



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with a landlord's application for a Monetary Order to recover by-law fines, cleaning, and damage from the tenant; and, authorization to retain the tenant's security deposit.

The landlord's agent appeared for the hearing; however, there was no appearance on part of the tenant despite leaving the telephone conference call open for at least 20 minutes to give the tenant the opportunity to appear.

Since the tenant did not appear, I explored service of hearing materials upon the tenant. The landlord's agent testified that the tenant's forwarding address was received from the tenant, via email, on January 7, 2021 and on January 12, 2021 the proceeding package and some of the landlord's evidence was sent to the tenant via registered mail, at his forwarding address. Additional evidence was sent to the tenant via registered mail on April 19, 2021 at his forwarding address. The landlord provided copies of the registered mail receipts, including tracking numbers, as proof of service. I also ordered the landlord to provide me with a copy of the email continuing the tenant's forwarding address, which she did. Upon review of the proof of service, I was satisfied the tenant was duly served in accordance with section 89(1) of the Act and I continued to hear from the landlord's agent without the tenant present.

The landlord requested the monetary claim be amended to withdraw the request for compensation for missing fobs. Since this request is beneficial to the respondent, I permitted the amendment.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation against the tenant, as amended?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The tenancy started on August 1, 2017 and ended on December 31, 2020. The tenant paid a security deposit of \$550.00 and was required to pay rent of \$1100.00 on the first day of every month. The landlord provided a copy of the tenancy agreement.

The landlord's agent and the tenant participated in a move-in and move-out inspection together but the tenant did not authorize the landlord to retain the security deposit in writing. The landlord tried to settle its claims against the tenant via email but the tenant did not respond to agree. As such, the landlord proceeded to file this claim. Below, I have summarized the landlord's claims against the tenant.

By-law fines -- \$400.00

The rental unit is a condominium located in a stratified building and the tenant was assigned a parking stall in the underground parking garage. The strata council levied four \$100.00 by-law fines against the landlord due to the actions of the tenant for: excessive noise; having no insurance on the motorcycle in the parking garage; plugging a battery charger into common property in the parking garage; and, storing items and causing an oil spill in the parking garage.

The addendum to the tenancy agreement provides that the tenant is responsible for paying for strata by-law fines incurred during the tenancy and the tenant signed a Form K indicating the tenant received the strata by-laws and was bound to comply with them.

The landlord provided copies of the addendum, the signed Form K, and correspondence from the strata counsel with respect to the strata by-law violations and fines.

Paint -- \$40.00

The tenant permitted a cat in the rental unit and the cat badly scratched and clawed at the walls in the foyer. The tenant patched the walls with drywall mud but did not paint over the mud. The landlord painted the entire unit after the tenancy ended but the foyer walls covered in drywall mud took more effort and paint. The landlord is seeking the cost of the extra paint needed to cover the drywall mud in the foyer.

Clean oil spill -- \$150.00

The tenant caused an oil spill in the parking stall assigned to the tenant and he did not clean it by the end of the tenancy. The landlord hired a handyman to clean up the oil spill, at a cost of \$150.00. The landlord included a photograph of the oil spill along with the strata counsel correspondence concerning the oil spill in the parking stall.

Cleaning rental unit -- \$100.00

The tenant failed to leave the rental unit reasonably clean at the end of the tenancy. The landlord incurred a cost to clean the unit of \$183.75; however, the landlord limited its claim to \$100.00 to reflect a charge of \$25.00 per hour based on a term in the addendum that sets out cleaning will be charged at \$25.00 per hour. The landlord provided an invoice for the cleaning and pointed to photographs and the move-out inspection report in support of the claim.

Blinds -- \$210.00

The tenant left the blinds in the rental unit very dirty, and the blinds had bent slats and broken strings. The blinds provided to the tenant were original but were in good condition at the start of the tenancy. At the end of the tenancy they were so dirty and damaged they could not be re-used. The landlord is seeking to recover only 50% of the cost to purchase new blinds, before tax, and without any charge for installation, in recognition the blinds provided to the tenant were older. The landlord provided an invoice for the purchase of new blinds and pointed to photographs and the move-out inspection report in support of the claim.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

By-law fines

Upon review of the addendum to the tenancy agreement, the signed Form K, and the correspondence issued to the landlord from the strata, I find I am satisfied that the tenant was required to comply with the strata by-laws and he failed to do so and his violations resulted in the landlord suffering a loss of \$400.00 due the tenant's actions or neglect. Therefore, I find the landlord entitled to recover the by-law fines totalling \$400.00 from the tenant.

Paint and blinds

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Upon review of the condition inspection reports, photographs and invoices, I find I am satisfied that the tenant is responsible for causing a significant amount of patching of the walls in the foyer of the rental unit and the excessive patching exceeds reasonable

wear and tear and resulted in a greater amount of paint and work to cover the drywall mud. Therefore, I grant the landlord's request for \$40.00 to cover the additional cost of paint.

Upon review of the condition inspection reports, photographs and invoices, I find I am satisfied the blinds were left very dirty, with bent slats, and broken strings at the end of the tenancy that exceeds reasonable wear and tear; and, the blinds were in much better condition at the start of the tenancy. Therefore, I find the landlord's request to recover 50% of the cost to purchase new blinds, before tax and without any charge for installation, to be within reason and I grant the landlord's request for \$210.00.

Cleaning rental unit and oil spill

Section 37 of the Act requires a tenant to leave a rental unit "reasonably clean" at the end of the tenancy and that includes common areas where the tenant has exclusive possession, such as an assigned parking stall.

Based upon review of the invoices, photographs and inspection reports, I find the landlord has satisfied me that the tenant failed to leave the rental unit reasonably clean and caused a significant oil spill in his parking stall and I hold the tenant responsible to compensate the landlord to rectify these violations.

I note that the cleaning invoice of \$183.75 is for a "for sale prep" cleaning. A tenant is not required to leave a rental unit impeccably or perfectly clean, such as a "for sale prep" cleaning would imply; however, the landlord limited its claim to \$100.00 and I find that amount reasonable based on the photographs and move-out inspection report.

In light of the above, I grant the landlord's request to recover \$100.00 and \$150.00 from the tenant for cleaning the rental unit and cleaning the oil spill in the parking stall.

Filing fee, security deposit and Monetary Order

The landlord was successful in this Application for Dispute Resolution and I further award the landlord recovery of the \$100.00 filing fee from the tenant.

The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In keeping with all of my findings and awards above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, as calculated below:

By-law fines	\$400.00
Paint (wall damage)	40.00
Damaged and dirty blinds	210.00
Cleaning rental unit	100.00
Cleaning oil spill in parking stall	150.00
Filing fee	100.00
Less: security deposit	<u>(550.00)</u>
Monetary Order	\$450.00

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance owing of \$450.00 to serve and enforce upon the tenant.

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: May 13, 2021

Residential Tenancy Branch