



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL FFT

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 in the amount of \$1,260 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Tenant NS attended the hearing on behalf of the tenants. The landlord was represented at the hearing by an agent ("**JZ**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

JZ testified that the landlord served the tenants with the notice of dispute resolution form and supporting evidence package. NS confirmed this. NS testified that the tenants have not submitted any documents in support of their response to the landlord's claim. I find that tenants have been served with the required documents by the landlord in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$1,260; and
- 2) recover his filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting May 1, 2018. Monthly rent was \$2,500 and is payable on the first of each month. The rental unit is strata property unit. The tenants paid the landlord a security deposit of \$1,250 and a pet damage deposit of \$1,250. The tenancy ended on July 1, 2019. The parties agreed that the landlord could retain \$600 of the security deposit. The landlord returned the balance of the two deposits (\$1,900) to the tenants.

The tenancy agreement contains an addendum, which contains the following clause:

7. Tenant hereby acknowledges and agree to observes [sic] and obey all the rules and regulation of the strata bylaw, also be available to provide access to the said premises if and when required by the strata as well as acceptance of the consequences if there are any infraction involve during their tenancy.

The parties agreed on the following facts:

- 1) When the tenants were moving into the rental unit in late April 2018, tenant BS damaged the strata corporation's common property (the electrical room facia and gutter) by hitting it with the moving truck (the "**Damage**").
- 2) The Strata Corporation (the "**Strata**") accepted quotes from contractors to repair the Damage.
- 3) The Strata selected a contractor, who repaired the damage, and, via an invoice dated June 12, 2019, charged the Strata \$1,260.
- 4) The Strata paid this amount and charged it back to the landlord's strata unit (the rental unit).
- 5) On June 14, 2019, the Strata forwarded this invoice to landlord and the tenants and demanded payment.
- 6) On June 25, 2019, NS appeared before the Strata council to ask that the cost assessed for repairing the Damage waived.
- 7) At this hearing, NS argued that:
 - a. The tenants should have been offered an opportunity to repair the damage themselves at minimal cost.
 - b. A "site contractor" of the Strata offered to the tenants to make the repair at a minimal cost (\$200), and the Strata should honor that offer.
 - c. The Strata should have notified the tenants of the tendering process to obtain a contractor to repair the Damage.

- 8) On June 25, 2019, the Strata Council voted to decline to waive the cost assessed for repairing the Damage.
- 9) The Strata notified the landlord of the July 25, 2019 hearing via a letter dated July 28, 2019 (which is entered into evidence).
- 10) Following the hearing, the landlord paid the Strata \$1,260.
- 11) The tenants have refused to pay the landlord this, or any, amount in connection to the Damage.

JZ argued that the landlord suffered damage due as the result of the tenants causing the Damage, specifically that the landlord paid for the repair of the Damage.

JZ argued that section 131 of the *Strata Property Act* permits the landlord to recover the repair costs from the landlord. It states:

Landlord's and owner's responsibility for fines and costs incurred by tenant

131(1) If the strata corporation fines a tenant or requires a tenant to pay the costs of remedying a contravention of the bylaws or rules, the strata corporation may collect the fine or costs from the tenant, that tenant's landlord and the owner, but may not collect an amount that, in total, is greater than the fine or costs.

(2) If the landlord or owner pays some or all of the fine or costs levied against the tenant, the tenant owes the landlord or owner the amount paid.

NS argued that the tenants should not be responsible to pay the full repair cost for the same reasons that she advanced at the July 25, 2019 hearing:

- a. The tenants should have been offered an opportunity to repair the damage himself at minimal cost.
- b. A "site contractor" of the Strata offered to the tenants to make the repair at a minimal cost (\$200), and the Strata should honor that offer.
- c. The landlord should have notified the tenants of the tendering process to obtain a contractor to repair the Damage.

JZ testified that the landlord was not notified by the Strata of the tendering process either, and that the landlord learned of the cost incurred to repair the Damage at the same time the tenants did.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act or tenancy agreement is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

(the “**Four Part Test**”)

I will address each of these factors in turn.

Based on the testimony of NS, I find that the tenants caused the Damage. I find that damaging the common property of the Strata constitutes a breach of the Strata bylaws. Pursuant to the addendum to the tenancy agreement, I find that the tenants have agreed to “acceptance of the consequences if there is any infraction [of the bylaws] during their tenancy”. I find this to mean that the tenants agreed to pay any fines levied against the landlord by the Strata as the result of breaches of the Strata bylaws by the tenants. As such, I find that by not paying for the repairs of the Damages, the tenants breached the tenancy agreement.

I find that the landlord has paid the Strata \$1,260 in satisfaction of the cost to repair the Damages.

I am uncertain what the landlord could have done to minimize his damage. I accept JZ’s uncontroverted testimony that the landlord was unaware of the tendering process or the cost of the repairs until after the cost had been incurred. Additionally, as the tenant applied to the Strata have the cost of repair waived, I do not find it necessary for the landlord to have applied to the Strata to have the cost waived. I am uncertain as to what argument the landlord could have made at such a hearing that was not already made by the tenants. As such, I find that that the landlord acted reasonably to minimize his damage.

Accordingly, I find that the landlord has satisfied all factors of the Four Part Test, as is entitled to a monetary order in the amount of \$1,260.

As the landlord has been successful in his application, I order that the tenant reimburse him his filing fee (\$100).

I note that at this hearing some of the arguments made by NS seemed to be directed at how the Strata acted, as opposed to how the landlord acted. I have no jurisdiction under the Act to adjudicate disputes between a strata corporation and a tenant. However, other administrative tribunals likely have such jurisdiction granted to them by a different piece of legislation.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenants pay the landlord \$1,360.

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: January 7, 2020

Residential Tenancy Branch