



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNDCL-S MNRL-S FFL

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$9,375 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified, and the tenant confirmed, that the landlord served the tenant with the notice of dispute resolution form and supporting evidence package. The tenant did not submit any documentary evidence in support of her response to the landlord's application. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Order of Possession

The parties agree that the tenant vacated the rental unit on April 14, 2020. The landlord stated she no longer requires an order of possession. Accordingly, I dismiss this portion of the landlord's application.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$9,375;
- 2) recover her filing fee;

- 3) retain the security deposit in partial satisfaction of the monetary orders made?

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, fixed term tenancy agreement starting June 1, 2019 and ending May 31, 2020. The rental unit is an apartment located in a strata property. Monthly rent was \$2,450 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$1,225. As stated above, the tenant vacated the rental unit on April 14, 2020, and consented to the landlord retaining the security deposit as payment for rent from April 1 to April 14, 2020.

The tenancy agreement contains an addendum, signed by the parties, containing 18 additional terms, one of which states:

ASSIGN OR SUBLET. The Tenant acknowledges subletting the rental unit or parking space is not permitted under any circumstances without approval by the Landlord. This approval may not be unreasonably withheld. The Tenant must also not use, rent, occupy, license or advertise the rental unit or allow the rental unit to be used, rented, occupied, licensed or advertised, as a short-term rental accommodation, vacation accommodation, hostel, hotel room, bed and breakfast, lodging house, time- share, home exchange or homestay, including through any publication or online service, such as AirBnB or VRBO. If any are found is considered a breach of a material term, and will subject to immediate termination.

The parties each initialed this section of the addendum.

The landlord alleged that the tenant listed the rental unit on Airbnb, in breach of this section of the addendum.

The landlord submitted a copy of an Airbnb posting for the rental unit dated November 12, 2019. The posting states that the host offers a 3% discount if the unit is rented for a week, and a 5% monthly discount. The posting contains a calendar of availability which appears to indicate that the rental unit is available from November 13 to December 7, 2019, and from December 16 to 31 2019. The dates of December 8 to 15 are greyed out, suggestive of the rental unit not being available for rent.

The posting indicates that 17 reviews have been made on the rental unit and shows seven of them.

The tenant did not deny that the rental unit was rented out on Airbnb. Rather, she testified that she rented it out a few times while she was on vacation. She testified that she did this through a friend of hers who had an Airbnb account. She thought that she was permitted to do as someone else on the same floor of the residential property was renting their rental unit on Airbnb (she provided no documentary evidence in corroboration of this). She testified that she was never provided with a copy of the strata bylaws, and as such, did not know that renting on Airbnb breached them. The tenant testified that she stopped renting out the rental unit on Airbnb in December 2019.

The landlord testified that, as a result of the tenant renting the rental unit on Airbnb, she has incurred fines levied by the strata counsel as follows:

- 1) \$3,350 incurred from August 8 to November 27, 2019 as a result of a breach of the strata bylaws due to the rental unit being listed on Airbnb (the **"2019 Fines"**).
- 2) \$4,800 incurred from March 17 to April 14, 2020 as a result of the tenant not delisting the rental unit from Airbnb (the **"2020 Fines"**).

In support of the 2019 Fines, the landlord provided a statement of account from June 15 to December 15, 2019 showing twelve \$200 fines identified as "bylaw fines" (fined weekly from August 8 to October 23) and one \$1,000 "bylaw fine" dated November 27, 2019.

The landlord testified that, prior to receiving the statement of account in December 2020, she was unaware that any of the 2019 Fines had been levied against her. She testified that shortly after receiving the statement of account she contacted the strata council regarding the fines and was told that the strata had issued multiple notices of bylaw violations to the landlord, all of which had been sent to the rental unit's mailbox.

The landlord testified that she never received any of these notices and speculated that the tenant intercepted them. The tenant denied having done so and testified that no such notices were sent to the rental unit's mailbox.

The landlord testified that she met with the strata council on February 11, 2020 and explained that she had not received any notices of the 2019 Fines and asked that the fines be halted while she "sorted through the situation".

