



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LL: MNDCL-S, FFL

TT: MNSDS-DR, FFT

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A return of the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is either party entitled to the deposit for this tenancy?

Is either party entitled to recover their filing fee from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began on July 1, 2013 and ended on February 28, 2021. The rental unit is a suite in a multi-unit rental building managed by a strata corporation. In addition to the standard tenancy agreement the tenant signed a Form K agreement pursuant to the Strata Property Act stating that they are responsible for any penalties issues by the strata for contraventions of bylaws or rules. The tenant paid a security deposit of \$850.00 at the start of the tenancy. The landlord has returned \$250.00 of the deposit and retains \$600.00. The parties prepared a condition inspection report in accordance with the Act and regulations and the tenant provided their forwarding address prior to the end of the tenancy.

The landlord filed their application for dispute resolution requesting authorization to retain the \$600.00 balance of the security deposit on March 4, 2021. The landlord submits that the strata corporation for the rental building has issued three fines against the rental unit for infractions reported on December 15, 22, 26, 2020 in the amounts of \$200.00 each for a total of \$600.00. The landlord submitted into evidence correspondence from the strata management company stating that fines have been levied.

The tenant disputes the substance of the complaints reported, have been given minimal information about the incidents which led to the initial complaints, and were given little opportunity to respond or make submissions to the strata regarding the complaints. The copies of correspondence submitted into evidence by the parties show that the landlord informed the tenant of the complaints by an email dated January 19, 2021. The tenant disputed the complaints generally in their response dated January 19, 2021. The tenant now seeks a return of the balance of the security deposit and submits they have not given written authorization allowing the landlord to retain any portion of the deposit for this tenancy.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case as the tenancy ended on February 28, 2021 and the landlord filed their application on March 4, 2021, I find they were within the statutory time limits.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the evidence it is clear that the strata management corporation has levied fines as against the rental unit in the amount of \$600.00. However, I find there is insufficient evidence that the fines are a result of any breach on the part of the tenant. I find the correspondence from the strata management company submitted into evidence to provide little substantive information about the nature of the behaviour that led to the complaint or evidence to establish that the complaint has merit. The landlord failed to provide earlier correspondence with the strata company or the tenant to demonstrate that the tenant's submissions disputing the complaints were put forward.

I find there is insufficient evidence to demonstrate that the fines levied by the strata corporation has any merit or arises from a breach on the part of the tenant. The tenant is obligated to pay the cost of fines incurred as a result of their violation of the bylaws or rules pursuant to the tenancy agreement and Form K agreement. However, pursuant to section 67 of the *Act* the landlord still has the onus to demonstrate that the fines are a result of a breach on the part of the tenant. I find the conclusion of the strata company to be of little probative value as the correspondence provides little information beyond the complaint received and their determination.

Based on the paucity of evidence I am not satisfied that the fines levied by the strata company are a result of a breach on the part of the tenant. Consequently, I find the landlord has not met their evidentiary burden and dismiss their application.

I find that the tenant is entitled to a return of the balance of the security deposit for this tenancy in the amount of \$600.00 and issue a monetary order accordingly.

As the tenant was successful in their application they are also entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$700.00. 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.

The landlord's application is dismissed in its entirety without leave to reapply.

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: July 22, 2021

Residential Tenancy Branch