



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCL-S, MNRL-S, FFL, MNSDB-DR

Introduction

The landlords applied for compensation for unpaid rent, for the tenant's incurring strata fines, and for the cost of the filing fee, pursuant to sections 26, 67, and 72, respectively, of the *Residential Tenancy Act* ("Act"). By way of cross-application the tenant applied for the return of their security deposit, pursuant to section 38(1) of the Act.

One of the landlords (who referred to herself as the landlord's agent) and the tenant attended the hearing on February 26, 2021 at 1:30 PM, which was held by teleconference. No issues of service were raised by the parties.

Issues to be Decided

The issues are as follows:

- a) Are the landlords entitled to compensation for unpaid rent?
- b) Are the landlords entitled to compensation for the cost of the strata fines?
- c) Are the landlords entitled to compensation for the cost of the filing fee?
- d) Is the tenant entitled to the return of their security and pet damage deposits?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on July 1, 2020 and ended on November 15, 2020. Monthly rent was \$1,250.00 which was due on the first day of the month. The tenant paid a security deposit of \$625.00 and a pet damage deposit of \$200.00. Both deposits are currently

held in trust by the landlords pending the outcome of this dispute. A copy of a written Residential Tenancy Agreement was in evidence. It should be noted that on the last and sixth page of the tenancy agreement it is indicated that there “is not” an addendum and that in the section that reads “Number of pages of the Addendum” it is indicated as “0.”

In their application (which was filed by the landlords on November 18, 2020) the landlords seek compensation in the amount of \$2,400.00 for unpaid rent (\$1,200.00 for October 2020 and \$1,200.00 for November 2020), and \$800.00 for strata bylaw fines (also called “penalties” by the landlords), for a total of \$3,200.00. During the hearing, the landlord explained that the \$1,200.00 dollar amounts were written in error, and that monthly rent was indeed \$1,250.00.

Submitted into evidence was a copy of a Monetary Order Worksheet detailing these costs, a copy of a 10 Day Notice to End Tenancy for Unpaid Rent, a copy of an “Owner Ledger” from the strata which reflects three “Bylaw fine” items each in the amount of \$200.00. All three strata bylaw fines were incurred on September 16, 2020 and were for “Pet restriction,” “Failure to remit form K,” and “Unscheduled move in.” Also submitted into evidence is a copy of a Mutual Agreement to End Tenancy in which the parties on October 3, 2020 agreed that the tenancy would end on October 31, 2020 at 12:00 a.m.

The landlord testified that she gave the tenant a copy of the strata bylaws, and that there was a Form K. It should be noted that no copies of the bylaws or a copy of any signed Form K was submitted into evidence by the landlords. The landlord also mentioned that there was additional evidence, including correspondence from the strata, but that she did not want to bombard me with evidence; thus, this evidence was not submitted.

In the tenant’s application they seek the return of the security and pet damage deposits totalling \$825.00. Submitted into evidence by the tenant was a copy of a Condition Inspection Report on which the tenant’s forwarding address was written.

The tenant disputed that she owed rent for both months, and that she vacated the rental unit in mid-November 2020, which was confirmed by the landlord. Further, the tenant testified that the landlord “gave me the building rules” but that “she never gave me [a copy of] the bylaws.”

In respect of the strata bylaws, which presumably contained restrictions on the number of pets that residents could have, both parties spent considerable time testifying about issues concerning dogs and the strata rules about this.

Analysis

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.

Are the landlords entitled to compensation for unpaid rent?

Section 26 of the Act states the following regarding rent:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The mutual agreement to end the tenancy was a contractual agreement wherein both parties agreed that the tenancy would end at midnight on October 31, 2020. However, the tenant did not vacate the rental unit according to the mutual agreement and became what is known as an “overholding” tenant until she vacated on November 15, 2020.

Section 57(1) of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. Further, section 57(2) states that “A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.”

