



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

The hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on July 21, 2020, in which the Landlord requested an Order of Possession based on a 1 Month Notice to End Tenancy for Cause, issued on July 2, 2020 (the "Notice"), monetary compensation from the Tenant for fines levied against the Landlord by the Strata Council, authority to retain the Tenant's security deposit, and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 11:00 a.m. on August 27, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord also had a witness, A.Z. available to testify, although they did not testify before me.

Preliminary Matter—Agreement to End Tenancy

At the outset of the hearing the Tenant stated that he had found alternate accommodation and was able to move from the rental unit by September 1, 2020. The Landlord confirmed she was agreeable to the Tenant moving by that date. I therefore record this agreement in my Decision pursuant to section 63 of the *Residential Tenancy Act* and Rule 8.4 of the *Residential Tenancy Branch Rules of Procedure*.

In furtherance of the parties' agreement and pursuant to sections 55 and 63 of the *Act* I grant the Landlord an Order of Possession effective 11:59 p.m. on September 1, 2020.

Preliminary Matter—Tenant's Adjournment Request

During the Tenant's testimony he claimed that he only became aware of the hearing the evening before. He stated that he has not been collecting his mail as he has been busy looking for alternate accommodation. He requested that I adjourn the hearing of the Landlord's monetary claim on this basis.

Documentary evidence filed by the Landlord confirms that she sent her Application, Notice of the Hearing and her evidence in support of her claims to the Tenant by registered mail sent July 25, 2020. The Landlord testified that the package was delivered on July 27, 2020.

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. At all times an Arbitrator is guided by Rule 1.1 which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

Rules 7.8 and 7.9 provide me the authority to adjourn these proceedings and read as follows:

7.8 Adjournment after the dispute resolution hearing begins

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and

- the possible prejudice to each party.

I declined the Tenant's request for an adjournment as I find the need for the adjournment arises directly out of the intentional actions of the Tenant, namely, to refuse or neglect to collect his mail.

I also find the Tenant is not prejudiced by my decision to proceed with the hearing. Although the Tenant claimed to have only received the Landlord's evidence the night before the hearing, the Landlords' evidence related to strata fines of which I find the Tenant was fully aware.

For example, the circumstances giving rise to those fines were set out in the attachments to the Notice, which were served on the Tenant on July 2, 2020. Further, the Tenant was informed of the fines and appeared at a hearing of the Strata Council wherein the fines were disputed. During the hearing before me the Tenant also made specific reference to videos and infraction notices as well as details relating to the fines such that it was clear he was aware of the allegations and subsequent fines. The Landlord also gave testimony as to the circumstances giving rise to the fines. In all the circumstances, I find the Tenant was aware of the reasons for the fines and was therefore able to respond to the Landlord's claim for monetary compensation relating to those fines.

No other issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

This tenancy began November 1, 2019. Monthly rent is payable in the amount of \$2,050.00 and the Tenant paid a \$1,025.00 security deposit.

The Landlord sought monetary compensation from the Tenant for \$800.00 in fines which have been levied against her by the Strata Council. These fines related to four separate incidents following which the Landlord was fined \$200.00 per incident. As previously noted, the events giving rise to the fines were set out in the attachment to the Notice, as well as in letters from the Strata to the Landlord; the attachment and the letters from the Strata were provided in evidence before me.

The Landlord also provided testimony regarding the four incidents as follows:

1. December 1, 2019. This incident related to conflict with the Tenant and the building concierge. The Landlord stated that she was informed the Tenant was yelling at the concierge regarding homeless people camping near the building and under the bridge and intimating that the concierge was not doing their job properly.
2. December 13, 2019. This incident related to conflict with the Tenant and the owner of the neighbouring unit. The Landlord stated that she was informed the Tenant was verbally aggressive to another resident for not holding the door of the elevator.
3. December 24, 2019. This incident related to conflict the Tenant had with another resident of the building who was not allowing the Tenant to enter through the garage. The Landlord stated that she was informed the other resident closed the door despite his request to keep it open. The Landlord confirmed that residents are not permitted to allow access to others and must close the garage door after they enter. When the resident refused the Tenant's request, he was verbally aggressive towards her.
4. March 21, 2020. This incident also occurred in the elevator. The Landlord was informed that another resident walked into the elevator (which was occupied by the Tenant) with a long item which touched his leg. The Tenant pointed it out and then became verbally aggressive to the resident.

The Landlord did not provide the strata bylaws in evidence before me. She testified that she provided the Tenant with the bylaws, twice by email prior to him moving in, as well as leaving a hard copy of the bylaws in the unit before he moved it.

The Landlord confirmed she did personally not dispute the fines, as she was aware that there were numerous other incidents with the Tenant and other residents in which he was alleged to be verbally aggressive. She also stated that she has personally had the Tenant be verbally aggressive to her.

The Landlord testified that she served the Notice on the Tenant on July 2, 2020 by posting to the rental unit door. She confirmed the Tenant did not apply to dispute the Notice.

In response to the Landlord's testimony, the Tenant testified as follows. He initially stated that as he did not review the hearing package in a timely fashion, he was objecting to the hearing proceeding and would not respond to any documentary evidence.

