



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNRL-S, MNDCL-S, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for damage to the rental unit or property; a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

One of the named landlords attended the hearing identifying himself as the “Leasing Agent,” who gave affirmed testimony, and called 1 witness who also gave affirmed testimony. One of the tenants attended the hearing with an agent to assist due to the tenant’s broken English. The tenant’s agent also gave affirmed testimony, and the parties were given the opportunity to question each other and the landlord’s witness.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the landlord withdrew the application for a monetary order for damage to the rental unit or property.

### Issues to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or

tenancy agreement, and more specifically for liquidated damages and strata fines?

- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on May 1, 2019 and was to expire on May 31, 2020 thereafter reverting to a month-to-month tenancy, however the tenancy ended on April 30, 2020. Rent in the amount of \$3,700.00 per month was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,850.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment in a strata condominium building, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlords received a letter dated November 5, 2019 from the Strata Corporation indicating a breach by smoking or vaping in the elevator, which was reported on October 18, 2019. The letter also states that a copy has been sent to the tenant, and if the Strata Corporation does not receive a response, it will proceed with enforcement, if deemed appropriate.

Another letter dated November 5, 2019 was received by the landlord from the Strata Corporation, and a copy provided for this hearing. It notifies the landlords that a \$1,000.00 fine has been levied for short-term renting.

A letter from the Strata Corporation dated December 12, 2019 has also been provided for this hearing. It is addressed to the landlords and states that a complaint was reported on November 1, 2019 about a short-term rental on Air BnB, and states: "Please note that you have been issued the following infractions in the past: First contravention - \$1,000 FINE – Letter dated November 5, 2019." It also states that the Strata Council has decided to issue a \$1,000.00 fine, and that a copy of the letter had been sent to the tenants.

The landlords also received a "Notice of Decision" from the Strata Corporation dated December 12, 2019 stating that the Strata Council decided to issue a \$200.00 fine for the October 18, 2019 incident of smoking or vaping in the elevator.

A Caution Notice was sent to the tenant on February 10, 2020 warning the tenant about short term renting, and to cease and desist or further action would be taken. The landlords received a letter from the City dated February 11, 2020 which explains that short term

rentals of less than 30 consecutive days are prohibited and the landlords may be subject to fines up to \$1,000.00.

The Strata de-activated the tenants' fob due to the numerous strata fines levied that had not been paid. The owner of the rental unit was getting billed by the Strata for those fines. Photographs of people in an elevator have been provided for this hearing, which the landlord testified were taken by the Strata system, and the fob is tied to the tenant's rental unit. One of the people in one of the photographs appears to be vaping.

The landlord further testified that the tenants are in arrears of rent the sum of \$11,100.00 for the months of March, April and May, 2020, which the landlords claim against the tenants. A copy of a tenant ledger has been provided as evidence for this hearing. The landlords have also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which is dated March 6, 2020 and contains an effective date of vacancy of March 21, 2020 for unpaid rent in the amount of \$3,700.00 that was due on March 1, 2020.

On April 21, 2020 the landlords advertised the rental unit on Craigslist as well as the landlord's own website, and others to get as much exposure as possible, and the rental unit was re-rented effective May 27, having reduced the rent to \$3,395.00 per month for a new tenant.

The tenancy agreement contains an Addendum which specifies that if the tenant causes the tenancy to end before the expiry of the fixed-term the tenants must pay liquidated damages in the amount of half of the rent, which is not a penalty but toward the administration costs of re-renting.

The landlords have provided a revised Monetary Order Worksheet setting out the following claims as against the tenants which totals \$14,600.00:

- \$11,100.00 for unpaid rent;
- \$1,850.00 for Liquidated Damages; and
- \$1,650.00 unpaid strata fines.

**The landlords' witness** is a property manager for the rental unit, who testified that the tenancy ended on April 30, 2020. A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities had been issued to the tenants on March 21, 2020 when the tenants' rent cheque bounced. The tenant reached out to the witness a few days later and the parties agreed to a move-out date of April 30, 2020.

During the tenancy the Strata issued 2 separate fines of \$1,000.00 each for short term rentals and another one for smoking in the elevator, which was another \$200.00. An infraction was reported to the Strata on September 20, 2019 for short-term rentals and on

October 7 the Strata imposed the first \$1,000.00 fine. Then on November 5, 2019 the landlord got several notices from the Strata regarding this rental unit, copies of which have been provided for this hearing.

