Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The landlord's agent (the "agent") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I note that Section 78 of the *Act* states that the director may, with or without a hearing:

> (a)correct typographic, grammatical, arithmetic or other similar errors in his or her decision or order,
> (b)clarify the decision or order, and
> (c)deal with an obvious error or inadvertent omission in the decision or order.

This decision is being corrected, due to an inadvertent omission in the decision and order.

Preliminary Issue- Service

Both parties agree that the tenant was served with the landlord's application for dispute resolution via registered mail. I find that the tenant was served in accordance with section 89 of the *Act.*

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) state that evidence should be served on the respondent and the Residential Tenancy Branch at least 14 days before the hearing.

The landlord's agent testified that the tenant was served with the landlord's evidence via registered mail on October 15, 2020. A Canada Post receipt stating same was entered into evidence. The Canada Post website states that the package was delivered to [the tenant's] community mailbox, parcel locker or apt./condo mailbox on October 19, 2020. The tenant testified that he didn't check his mail until sometime last week and received the landlord's evidence at that time. I find that the tenant was deemed served with the landlord's evidence on October 20, 2020, five days after it was mailed, pursuant to sections 88 and 90 of the *Act.* I find that the landlord should not be penalized for the tenant's failure to check his mail. I find that the landlord's evidence was served in accordance with section 3.14 of the *Rules.*

Section 3.15 of the *Rules* states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The tenant's evidence was received by the Residential Tenancy branch on November 5, 2020, the day of this hearing. Both parties agree that the tenant personally delivered the tenant's evidence to the landlord on November 4, 2020, the day before this hearing. The agent testified that the landlord has not had time to review and respond to the tenant's evidence. I find that the tenant breached section 3.15 of the *Rules* and therefore, the tenant's evidence is excluded from consideration.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and agent's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 16, 2017 and ended on June 30, 2020. Monthly rent in the amount of $2,150.00 was payable on the first day of each month. A security deposit of $1,075.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. A Form K "Notice of Tenant's Responsibilities" relating to the strata was signed by both parties and entered into evidence.

Both parties agree that a joint move in condition inspection and report were completed on June 13, 2017 and a joint move out condition inspection and report were completed on June 30, 2020. Both parties agree that the tenant provided the landlord with the tenant's forwarding address on the move out condition inspection report. The move in and out condition inspection reports were entered into evidence.

The landlord filed this application for dispute resolution on July 15, 2020, 15 days after the end of this tenancy.

The agent testified that the landlord is seeking the following damages arising from this tenancy:

Item	**Amount**
Strata fines	$300.00
Damage to cook top	$100.00
Breach of material term	$500.00
Damage to blinds	$201.60
Total	**$900.00**

Strata fines

The agent testified that the tenant incurred two strata fines in the amount of $200.00 each for a total of $400.00 owing. The agent testified that the fines were reduced to $300.00. The agent testified that the landlord is seeking $300.00 from the tenant.

The landlord entered into evidence the following letters from the strata to the landlord:

- December 13, 2019:
  - violation warning regarding incident on December 5, 2019;
  - possible fine, 14 calendar days to respond;
- December 19, 2019:
  - violation warning regarding incident on December 15, 2019; and
  - possible fine, 14 calendar days to respond.
- March 18, 2020:
  - "This letter is to follow up with your response dated December 17, 2019. Upon further discussion, Counsel agreed to reduce the fine from $200 to $100 as a courtesy."
- July 10, 2020:
  - "Thank you for your response to this bylaw violation. Upon further discussion, Counsel regretfully declined your fine reversal request.

The landlord entered into evidence a June 15, 2020 statement of account which shows $300.00 in outstanding bylaw fines.

The tenant testified that he was not provided with a copy of the December 13th and 19th, 2019 violation letters (the "violation letters") and so was not able to respond to the strata within 14 days as required by the violation letters. The tenant testified that since the landlord did not provide him with a copy of the violation letters, the landlord took responsibility for the fines.

The agent testified that the violation letters were sent to the tenant. The agent testified that on both violation letters, which are date stamped with the date they are received, there is a hand notation which states that they were e-mailed to the tenant. The tenant testified that he did not receive the e-mails. The December 13, 2019 violation letter is stamped as received on December 17, 2019. The December 19, 2019 violation letter is stamped as received on December 27, 2019. The "e-mail" notations are on the violation letters.

The agent testified that it is clear the tenant did receive the violation notices because the March 18th letter states: "This letter is to follow up with your response dated December 17, 2019. Upon further discussion, Counsel agreed to reduce the fine from $200 to $100 as a courtesy." The agent submitted that the March 18, 2020 letter was made in response to the tenant's December 17, 2019 response to the first violation

letter. The agent testified that the tenant responded to the December 13, 2019 violation letter on the same day the landlord received it and emailed it to the tenant.

