



# 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 was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on April 09, 2020 (the “Application”). The Landlord originally sought the following:

- An Order of Possession based on a One Month Notice;
- Compensation for monetary loss or other money owed;
- To recover unpaid rent;
- To keep the security deposit; and
- Reimbursement for the filing fee.

The parties attended a hearing May 29, 2020 before the original Arbitrator and a decision and Monetary Order were issued June 10, 2020. I note the following from the original decision. The Landlord no longer sought an Order of Possession as the parties agreed the Tenant vacated April 14, 2020. The Tenant had consented to the Landlord keeping the security deposit for rent owed and the Arbitrator dismissed the requests for unpaid rent and to keep the security deposit. The Arbitrator found the Landlord was entitled to \$3,450.00 in compensation for 2019 strata fines and the filing fee. The Landlord was issued a Monetary Order for this amount.

The Tenant sought and was granted a review hearing in a review decision issued June 26, 2020.

The matter came before me for a review hearing July 23, 2020. The Landlord and Tenant appeared. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord confirmed the request for an Order of Possession is no longer an issue.

The Tenant confirmed she did agree, and continues to agree, to the Landlord keeping the security deposit towards unpaid rent. The Landlord agreed to the unpaid rent being dealt with in this manner.

The Tenant submitted further evidence for the review hearing. The Landlord did not. The Landlord confirmed receipt of the review decision and hearing documents as well as the Tenant's further evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started June 01, 2019. The parties agreed it ended April 14, 2020.

The compensation request is for strata fines incurred during the tenancy from 2019 and 2020. The Landlord relied on a Statement of Account from June 15, 2019 to December 15, 2019 showing strata fines. The Landlord acknowledged there is no documentation before me about the 2020 strata fines. The Landlord relied on an email in evidence showing strata was going to fine her \$200.00 per day for contraventions.

A summary of the Landlord's testimony and submissions is as follows.

She found the Statement of Account in the mailbox of the rental unit in December. She had not received notices in relation to the fines noted on the Statement of Account. The fines built up. In December, she requested a meeting with strata. She had a meeting with strata February 11, 2020. Strata told her the fines were for the rental unit being on a vacation rental website. Strata agreed to stop the fines for a period to allow the Landlord time to sort the issue out which is why no fines were issued between December and March.

All of the fines on the Statement of Account are for the rental unit while the Tenant was living in the rental unit. Pursuant to the tenancy agreement, the Tenant was not allowed to rent the unit out as a short-term rental. The evidence shows the Tenant violated this rule. The strata fines are as a result of this.

She contacted the vacation rental website and tried to have the posting removed; however, she could not do so because she was not the one who posted it. She sent the Tenant a notice stating the Tenant was breaching the tenancy agreement and to cease the violations including the vacation rental website posting.

She received a letter from strata February 19, 2020 requesting documents including a Form K and proof that the vacation rental website posting had been removed. Strata did not give a deadline for this. She could provide some of the documentation strata was requesting but not others such as proof the vacation rental website posting had been removed or a Form K because she did not do a Form K at the start of the tenancy. She also did not have the Tenant's insurance. She told strata she could not get some of the documents requested. The main concern of strata was the rental unit being posted on the vacation rental website versus the absence of other documentation.

On March 10, 2020, she issued the One Month Notice. The rental unit was still posted on the vacation rental website.

On March 17, 2020, she received a letter from strata stating she would be fined \$200.00 per day because they had not received the requested documents. She did not know March 17, 2020 was the deadline for these.

At the start of April, she spoke to the Tenant who said she would vacate the rental unit and would leave her security deposit for unpaid rent.

The Landlord confirmed that, as of the date of the hearing, she had not obtained any documentation setting out the basis for the fines listed in the Statement of Account. The Statement of Account does not list what the fines are for, it simply shows "bylaw fines", the date and the amount.

I asked the Landlord if she would not have been fined in any event because she could not provide strata a Form K because she did not have the Tenant sign a Form K at the start of the tenancy. The Landlord replied, "yeah good question". She said she could not speak to this. She said she can speculate that she would not have been fined if she

could have provided proof that the vacation rental website posting had been removed based on her conversation with strata.

The Landlord pointed out that term five and six in the addendum of the tenancy agreement refers to strata, bylaws and fines.

The Landlord submitted a text message showing the Tenant said the Landlord could keep and apply the security deposit for half the monthly rent owing.

A summary of the Tenant's testimony and submissions is as follows.

The evidence shows the strata fines are for things other than the unit being posted on a vacation rental website. One of the fines was for the wrong unit number. One of the fines was for not having a Form K or insurance. At the last hearing, the Landlord did not say that any of the fines were for different things and she was awarded compensation based on her verbal testimony. The Statement of Account is ambiguous. It does not specify what the fines are for. You cannot tell whether the fines are for what she did or what the Landlord did. Strata told her there would be a fine for her not having tenant insurance.

The Landlord never mentioned a Form K. She was never given a copy of the strata bylaws. She did not know she had to get tenant insurance. Obtaining insurance for the rental unit was the responsibility of the Landlord.

She did rent out the unit through a vacation rental website while she was out of town. She did this a couple of times and stopped in October.

The Tenant submitted a notice of infraction issued to the Landlord July 15, 2019 stating the details as:

The above noted unit is being used as a short term rental. Resident(s) of the above noted unit have not submitted a form K, rental property insurance or tenant insurance.

The Tenant submitted a notice of infraction issued to the Landlord August 08, 2019 showing the infraction related to a different unit in the building.

