



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCL, 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; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord appeared, assisted by a family member and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses

The landlord gave evidence that they served each of the tenants by email in accordance with a Substituted Service order of this Branch dated November 26, 2019. The landlord provided documentary evidence of service by way of a screen shot of the emails sent on December 3, 2019. In accordance with the Substituted Service order and sections 88, 89 and 90 of the Act, I find that each of the tenants was served on December 6, 2019, three days after emailing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

### Background and Evidence

This fixed-term tenancy began in April, 2019. The monthly rent was \$3,400.00 payable on the first of each month. A security deposit of \$1,700.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a strata managed building.

Since the start of the tenancy through the end of the tenancy in September 2019 the tenants incurred multiple fines from the strata corporation for operating a short-term rental AirBnB business in the rental unit. The total amount of the fines levied by the strata corporation is \$14,000.00. The landlord submitted documentary evidence by way of the strata ledger, copies of correspondence from the strata warning of the infraction and applicable penalties and correspondence between the parties regarding the fines.

The landlord testified that the tenants failed to pay any of the fines and abandoned the rental unit sometime in September 2019. The landlord testified that the total amount of fines owing to the strata is \$14,000.00.

### 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.

I find that the landlord has proven on a balance of probabilities that the tenants incurred fines from the strata by acting in contravention of the strata rules. The tenancy agreement provides that the tenants are responsible for all charges levied against the unit in accordance with the rules of the strata corporation. I accept the landlord's evidence that the total amount of the fines is \$14,000.00.

Accordingly, I find that the landlord is entitled to a monetary award in the amount of \$14,000.00 as against the tenants.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlord's favour

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$12,400.00, allowing the landlord to recover their monetary claim and filing fee, and to retain the security deposit for this tenancy. The tenants must be served with this Order as soon as possible. Should the tenants 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 28, 2020

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Residential Tenancy Branch