When I reminded the Tenant that I had declined his request for an adjournment, the Tenant began raising his voice, yelling and interrupting me during the hearing. Fortunately, he was able to calm himself and contain his outbursts such that he was able to respond to the Landlord.

The Tenant stated that he never received any warnings from the strata and all he received were the incident reports and the maximum fine. He also stated that initially he was not provided with any specifics, such as time and date of the incidents, on the reports such that he was not initially able to respond to the allegations. He testified that he personally disputed the fines with the strata and was later informed he was unsuccessful in having the fines overturned.

In terms of the specific incidents, the Tenant testified as follows. He stated that the first incident on December 1, 2019, occurred because he was chased by a guy with a knife and a bat. He stated that he was very scared, "worked up", and "adrenalized" and when he got to the building, he was yelling, but then asked the concierge for time to calm down. He also stated said that he wasn't mad at her at all and it was the concierge who was yelling at him.

In terms of the December 13, 2019 incident, the Tenant stated that he was that he was holding the elevator door for another person. He said the other person started insulting him and calling him derogatory names. The Tenant responded by calling the other person a derogatory name. The Tenant and this person then spoke to the concierge about what happened and, from the Tenant's perspective, the concierge "took the other persons' side". Again, the Tenant noted that he didn't get a warning, and only received the "infraction sheet". He stated that he got a lawyer involved, but due to COVID-19 he was not able to proceed with disputing this particular allegation.

In terms of the December 24, 2019 incident in the garage the Tenant testified as follows. He stated that he was pushing his fob button to indicate to the other resident that he was also a resident. He claimed that he started joking with her and she started taking photos of him with her phone and driving illegally. He also stated that he did not receive a warning from the strata, only the maximum fine.

The Tenant claimed that he asked for further details of these three December infractions/allegations as he received notice of the infractions in January 2020. He claimed that the information was not forthcoming, and he was not provided any means to dispute the allegations.

In terms of the March 21, 2020 incident the Tenant stated at that time there were no COVID-19 measures present in the building in March. He was very concerned about this, particularly as he had lost a family member to COVID-19. On March 21 he was in the elevator, which was not large enough to safely socially distance. He stated that the other resident entered the elevator, swung his lawn chair, which in turn hit the Tenant on his leg. The Tenant stated that he was joking with the resident and the concierge heard him and the concierge "made a big deal about it".

Although the Tenant initially claimed he did not have an opportunity to dispute the fines, the Tenant acknowledged that there was a strata hearing that he attended. He stated that during the hearing the strata council did not listen to him, and did not give him a chance to present evidence. He also stated that only a month prior to the hearing before the Residential Tenancy Branch did he find out that he had lost that case.

In reply, the Landlord confirmed that she is not aware if the Tenant had a further avenue of appeal of the strata fines, however she reiterated that due to his behaviour with her and many others she does not believe he would be successful in any such appeal, if one were available. The Landlord also stated that she may have another fine levied against her due to the Tenant's behaviour in the recent months.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I am satisfied, based on the testimony and evidence before me, that the Landlord was fined \$800.00 from the strata due to the actions of the Tenant. While the Tenant

adamantly disputes the allegations giving rise to the fines, his attempts, thus far, to set aside the fines have been unsuccessful.

I accept the Landlord's testimony that she is expected to pay the sum of \$800.00 to the strata, and she has not yet been able to pay the fines for financial reasons.

I also find the Landlord has mitigated her losses. She testified that due to her personal interactions with the Tenant, as well as information she has regarding other disputes he has had with other residents of the building, that she does not believe an appeal of the strata fines would be successful. I am satisfied, based on the substantial evidence submitted by the Landlord, as well as the Tenant's behaviour during the hearing, namely yelling and interrupting, that her decision not to further appeal the fines is reasonable. Further, while the Tenant may personally decide to appeal the fines to the Civil Resolution Tribunal, currently the Landlord is required to pay the fines to the strata council.

I therefore award the Landlord the \$800.00 claimed for the fines levied by the strata against the Landlord as a result of the Tenant's behaviour.

As the Landlord has been successful in her Application, I also award her recovery of the filing fee pursuant to section 72 of the *Residential Tenancy Act*.

Conclusion

The Landlord's request for an Order of Possession is granted by consent. The tenancy shall end by 11:59 p.m. on September 1, 2020. I also point out that even in the event I had not granted the Order of Possession by consent, I would have granted the Landlord an Order of Possession pursuant to sections 47(5) and 55 of the *Act*, as the Tenant, by not disputing the Notice, is conclusively presumed to have accepted the end of the tenancy.

The Landlord's request for monetary compensation for \$800.00 in fines levied by the strata is granted. The Landlord is also entitled to recover the filing fee for a total award of **\$900.00**.

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain \$900.00 from the Tenant's \$1,025.00 security deposit; the Landlord must pay the \$800.00 fines to the strata council. Should the Tenant wish to further dispute these fines, he is at

liberty to pursue such a claim against the strata council through the Civil Resolutions Tribunal.

The Landlord must return the balance of **\$125.00** to the Tenant. In furtherance of this, and in the event the Landlord does not return the \$125.00 balance to the Tenant, I award the Tenant a Monetary Order in the amount of **\$125.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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 1, 2020

Residential Tenancy Branch