On February 13, 2020, the landlord contacted Airbnb to ask it to de-list the rental unit. Airbnb declined to do this and replied:

Thank you for contacting Airbnb, though I'm sorry it's under these circumstances.

We find that communicating directly with your tenant is the simplest way to address these types of complaints.

Airbnb is an online platform and does not own, operate, manage or control accommodations. We do, however, require hosts to represent that they have all

the rights to list their accommodations. As such, we take these types of complaints seriously and are committed to notifying hosts when we receive them.

If you would prefer to go through Airbnb's formal host notification process, please reply to this email with a scanned copy of a letter detailing your specific allegation or request, including contact information.

Although we are unable to evaluate private contract terms and cannot arbitrate these disputes, we will share your letter with the user responsible for the listing.

On February 17, 2020, the landlord sent a letter to the tenant advising her that she was in breach of the tenancy agreement and demanding that the tenant:

- 1) Cease all tenancy violations, specifically short-term rental violations
- 2) Provide adequate evidence that she is in compliance with the tenancy agreement
- 3) Pay the 2019 fine to the strata by February 27, 2019.

The landlord testifies that, on February 19, 2020 she received a notice from the strata council that indicating that she needed to provide the following:

- 1) Form K;
- 2) Airbnb cancellation receipt or proof of cancellation;
- 3) Proof of no Airbnb license from the City of Vancouver;
- 4) Copy of Residential Tenancy Agreement; and
- 5) Copy of Rental Property Insurance.

She did not enter a copy of this letter into evidence.

On March 10, 2020, the landlord served the tenant with a One Month Notice to End Tenancy for Cause.

The landlord testified that, on March 17, 2020, she received an email from the strata council which stated, which stated:

Please refer to the attached letter for the subject unit.

The Strata Council has not received the aforementioned items which were requested by the Council on February 19th. As a result, the Strata Council is issuing a daily \$200 fine, effective March 17th, 2020.

The landlord did not submit into evidence a copy of attached letter or indeed any prior correspondence with the strata council.

The landlord testified that she has been unable to get the tenant's signature on the Form K. I am unsure which, if any, of the requested documents the landlord has provided to the strata council.

The landlord did not submit any documentary evidence (such as notices that fines are being levied, or a statement of account) that she has actually been charged the \$4,800 by the strata council, as she alleged.

The tenant disputes that the landlord incurred the 2019 Fines as a result of her listing the rental unit on Airbnb. She testified that at some point during the tenancy a representative of the strata came to the rental unit and asked if the rental unit was insured. She stated that she did not know and that the strata should contact the owner.

The tenant argued that there is no documentary evidence which shows that the 2019 Fines were incurred due to her posting the rental unit on Airbnb. She speculated that these fines were incurred due to some issue with inadequate insurance. She points to the strata council's demand for a copy of Rental Property Insurance and the visit from a strata representative as evidence of this.

The tenant argued that as there is insufficient documentary evidence to show that the landlord incurred any of the 2019 or 2020 fines as a result of her actions, and that the landlord's claim should be dismissed.

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 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**”)

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the landlord must prove that it is more likely than not that she incurred the 2019 and 2020 fines as a result of the tenant's breach of the tenancy agreement.

1. Did the tenant breach the tenancy agreement?

The tenant admitted that she listed the rental unit on Airbnb. I am dubious of her testimony that she only listed it "a few times" while she was on vacation, given:

- 1) the number of reviews the rental unit received on Airbnb;
- 2) the fact that the unit offered a monthly discount; and
- 3) the screenshots of submitted into evidence suggest that it was available for much of November and December 2019.

However, the extent of the rental unit being posted on Airbnb is not at issue in this matter. The addendum to the tenancy agreement explicitly forbids the tenant from renting the rental unit out on Airbnb for *any* period of time. The tenant initialed this term of the addendum. I find that the tenant knew, or ought to have known, that renting the rental unit on Airbnb was a breach of the tenancy agreement. That she did not receive the strata bylaws is not relevant in determining whether or not she breached the tenancy agreement.

I find that the tenant breached the tenancy agreement by renting out the rental unit on Airbnb.

2. Did the landlord suffer loss due to the tenant's breach?

The tenant did not dispute that the 2019 Fines were issued against the landlord. Rather, she argued that there is no documentary evidence to suggest that they were issued as a result of the tenant's breach of the tenancy agreement.