The witness corresponded with the tenant about the fines, and the witness sent everything she received from the Strata to the tenant. The tenant agreed to pay the fines, stating that he would dispute them later. The landlord received \$550.00, leaving \$1,650.00 outstanding. The witness tried to deal with the Strata about the fines and helped as much as she could, but could not have the fines removed. The landlords have paid the fines and seek recovery of \$1,650.00 from the tenants.

As a result of the outstanding Strata fines, the tenants' fob was deactivated, which the witness found out after March 21, 2020, and tried to confirm a move-out date with the tenant. However, on March 23, 2020 the tenant emailed the witness asking to get into the rental unit to retrieve his furniture.

**The tenant's agent** testified that the fines imposed are not legitimate. The people in the photographs are the tenant and his family, and the person "vaping" is actually using medicine.

The tenant also feels he never had peaceful enjoyment of the apartment, due to inspections and numerous emails. There was a lot of pressure on the tenant, and it was hard to deal with the issues, but the landlords didn't help him; they only sent letters that he didn't understand the meaning of.

The tenant stopped the payment in March, 2020. By the 10<sup>th</sup> of March or so, the tenant gave up and moved out, prior to the effective date of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. He packed up his clothes, kids and wife and tried to make moving arrangements, but the landlord was holding the tenants' furniture hostage; they couldn't get in.

### Analysis

I have reviewed all of the evidentiary material.

The parties entered into a fixed-term agreement, and the agreement contains a "liquidated damages" clause, requiring the tenant to pay half a month's rent if the tenant causes the tenancy to end earlier than the end of the fixed term. The tenant testified that he put a stop payment on the rent cheque for March, 2020, and then attempted to move out in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. I have reviewed the tenancy agreement, and I am satisfied that it is lawful, is

not a penalty, and is a reasonable amount for pre-determining the costs to the landlord if the tenant causes the tenancy to end early. Therefore, the breach is by the tenant, and the landlord has established a monetary claim of half a month's rent, or **\$1,850.00 for liquidated damages.**

The landlords also claim unpaid rent for the months of March, April and May, 2020 and the landlord testified that the rental unit was re-rented for May 27, 2020. The fixed term expired on May 31, 2020. In a month-to-month tenancy, if, at any time after March 21, 2020 (the date the Notice was issued) the tenant had given notice to end the tenancy, it wouldn't be effective until the end of April. The tenant's agent testified that the tenant put a stop payment on the rent cheque for March, and therefore the landlords have established **unpaid rent of \$3,700.00 for March and \$3,700.00 for April.**

In order to be successful in the claim for May's rent, the landlords must establish mitigation by attempting to re-rent as soon as reasonable after the date the tenancy ends or the date the landlords learned that the tenant was moving out. The landlord attempted to re-rent commencing on April 21, 2020, and the landlord and witness testified that the tenancy ended on April 30, 2020. If the tenant had vacated in March, and the landlord was aware of that, the landlord may not have proven mitigation as required.

The landlord's witness also testified that on March 23, 2020 the tenant emailed the landlord asking to get into the rental unit because of his furniture. Certainly the landlord knew at that time that the tenant was vacating in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Therefore, I find that the landlords ought to have advertised the rental unit sooner than April 21, 2020, and therefore has not proven mitigation for rent for the month of May, 2020.

I have reviewed the letters from the Strata Corporation, and I am also satisfied that the landlords have established \$2,200.00 of Strata fines, and I accept that the tenants paid \$550.00 of that. Therefore, the tenants are still responsible for the balance of **\$1,650.00 for unpaid Strata fines.**

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the **\$100.00 filing fee.**

I order the landlords to keep the \$1,850.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlords as against the tenants in for the difference, in the amount of \$9,150.00 (\$3,700.00 March rent + \$3,700.00 April rent + \$1,650.00 Strata fines + \$1,850.00 Liquidated Damages + \$100.00 filing fee = \$11,000.00 - \$1,850.00 security deposit = \$9,150.00).

Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$1,850.00 security deposit, and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$9,150.00.

This order is final and binding and may be enforced.

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 17, 2020

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Residential Tenancy Branch