In this dispute, the tenant was obligated to pay rent for October 2020. However, as the tenancy ended on October 31, 2020, she is only liable for a per diem amount for each day of overholding beyond October 31. In this case, a per diem rate of \$41.10 would apply (calculated by multiplying the monthly rent by 12 and dividing by 365). Hence, the tenant’s fifteen-day overhold amounts to \$616.50, not \$1,250.00 for November.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for unpaid rent for October 2020 in the amount of \$1,250.00 and an additional \$616.50 as compensation for the overholding period.

Therefore, on this aspect of the landlords’ claim they are awarded \$1,866.50.

Are the landlords entitled to compensation for the cost of the strata fines?

Section 67 of the Act states that

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.

In this dispute, the landlords seek compensation for strata bylaw fines presumably incurred by the tenant. However, in order for a tenant to be found liable for the incurring of such fines there must be clear and cogent evidence that the tenant was provided with a copy of the strata bylaws. Such evidence is usually provided by way of a copy of a signed Form K that must be included in a tenancy agreement where the rental unit is in a strata-regulated residential property.

Under the *Strata Property Regulation*, B.C. Reg. 43/200, a *Form K: Notice of Tenant's Responsibilities* includes the following statement (bold font in original):

1 Under the *Strata Property Act*, a tenant in a strata corporation **must** comply with the bylaws and rules of the strata corporation that are in force from time to time (current bylaws and rules attached).

2 The current bylaws and rules may be changed by the strata corporation, and if they are changed, the tenant **must** comply with the changed bylaws and rules.

3 If a tenant or occupant of the strata lot, or a 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 those costs.

I can think of no document more important respecting a tenant's awareness of their legal obligations to comply with strata bylaws than a Form K. Yet, there is in this case no copy of any Form K. Nor is there any evidence before me that the landlords provided a copy of the bylaws to the tenant. Indeed, that the tenancy agreement indicates no addendum is in my mind an indication that no such documentation was ever provided to the tenant.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlords failed to provide any evidence that the tenant was given a copy of the bylaws. Perhaps they did, but there is no convincing evidence that this was the case. And, while I certainly appreciate the landlord's not wanting to bombard me with additional documentation, without a copy of supporting evidence, such as a copy of a signed Form K and a copy of the strata bylaws, I am unable to find as a fact that the tenant had a copy of the bylaws or that she signed a Form K.

Ultimately, a tenant cannot be found in breach of a tenancy agreement—including strata bylaws that form part of that tenancy agreement—if they are not aware of the potential bylaw fines for various infractions. Thus, in the absence of any such evidence I do not find that the tenant breached the tenancy agreement from which damages may flow.

Therefore, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving their claim for compensation in respect of strata bylaw fines. This claim is dismissed without leave.

Are the landlords entitled to compensation for the cost of the filing fee?

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the landlords were partly successful, I award them \$50.00 toward the application for dispute resolution filing fee.

Summary of Award to Landlords, Retention of Deposits, and Monetary Order

In summary, the landlords are awarded a total of \$1,916.50.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlords may retain the tenant's security and pet damage deposits of \$825.00 in partial satisfaction of the above-noted award.

The balance of the award is issued by way of a monetary Order in the amount of \$1,091.50. This Order is issued in conjunction with this Decision, to the landlords. A copy of the Order must be served on the tenant.

Is the tenant entitled to the return of their security and pet damage deposits?

As the landlords' monetary award exceeds the amount of the tenant's security and pet damage deposits, and as I have ordered the landlords to retain the deposits, the tenant is not entitled to their return. The tenant's application is therefore dismissed.

Conclusion

The landlords' application is granted, in part.

I hereby order and authorize the landlords to retain the tenant's security and pet damage deposits of \$825.00.

I grant the landlords a monetary order in the amount of \$1,091.50, which must be served on the tenant. If the tenant fails to pay the landlords, the amount owed, the landlords may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

The tenant's application is dismissed, without leave to reapply.

This decision is final and binding, except where otherwise permitted under the Act, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 1, 2021

Residential Tenancy Branch