



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for unpaid rent, damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 20 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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

The landlord testified that they served the tenant with the notice of dispute resolution proceeding and evidence by registered mail sent on July 16, 2021. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on July 21, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlords indicated that since the application was filed additional strata fines and rent has come due. As additional fines, rent and damages coming due and owing is reasonably foreseeable, pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's application to increase the landlords' monetary claim from \$6,200.00 to \$17,481.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposit for this tenancy?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

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

The landlord provided undisputed evidence regarding the following facts. This tenancy began on September 25, 2020. The monthly rent was \$8,333.33 payable on the first of each month. A security deposit of \$4,166.67 was paid at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a strata managed multi-unit building. A copy of the signed tenancy agreement and the Form K agreement providing that the tenant is responsible for fines resulting from violations of the strata bylaws were submitted into evidence.

There was a previous proceeding under the file number on the first page of this decision on August 13, 2021 in which the landlord was granted an Order of Possession on the basis of non-payment of rent. The landlord was issued a monetary award for unpaid rent for July 2021 in the amount of \$8,333.33. The landlord submits that the tenant did not pay rent for August 2021 and they claim compensation for the period that the tenant overheld the rental unit calculated to be \$5,555.55.

The landlord submits that the tenant vacated the rental unit without participating in a move-out inspection despite being provided multiple opportunities and the rental unit was left in a state of profound disarray and disrepair. The landlord submitted photographs of the damage done to the rental unit by the tenant which includes marring of walls, fixtures and appliances, staining the flooring with urine and debris left

throughout the suite. The landlord claims the amount of \$1,710.00 for repairs and work done and submits invoices and receipts in support of their claim.

The landlord testified that the tenant incurred substantial fines from the strata for numerous bylaw violations. The total amount of the fines issued by the strata are \$9,066.00. The landlord submitted a large volume of correspondence from the strata identifying the tenant and their various infractions. The violations include noise complaints, throwing cutlery off of the balcony at the pedestrians below, allowing pets to defecate and urinate throughout the common areas of the building and onto the property of other occupants, purposefully causing noise and disturbance to neighboring units and defecating in the common area steam room of the building. In addition the tenant and their family members hosted large gatherings in the rental suite in contravention of emergency health orders on several occasions requiring police intervention.

As a result of the ongoing, purposeful misbehaviour of the tenant the landlord incurred significant costs to address the infractions. The landlord submits that they incurred a cost of \$1,150.00 for the time and process of dealing with the tenant and their continued infractions.

Analysis

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.

I am satisfied with the undisputed evidence of the landlord that the tenant was responsible for paying monthly rent in the amount of \$8,333.33 on the first of each month. I accept that the tenant failed to pay rent on August 1, 2021 and they overheld the rental unit for much of that month. I accept that the amount of compensation based on the monthly rent and the period of overholding is \$5,555.55 and issue a monetary award in that amount accordingly.

I find that the rental unit was left in a state of disrepair attributable to the tenancy. I am satisfied with the preponderance of evidence provided by the landlord including

photographs, invoices and testimony that the landlord incurred significant costs to repair, clean and restore the rental unit. I find that the amount claimed by the landlord to be reasonable and commensurate with the damage shown and issue a monetary award in the amount of \$1,710.00 for work to restore the rental unit.

The landlord provided a large volume of evidence in support of their claim for strata fines incurred as a result of the infractions of the tenant. I am satisfied on a balance of probabilities that the tenant and those allowed on the property by the tenant conducted themselves in a manner violating the bylaws of the strata corporation and basic human decency.

I find the nature of the violations cited by the strata corporation in their correspondence to demonstrate conduct that is purposeful and knowingly disruptive or dangerous. Actively hurling cutlery off of the balcony of a high rise building is inherently dangerous and an act which serves no purpose other than injuring or alarming pedestrians below. Hosting a large gathering in contravention of public health orders requiring police intervention causes significant disruption to others. Defecating in the common area and failing to report or clean evidences a profound absence of bodily and impulse control.

I accept the evidence of the landlord that the complaints were communicated to the tenant but the tenant chose to continue their pattern of disruptive, unsanitary and repugnant behaviour. As a result the tenant incurred multiple fines cumulatively totalling \$9,066.00. I find that the landlord incurred losses as a result of the actions of the tenant and consequently issue a monetary award in that amount.

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

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$13,414.33, allowing for the recovery of damages and loss and the filing fee and to retain the security deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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: January 14, 2022

Residential Tenancy Branch