



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a tenant's notice to end a tenancy, pursuant to sections 45 and 55;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain a portion of the tenant's security deposit, pursuant to section 38;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:31 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord and counsel KW (the landlord) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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, her counsel and I were the only ones who had called into this teleconference.

At the outset of the hearing the landlord affirmed he understands it is prohibited to record this hearing.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on January 24, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on January 29, 2021, in accordance with section 90(a) of the Act.

I accept the landlord's testimony that the tenant was served with a second evidence package in person on March 30, 2021, in accordance with section 88(a) of the Act.

The landlord affirmed she did not serve the evidence documents submitted to the RTB on April 15, 2021. I do not accept the evidence documents submitted on April 15, 2021, per Rule of Procedure 3.14.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Partial Withdrawal of the Application

At the outset of the hearing the landlord advised he is no longer seeking for an order of possession or a monetary order for cleaning expenses.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the landlord's application to withdraw her claim for an order of possession and for a monetary order for cleaning expenses.

Preliminary Issue – Amendment of the Application

At the hearing the landlord stated the tenant did not pay rent due on March 01 and April 01, 2021 and she served the tenant with a monetary order worksheet on March 30, 2021 claiming for unpaid rent.

Rules of Procedure 4.1 and 4.2 provide:

4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

- **completing an Amendment to an Application for Dispute Resolution form;**
- and**
- **filing the completed Amendment** to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.

[...]

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, **such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made**, the application may be amended at the hearing. If an

amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.”

(emphasis added)

In this matter, the Notice of Dispute Resolution served by the landlord does not state the landlord is seeking compensation for unpaid rent. The landlord did not serve an amendment form. I do not find that the tenant could reasonably have anticipated that the landlord would amend her application at the hearing to include a claim for compensation for unpaid rent. As such, I deny the landlord’s request to amend the application.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain a portion of the tenant’s security deposit?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord’s obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on July 15, 2020 and the tenant is occupying the rental unit. Monthly rent is \$2,300.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00 were collected and the landlord holds them in trust. The tenancy agreement was submitted into evidence.

Both parties signed the form K, submitted into evidence. It states:

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.

The landlord testified the tenant verbally agreed to pay the strata move in fee and sent a text message on October 05, 2020 (submitted into evidence) confirming she will pay the strata move in fee:

Landlord: Hi [tenant], please send the move in/out fee today, thanks!

Tenant: Yes I will

The landlord said the tenant did not pay the \$300.00 strata move in fee, the landlord paid this amount (statement submitted into evidence) and is claiming for this loss.

The landlord stated the tenant received six strata fines. The landlord submitted into evidence four letters sent by the strata:

- fine in the amount of \$50.00 on November 23, 2020 for noise complaints on October 07, 2020;
- fine in the amount of \$50.00 on December 07, 2020 for noise complaints on November 30, 2020;
- fine in the amount of \$50.00 on December 08, 2020 for noise complaints on December 07, 2020;
- fine in the amount of \$150.00 on January 07, 2021 for noise complaints on January 01, 02 and 04, 2021.

The landlord affirmed she paid the strata fines in the amount of \$250.00 and there is an outstanding balance of \$50.00. The landlord is claiming for the loss in the amount of \$300.00.

The landlord submitted into evidence a monetary order worksheet dated January 23, 2021 indicating a claim in the total amount of \$600.00.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

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 the case is on the person making the claim.

Strata move in fee (claim 1 in the monetary order worksheet)

Based on the landlord's uncontested testimony, the text messages on October 05, 2020 and the strata statement, I find the tenant agreed to pay the move in fee in the amount of \$300.00 and did not pay this fee.

Section 1 of the Act states:

"tenancy agreement" means an agreement, **whether written or oral, express or implied**, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

(emphasis added)

I find the verbal agreement between the parties to pay the move in fee and the text messages on October 05, 2020 is an amendment to the tenancy agreement, per section 1 of the Act. I find the tenant breached the tenancy agreement by not paying the move in fee in the amount of \$300.00 and the landlord incurred a loss in that amount.

As such, I award the landlord \$300.00 in compensation for this loss.

Strata fines – noise (claims 2, 3, 4 and 5)

I accept the landlord's uncontested testimony and the four strata letters that the tenant received six strata fines for noise violations in the total amount of \$300.00.

I find the form K is an amendment to the tenancy agreement, per section 1 of the Act. I find the tenants breached section 1 of the form K tenancy agreement addendum by not paying the six strata fines in the amount of \$300.00 and the landlord incurred a loss in that amount.

As such, I award the landlord \$300.00 in compensation for this loss.

Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17 and section 72(2)(b) of the Act, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord.

In summary:

Item	Amount \$
Strata move in fee	300.00
Strata fines	300.00
Filing fee	100.00
Total	700.00

Conclusion

Pursuant to section 72(2)(b) of the Act, I authorize the landlord to retain the amount of \$700.00 from the security deposit in full satisfaction of the monetary order requested.

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: April 20, 2021

Residential Tenancy Branch