The Tenant submitted a notice of decision issued to the Landlord August 08, 2019 stating the details as:

The above noted unit is being used as a short term rental. Resident(s) of the above noted unit have not submitted a form K, rental property insurance or tenant insurance.

I have reviewed the remainder of the evidence submitted by the Landlord and Tenant but do not find it necessary to outline here.

### Analysis

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Term five and six of the tenancy agreement addendum state:

COMPLIANCE. The Tenant and Tenant's guests' must comply with the Strata Property Act, the strata corporation's bylaws and the strata corporation's rules, all of which are material terms of this agreement. The Tenant must indemnify the Landlord for any charge or fine imposed by the strata corporation on the Landlord **for a breach by the Tenant or the Tenant's guests** of the Strata Property Act, the strata corporation's bylaws or the strata corporation's rules. The Tenant must cooperate with the strata corporation's plans for any repairs, maintenance and inspections to the common property, limited common property and the strata lot. The Tenant is responsible for providing access to the strata lot to the strata corporation for any repairs, maintenance and inspections.

6. 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.

(emphasis added)

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

In order to be entitled to the compensation sought, the Landlord must prove on a balance of probabilities that she incurred strata fines in 2019 and 2020 as a result of breaches by the Tenant.

In relation to the 2019 strata fines, I have the Statement of Account before me. It does not outline what the fines are for.

The Landlord testified that the 2019 strata fines on the Statement of Account resulted from breaches by the Tenant in relation to posting the rental unit on a vacation rental website. I do not find the Landlord's testimony alone sufficient to prove the reason for the fines. I would expect the Landlord to have obtained documentation of the reason for the fines in December when she received the Statement of Account. The Landlord did not do so. Nor did the Landlord obtain such documentation prior to the original hearing or prior to the review hearing. The Landlord has not submitted any other compelling evidence showing that the fines resulted from breaches by the Tenant.

The Tenant did submit documentary evidence showing that one of the fines was not at all related to the rental unit being posted on a vacation rental website and in fact related to a different unit in the building. This evidence calls into question the basis of each fine listed on the Statement of Account that I do not have documentary evidence of.

The Tenant also submitted documentary evidence showing that some of the fines do relate to the rental unit being used as a short term rental but also relate to a Form K, rental property insurance and tenant insurance not being submitted. The parties agreed a Form K was not signed at the start of the tenancy. This was the Landlord's responsibility to do, not the Tenant's responsibility. Rental property insurance is also the responsibility of the Landlord. Therefore, the evidence suggests that some fines resulted from actions of both the Landlord and Tenant.

Based on the evidence provided, I am not satisfied that any of the fines were issued on the sole basis that the Tenant posted the rental unit on a vacation rental website. The documentary evidence does not support this. In relation to the fines issued for the rental unit being used as a short term rental, the documentary evidence shows the absence of a Form K was grouped with this and formed part of the reason for the fines. The absence of a Form K is the fault of the Landlord. The documentary evidence does not show that the fines would not have been issued, or would have been less, had the Form K been the only issue. I am not satisfied the Tenant is responsible for paying fines when they are based in part on issues that are the Landlord's responsibility.

The Landlord testified that strata's main concern was that the rental unit was posted on a vacation rental website. I do not find the Landlord's testimony stating this sufficient to prove this, or to prove that the fines are for the rental unit being posted on a vacation rental website. I would expect to see some evidence from strata to support this such as statements from strata confirming this, correspondence between strata and the Landlord stating this or meeting minutes reflecting this. The Landlord has submitted no evidence to support her verbal testimony on this point. In the absence of further

evidence to support the Landlord's testimony, I am not satisfied the main concern of strata was that the rental unit was posted on a vacation rental website. Nor am I satisfied the fines would not have been issued had this been remedied.

In the circumstances, I am not satisfied as to the reason for the majority of the fines outlined in the Statement of Account and am not satisfied the fines were incurred due to breaches by the Tenant versus breaches by both the Tenant and Landlord.

In relation to fines from 2020, there is insufficient documentary evidence before me showing that the Landlord incurred further fines. The email from strata dated March 17, 2020 about their intention to fine the Landlord \$200.00 per day is not sufficient. I would expect to see a Statement of Account, notices of infraction or notices of decision relating to the fines. The Landlord has not submitted this type of evidence and has failed to prove she incurred fines due to breaches by the Tenant in 2020.

I also note again that, from the email from strata, it appears the Landlord was going to be fined for not submitting the documents requested February 19, 2020. Again, one of these documents was the Form K which the Landlord failed to do at the start of the tenancy. Therefore, I am also not satisfied the Landlord would not have incurred further fines in any event.

In the circumstances, I am not satisfied the Landlord has proven she incurred fines as a result of breaches by the Tenant or solely as a result of breaches by the Tenant. I am not satisfied the Landlord is entitled to compensation for strata fines in 2019 or 2020.

I decline to award the Landlord reimbursement for the filing fee as the Landlord was not successful on any of the claims in the Application. The requests for an Order of Possession, unpaid rent and the security deposit were not necessary and not decided at either hearing. The Landlord has failed to prove she is entitled to compensation for strata fines. Therefore, I do not award the Landlord reimbursement for the filing fee.

Given the above, I set aside the original decision and Monetary Order. The Monetary Order is cancelled as the Landlord has failed to prove she is entitled to compensation.

There was an issue of substituted service raised by the Landlord prior to the hearing which I addressed at the hearing. However, it is not necessary for me to make a decision about how the Landlord can serve the Tenant as the Monetary Order has been cancelled and there are no further documents for the Landlord to serve.



Conclusion

The original decision and Monetary Order issued June 10, 2020 are set aside. The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 04, 2020

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Residential Tenancy Branch