



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-, FFL

### Introduction

The Landlord's Application for Dispute Resolution was made on September 30, 2019 (the "Landlord's Application"). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time and provided affirmed testimony.

At the beginning of the hearing, the parties acknowledged receipt of the respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 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 money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?

2. Is the Landlord entitled to an order granting recovery of 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 March 1, 2002. Currently, the Tenant is required to pay rent in the amount of \$1,365.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$575.00 which the Landlord continues to hold.

The Landlord is claiming for monetary compensation in the amount of \$200.00 in relation to a strata fine she incurred as a result of the Tenant smoking. The Landlord stated that the building is managed by a strata and that the strata bylaws do not permit smoking in the building or in the common areas. The Landlord stated that the Tenant has been provided several written warnings regarding complaints received by other occupants in the building regarding the Tenant's smoking interfering with their rights and enjoyment of the common property.

The Landlord stated that the Tenant has not complied with the written warnings, which has resulted in the Landlord receiving a \$200.00 fine from the strata. The Landlord acknowledged that the tenancy pre dates the strata bylaws and the form K. The Landlord stated that the Tenant had been permitted to smoke inside and on her patio space throughout her tenancy. The Landlord submitted a copy of the written warnings and a copy of the strata fine in support.

The Tenant responded by stating that she has not agreed to change any terms of her tenancy agreement around smoking and that she feels as though her patio space does not constitute common area as it is an enclosed space that is included in her rent. The Tenant stated that the Landlord has not mitigated her loss by disputing the strata fine and referred to an email the Landlord sent to the Tenant which states;

*"As you know I also wish to keep things on an even keel and do not want to cause a problem. Fighting things are not something I want to deal with and I will not do so. Even though the Strata may be not be able to enforce any fines I will pay them and I will be asking you to reimburse me should that happen."*

**[Reproduced as written]**

The Tenant stated that she has not breached any condition of the tenancy agreement or the *Act*. The Tenant stated that she has not signed a form K and that she has not

agreed to amending the terms of her tenancy. As such, the Tenant stated that she should not be responsible for paying the strata fine.

### 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*. 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.

Section 14 of the *Act* states;

- (1) A tenancy agreement may not be amended to change or remove a standard term. (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

The Landlord is claiming for monetary compensation in the amount of \$200.00 in relation to a strata fine she incurred as a result of the Tenant smoking. I accept that both parties agreed that the Tenant had been permitted to smoke in her rental unit and on her patio throughout the tenancy. I accept that the tenancy pre dates the strata bylaws which prohibit the Tenant from smoking in the rental unit and in common areas.

In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant has breached a condition of the tenancy agreement or the *Act*. Furthermore, I find that the Tenant has provided sufficient evidence to demonstrate that the Landlord was unwilling to dispute any strata fines that were incurred by the Tenant as a result of the Tenant smoking, which had been an activity that had been permitted during the tenancy. I find that the Landlord has failed to mitigate her loss by not disputing the strata fine.

In light of the above, I dismiss the Landlord's Application for monetary compensation. As the Landlord was unsuccessful with her Application, I find that she is not entitled to the return of her security deposit.

### Conclusion

The Landlord's Application for monetary compensation is dismissed without leave to reapply.

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: February 06, 2020

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Residential Tenancy Branch