Damage to cook top

The agent testified that the cooktop at the subject rental property was brand new at the start of this tenancy. This was not disputed by the tenant. The landlord testified that the cooktop was in new condition at the beginning of this tenancy. The move in condition inspection report states that the stove top is in good condition. The agent entered into evidence photographs of the stovetop taken at the beginning of this tenancy which show that it is in good condition and all control markings are present.

Both parties agree that at the end of the tenancy all of the control markings on the stovetop were gone. The agent testified that the tenant used improper cleaning methods to clean the stovetop and have worn away all the markings. The agent testified that the tenant was provided with the manual for the stovetop which gave cleaning instructions. The agent testified that the control markings cannot be replaced and entered into evidence a quote for a new stove top in the amount of $665.00-$765.00 plus tax. The agent testified that the landlord is seeking $100.00 for the reduced value of the stovetop.

The tenant testified that he followed the cleaning guidelines in the manual. The tenant testified that the control markings were painted on and gradually wore away due to normal use. The tenant testified that he and his spouse love to cook and so the stovetop was cleaned frequently.

Breach of material term

The agent testified that the tenant had a dog at the subject rental property, contrary to the tenancy agreement from at least March to May 2020. The agent testified that the tenant attempted to conceal the dog from the landlord. The tenancy agreement states that pets are not permitted.

Both parties agree that the landlord sent the tenant a letter dated May 27, 2020 regarding the tenant’s breach of a material term. The agent testified that the landlord is seeking $500.00 for breach of a material term of the tenancy agreement.

The tenant testified that he was looking after the dog for a friend who traveled out of country and that his friend was not able to return as expected due to personal reasons. The tenant testified that he immediately complied with the May 27, 2020 letter and sent the dog elsewhere.

The tenant testified that while the tenancy agreement may have been breached, the landlord has not suffered any damage and so is not entitled to $500.00 for the breach.

Damage to Blinds

Both parties agree that the tenant damaged the blinds in the subject rental property. Both parties agree that the tenant agreed in writing, on the moveout condition inspection report, for the landlord to retain $180.00 plus tax from the security deposit, for this damage. $180.00 plus 12% tax equals $201.60.

Analysis

Strata fines

Based on the strata letters entered into evidence, I find that the tenant was provided with copies of the violation letters as the March 18, 2020 letter references the tenant's response dated December 17, 2019, the same day the landlord received the December 13, 2019 violation letter. I find that the tenant must have received the December 13, 2019 violation letter from the landlord because he responded to it the same day the letter was received by the landlord.

The Form K "Notice of Tenant's Responsibilities" states in part:

> If a tenant or occupant of the strata lot, or person visiting the tenant or admitted by the tenant for any reason, contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, denial of access to recreational facilities, and if the strata corporation incurs costs for remedying a contravention, payment of these costs.

Based on the statement of account and strata letters, I find that the tenant incurred $300.00 in strata fines, and pursuant to the Form K, is responsible for those fines.

Damages

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Damage to cooktop

Residential Tenancy Policy Guideline #1 states:

> The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

I find that the removal of all control markings on a three-year-old stovetop, is not regular wear and tear. Residential Tenancy Policy Guideline #40 states that the useful life of a stove is 15 years. I find that the tenants damaged the stovetop and have reduced the value of that stovetop. While the landlord has not provided proof of the amount of the reduction in value of the stovetop, I find that the landlord is entitled to nominal damages.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I award the landlord $100.00 in nominal damages for the loss of value to the stovetop.

Damage to Blinds

As both parties agreed that the tenant owes the landlord $180.00 plus tax for the repair of the blinds, I find that the landlord is entitled to a monetary award in the amount of $201.60.

Breach of material term

The agent did not provide any testimony on what loss was suffered by the landlord as a result of the tenant keeping at dog at the subject rental property. As stated above and set out in Residential Tenancy Policy Guideline 16, the landlord must prove:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the agent has not proved that the landlord suffered a loss stemming from the tenant keeping a dog at the subject rental property. I therefore dismiss the landlord's claim for $500.00 for breach of a material term.

Security deposit and filing fee

Section 38(1) of the *Act* states that within 15 days after the later of:

(a)the date the tenancy ends, and

(b)the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act.*

As the landlord was successful in this application, I find that the landlord is entitled to recover the $100.00 filing fee from the tenant, pursuant to section 72 of the *Act.*

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain ~~$500.00~~ $701.60 from the tenant's security deposit. I Order the landlord to return the remaining ~~$575.00~~ $373.40 of the tenant's security deposit to the tenant.

Conclusion

The landlord is entitled to retain ~~$500.00~~ $701.60 from the tenant's security deposit.

I issue a Monetary Order to the tenant in the amount of ~~$575.00~~ $373.40.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 05, 2020

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON **November 25, 2020**
AT THE PLACES INDICATED **BY UNDERLINING OR USING ~~STRIKETHROUGH~~**.

Residential Tenancy Branch