



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

MNDL-S FFL

### Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

As both parties were present service of documents was confirmed. The parties each testified that they were in receipt of the materials and based on the undisputed testimonies I find each party was duly served in accordance with section 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover their filing fee from the tenant?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in October, 2018. The rental unit is a suite in a multi-unit building managed by a strata corporation. Monthly rent was \$2,400.00 payable on the first of each month. A security deposit of \$1,200.00 was paid at the start of the tenancy and is still held by the landlord.

The tenancy ended on October 31, 2019. The parties prepared a move-out inspection and a copy of the condition inspection report was submitted into evidence. The parties noted on the report that the closet door needed to be reinstalled though the cost was unknown. The parties signed the completed report and the tenant provided their forwarding address.

The landlord seeks a monetary award of \$1,969.30 comprised of repair costs of \$59.30, a move-out fee of \$100.00 and 9 bylaw fines issued by the strata corporation of \$200.00 each.

The tenant testified that they agree with the repair costs, move-out fee and 2 of the bylaw fines but dispute the remaining fines issued by the strata corporation.

The landlord submits that bylaw infraction notices are issued by the strata corporation and provided to the tenant along with information on how a notice may be disputed. The landlord testified that, as the tenant does not have standing to dispute a strata notice, they respond in writing to the strata on the tenant's behalf when disputing a notice with the strata. The landlord testified that despite issuing written notices to dispute bylaw infractions the strata has failed to provide an opportunity to answer the complaint either by written submissions or by hearing. The landlord submitted into evidence correspondence from the strata corporation informing of contraventions and imposing fines.

The tenant submits that they have attempted to dispute the notices of infraction or to provide additional information to both the strata corporation and landlord but feel they were not provided an adequate opportunity to be heard. The tenant disputes the basis for the fines imposed by the strata.

### Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the tenancy ended on October 31, 2019 when the tenant provided their forwarding address in writing on the move-out inspection report. The landlord subsequently filed their application for dispute resolution on November 14, 2019. As such, I find that the landlord was within the 15 days provided under the *Act* to file an application for authorization to retain the deposit.

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.

As the tenant agreed to the repair cost of \$59.30, move-out fee of \$100.00 and 2 bylaw fines of \$200.00 for \$400.00 I find that the landlord is entitled to a monetary award for those amounts.

While I accept the evidence of the parties that the strata corporation issued 7 additional fines of \$200.00 each, I find that there is insufficient evidence to demonstrate that these fines resulted due to the violation on the part of the tenant. I accept the evidence of the parties that the strata corporation issued notices of infraction on various occasions for a variety of causes. I accept the tenant's submission that they did not agree with the reasons cited on some of the notices issued by the strata and attempted to dispute them. I further accept that the landlord, on some occasions, forwarded the written request to dispute the fines drafted by the tenant in their capacity as property owner. The parties testified that they were not provided with an opportunity by the strata corporation to be heard on disputing the notices either by written submissions or through a hearing.

I find that the unilateral imposition of fines is not sufficient to establish on a balance of probabilities that the fines resulted due to a violation on the part of the tenant. Based on the testimonies of both parties I find it equally probable that the strata corporation issued fines without evidentiary basis or proper investigation. As such, I am unable to determine on a balance of probabilities that the charges imposed by the strata corporation is due to a violation by the tenant. Consequently, I dismiss this portion of the landlord's claim.

As the landlord was partially successful in their application I find that they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$659.30 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour. The landlord is directed to return the balance of \$540.70 to the tenant.

Conclusion

The landlord is authorized to retain \$659.30 of the security deposit.

I issue a monetary order in the tenant's favour in the amount of \$540.70, representing the balance of the security deposit for this tenancy. The landlord must be served with this Order as soon as possible. Should the landlord 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: April 7, 2020

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Residential Tenancy Branch