort to forgo litigation to collect over \$17,000.00 in strata fines. This settlement was as a result of the numerous strata fines issued for the rental unit during the tenant's occupancy of the rental unit. The tenant has disputed the landlord's claims that short term rentals were made by the tenant during the tenancy. A review of the landlord's evidence shows that numerous emails were sent to the tenant using the tenant's provided email on the strata imposing fines for short term rentals and other issues. The landlord also provided copies of online ads on Airbnb. The tenant confirmed that this was her email that she provided to the landlord at the start of the tenancy and that she received the landlord's notice of hearing package and the submitted documentary evidence for this hearing at this email address. I find on a balance of probabilities based upon these emails that the tenant was contacted numerous times over these bylaw fines and chose to take no action as was allowed in disputing these allegations. As such, the strata fines were imposed by the strata against this unit. However, the landlord was able to negotiate a settlement of the \$17,000.00 plus in fines to \$3,500.00. On this basis, I find that the landlord has provided sufficient evidence of the strata fines imposed on this unit during the tenant's occupancy.

On the landlord's claim of \$200.00 for the missing television, I find that the landlord has failed. Although both parties confirmed that the tenant failed to notify the landlord of the broken television during the tenancy, the tenant stated that the television was disposed. I also find that the landlord has failed to provide any evidence to satisfy me of the original value of the television in order to use the depreciation calculator to determine a current value. However, the tenant did confirm that she disposed of the television without any notification of the landlord. On this basis, I find that the landlord is entitled to a nominal monetary award of \$75.00 for the loss of the television.

The landlord has established a total monetary claim of \$3,575.00. The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$1,475.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$2,200.00

This order must be served upon the tenant. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: November 18, 2019

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Residential Tenancy Branch