



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JOVI REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL, MNDCL**

Introduction

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

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- A monetary order for damages or compensation pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

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

The landlord testified that he served the tenant with the Application for Dispute Resolution Proceedings Package by emailing the documents to her on May 25, 2020. The landlord provided the tenant's email address which corresponds to the email address provided to the Residential Tenancy Branch by the landlord in his application. The landlord testified that he has communicated with the tenant in the past whereby the tenant used the same email address. He testified she sent him an email from that email account on May 3, 2020 at 9:07 p.m. regarding the violation of strata rules, as an example of the tenant using that particular email address. I am satisfied the tenant was properly served with the Application for Dispute Resolution Proceedings Package in accordance with The *Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020 ("Covid-19 Order") which allows for

service by email. In accordance with that order, the tenant is deemed served with the Application for Dispute Resolution Proceedings Package on May 28, 2020, three days after it was sent by email pursuant to section 71 of the Act.

Issue(s) to be Decided

Is the landlord entitled to the monetary order?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed evidence. The fixed term tenancy began last year with the tenant and the owner of the rental unit. The termination date stated on the tenancy agreement was April 30, 2020, although no copy of the tenancy agreement was provided as evidence. Rent was set at \$2,300.00 payable on the first day of the month. A security deposit of \$1,125.00 was collected from the tenant which the landlord continues to hold. A condition inspection report was conducted with the tenant and the owner of the property at the commencement of the tenancy.

The landlord testified that the tenancy ended on April 30, 2020 when the tenant served the landlord with a notice to end tenancy. A condition inspection report was done at the end of the tenancy and no damage was recorded by the landlord resulting from the tenancy. The tenant did not provide a forwarding address to the landlord on the condition inspection report and has not provided one to him as of the date of this hearing.

During the tenancy, the tenant rented out the unit as a short-term rental on AirBNB. A copy of the tenant's AirBNB advertisement was provided as evidence. The landlord testified that using the rental unit as a short-term rental is a violation of the strata bylaws and for the infraction, the landlord was fined \$1,000.00 by the strata corporation. Copies of the violation notices and the strata council's decision to fine the landlord for the violation were provided as evidence. The landlord testified that he gave the tenant 48 hours advance notice of the strata council meeting to allow her to testify before strata council to deny the violation, however the tenant chose not to attend.

The landlord testified that he paid the \$1,000.00 fine to the strata corporation as well as a further \$200.00 fine for improper garbage disposal. Copies of the certified cheques were provided as evidence.

Analysis

Section 131 of the Strata Property Act states:

131 Landlord's and owner's responsibility for fines and costs incurred by tenant

- 1) If the strata corporation fines a tenant or requires a tenant to pay the costs of remedying a contravention of the bylaws or rules, the strata corporation may collect the fine or costs from the tenant, that tenant's landlord and the owner, but may not collect an amount that, in total, is greater than the fine or costs.
- 2) If the landlord or owner pays some or all of the fine or costs levied against the tenant, the tenant owes the landlord or owner the amount paid.

Section 7 of the *Residential Tenancy Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. 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.

The landlord gave undisputed testimony and provided uncontroverted evidence to prove that during the course of the tenancy, the tenant had used the rental unit as a short term accommodation in violation of the strata corporation's bylaws. For the violations, the landlord was fined \$1,000.00. As required by both section 131 of the *Strata Property Act* and section 67 of the *Residential Tenancy Act*, the tenant is responsible for paying the amount of the fine paid by the landlord for the tenant's contravention of the strata's bylaws or rules. Pursuant to section 67, the landlord is awarded a monetary order in the amount of \$1,000.00.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$1,125.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$1,100.00 of the security deposit in full satisfaction of the monetary claim.

The tenant has not provided the landlord with a forwarding address. As such, the landlord may retain the remaining \$25.00 of the tenant's security deposit unless the tenant provides him with a forwarding address within one year after the end of the tenancy. If the tenant provides the landlord with a forwarding address before the year has elapsed, the landlord is required to comply with section 38 of the *Act*.

Conclusion

The landlord is entitled to retain \$1,100.00 of the tenant's security deposit in accordance with section 38(4)(d) of the *Residential Tenancy Act*.

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: September 25, 2020

Residential Tenancy Branch