The landlord conceded that she did not submit documentary evidence in support of this but gave strong oral evidence that it was the case.

Despite this lack of corroborating documentary evidence, I accept the landlord's testimony that the 2019 Fines were incurred due to the rental unit being rented out on Airbnb. I make this determination having considered the timing of the events described by the landlord. I find that the landlord received the statement of account after December 15, 2020. Based on the date of the response from Airbnb regarding delisting

the rental unit (February 13, 2020), the date of the demand letter sent to the tenant by the landlord (February 17, 2020), and the dated of initial demand for documents made by the strata council (February 19, 2020), I find that the landlord met with the strata on February 11, 2020, as claimed by the landlord.

In the days following this meeting, the landlord took steps to have the rental unit delisted. This suggests that the subject matter of the February 11, 2020 meeting with strata was the listing of the rental unit on Airbnb. I do not find likely the tenant's suggestion that the 2019 Fines were levied due to landlord failing to provide proof of insurance to the strata. Were this the case, I do not think it likely that the landlord would have taken the steps to have the rental unit delisted from Airbnb following her meeting with the strata council.

As such, I am satisfied that the landlord incurred the 2019 Fines as the result of the tenant's breach of the tenancy agreement.

I am not, however, satisfied that the landlord incurred the 2020 Fines as a result of the tenant's breach of the tenancy agreement. The landlord has provided no evidence that the warning contained in the March 17, 2020 email was carried out. I am uncertain if the 2020 Fines have, in fact, even been incurred by the landlord at all.

Additionally, in the March 17, 2020 email, the strata council wrote that it would levy daily fines of \$200 for the landlord's failure to provide the with certain documents, many of which were not in the power of the tenant to provide. I am uncertain that, if the 2020 Fines were levied at all, that they were levied due to landlord's failure to provide the requested documents or due to any action of the tenant.

The landlord bears the burden to prove that she incurred the 2020 Fines, and if she did, that they were incurred due to a breach of the Act or tenancy agreement by the tenant. The landlord has failed to prove these facts on a balance of probabilities. As such, I decline to order that the tenant reimburse the landlord any amount for the 2020 Fines.

3. Did the landlord minimize her damages?

The landlord started incurring the 2019 Fines in August 2019. The landlord took no steps to address the cause of these fines until December 2019.

The landlord testified that she took action as soon as she had notice of the 2019 Fines. She testified that she did not receive any notice of the 2019 Fine until December 2019. The landlord speculated that the tenant diverted such notices prior to December 2019. The tenant denied this and testified that she received no such notices in the rental unit mailbox. I do not have sufficient evidence to determine if notices of the 2019 Fines were sent to the rental until mailbox prior to December 2019. It is not necessary for me to determine this, however, as under either scenario (that they were not sent or that the

tenant diverted them), the landlord would have received no notice of the 2019 Fines until December 2019.

This accords with the landlord's actions following receipt of the statement of account in December 2019. I accept her testimony that she immediately contacted the strata council, met with the strata council in February 2020, and that following this meeting she took steps to have the rental unit delisted. If the landlord had received notice of the 2019 Fines prior to December 2019, I find it likely that she would have acted to remedy the situation sooner.

As such, I find that the landlord had no notice that the 2019 Fines were accruing and only became aware of them after they had been levied. I find that once she became aware of these fines, she took reasonable steps to minimize her loss and ensure that no further fines were incurred as a result of the tenant's breach of the tenancy agreement.

As stated above, I am uncertain if the 2020 Fines were actually incurred by the landlord, so I make no findings as to whether she acted reasonably to ensure that these fines were not levied.

Pursuant to section 72(1) of the Act, as the landlord has been partially successful in the application, she may recover their filing fee from the tenant.

As the tenant has already consented to the landlord retaining the security deposit in satisfaction of rent owed, I dismiss the landlord's application for unpaid rent and for an order that she may retain the security deposit in partial satisfaction of the monetary orders made in this decision.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$3,450, representing compensation for the 2019 Fines and the filing fee.

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: June 10, 2020

Residential Tenancy Branch