



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **Tenant: FFT, CNC; landlord: MNDCL-S, FFL**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended. Each acknowledged service of the other’s evidence packages. No issues of service were raised. I find each party served the other in compliance with the *Act*.

### *Preliminary Matter*

The tenant stated that she had moved out of the unit and withdrew her claims.

Accordingly, the tenant's claims are dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to the following:

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties entered into a tenancy agreement beginning in December 2017 for rent of \$1,695.00 monthly. At the beginning of the tenancy, the tenant provided a security deposit of \$847.50 which the landlord holds. The unit is a condo in a 200-unit high rise. The landlord submitted a copy of the tenancy agreement.

The landlord claimed reimbursement of two strata fines, each in the amount of \$200.00 for a total of \$400.00 and requested authorization to apply the security deposit to this amount. He filed an Application on February 3, 2020, within fifteen days of the end of the tenancy.

The parties agreed that the landlord received the two fines from the strata from two incidents occurring on the same day in which the tenant was accused of noise and displaying disrespectful behaviour to staff, each of which resulted in a \$200.00 fine for which the landlord claimed reimbursement. The issue is whether the tenant was responsible for the noise and the resulting fines.

Each party submitted documentary evidence.

The tenant claimed she was falsely blamed for noise on multiple occasions. The tenant submitted as evidence a copy of an apology letter from the strata council dated May 23, 2019 in which they apologized for a previous claim of noise purportedly coming from her unit.

The tenant testified that the landlord failed to support her in fighting the two fines which are the subject of this hearing. The tenant submitted correspondence with the council and the landlord in which she argued that the noise did not come from her unit and requesting that the landlord intervene on her behalf. The tenant testified that the landlord's presence at the council meetings was necessary to fight the noise allegations and she was not permitted to attend without him. The tenant asserted she asked the landlord to attend the strata meeting to contest the allegations and his failure to do so led to the fines improperly and unfairly being imposed.

The documents filed by the tenant support her claim that the landlord's personal presence was necessary at the council meeting at which the fines were imposed. The landlord acknowledged that he did not attend the meeting as requested by the tenant because he is the parent of young children and he lives an hour drive away, an inconvenient distance to travel in the evening.

The tenant testified that the ongoing multiple allegations, the efforts to counter the false claims, the resulting correspondence with the landlord and council, and subsequent strata proceedings caused her great deal of distress. The tenant testified that, as a result of these factors, she vacated the unit at the end of January 2020. The tenant stated that she has incurred many unnecessary expenses, such as costs related to moving and finding another place to live as a time when vacancy rates were low, and rent was high.

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

[www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

There is no doubt that the landlord incurred the two strata fines for a total expense of \$400.00. The key issue is whether this expense results from a violation of the agreement or a contravention on the part of the tenant.

The tenant claimed that the strata council falsely blamed her, and she submitted a letter of apology from the strata regarding a previous noise complaint in support of her assertion that the strata had been wrong before and was wrong this time. I accept the tenant's evidence as supported by the documents she submitted that she denied responsibility for the incidents from the beginning, urged the landlord to intervene on her behalf, and remained willing to the end to attend the strata meeting and defend herself. I accept the tenant's account as I found her informed and credible with her version of events well supported by documentary evidence.

I find that the landlord, as the only person who could attend at the strata meeting to defend the claims, did not meet his obligations to assure that any fine entered was properly levied. By failing to attend the meeting on the tenant's behalf, the landlord precluded any viable defense to the claims. I find that, if the landlord had attended with

the tenant and defended the claims, the fines may not have been imposed.

I accept that the landlord found it inconvenient to him personally to attend the meeting. However, by failing to take reasonable steps to counter the allegations, he cannot now claim reimbursement for an expense which may have been avoided.

For these reasons, I find the landlord has not met the burden of proof on a balance of probabilities that the tenant is responsible for the strata fines and I dismiss the landlord's claim without leave to reapply.

I find the tenant is entitled to reimbursement of her security deposit in the amount \$847.50. I grant the tenant a monetary order in this amount.

### Conclusion

I grant the tenant a monetary order pursuant to section 38 in the amount of **\$847.50**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

I dismiss the landlord's claim 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: March 6, 2020

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Residential Tenancy Branch