



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on July 26, 2021 seeking compensation for money owed from the Tenant and the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 8, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. The Tenant received notice of this hearing and the Landlord’s prepared evidence in advance of the hearing. At the outset, the Tenant confirmed they did not prepare evidence of their own. On this basis, the hearing proceeded.

Issues to be Decided

Is the Landlord entitled to compensation from the Tenant for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a written submission for this hearing. In this they set out the basic background information as follows:

- the parties entered a tenancy agreement on July 15, 2020 on a month-to-month basis, with the monthly rent at \$1,700 per month, payable on the 15th of each month
- the Tenant paid a security deposit at the outset, for \$850
- the tenancy ended on December 15, 2020 – on that date, the Tenant left the rental unit and removed all of their belongings
- there was no joint inspection meeting at the end of the tenancy.

The Landlord submits the Tenant moved out from the rental unit prior to their opportunity to schedule a final inspection date. In effect, the Tenant abandoned the property.

The Landlord submits there was a pending sale of the property; this process started before the start of this tenancy. It was expected to be a shorter-duration tenancy for this reason from the outset.

Here the Landlord claims for reimbursement of bylaw infraction fines that the Tenant had not paid during the tenancy. The Landlord paid up all outstanding fines prior to the sale of the rental unit.

The Landlord provided a copy of the Notice of Tenant's Responsibilities form from the strata council. The strata had requested a signed copy of this form from the Tenant via the Landlord. The strata's initial request to the Landlord was on July 31, 2020, setting a timeline for August 7 to return the signed form. The strata followed with subsequent requests for a signed form on: September 4, September 30, and November 10. On December 11, the Landlord emailed to the strata council to advise they could not obtain the Tenant's signature.

On July 11, 2021, the Landlord forwarded the completed form, without the Tenant's signature. That form, in the Landlord's evidence, is dated November 24, 2020, and bears the Landlord's signature, but not that of the Tenant.

The repeated requests from the Tenant for this form led to the strata imposing fines against the rental unit. This was for a bylaw infraction. The Landlord informed the Landlord of the bylaws in their repeated communication.

Additionally, the strata advised the Landlord of noise complaints. Their letters to the Landlord setting out these issues are dated July 31, September 30, October 5 (x2), and November 10, 2020. Additionally, the strata forwarded separate complaints of garbage over the balcony and "dirty water and vomit" to the Landlord on October 5, 2020.

These all resulted in the strata imposing further fines against the Landlord. The Landlord in the hearing provided that this was \$200 per month for the form not submitted in time. They are seeking the payment from the Tenant of \$1,839.67. The Landlord provided a Statement of Adjustments for the sale of the Property, indicating the amount that was to be paid upon the sale of the property. That document is dated April 21, 2021, and the indication is that the adjustment date was April 22, 2021. The Landlord paid the extant fines to the strata at that time, paid through the purchase price of the rental unit.

In the hearing, the Landlord listed the infractions for \$200 each, referring to each of the dates: September 4 and September 20, October 5 (x4), November 10. They listed 7 instances of a \$200 fine, then adding that the remainder amount was interest on that amount.

In response to this, in the hearing the Tenant stated they were not aware about the infractions. They were not informed about these penalties in writing; this information only came their way near the end of the tenancy. They submit the Notice of Tenant's Responsibilities should have been provided at the time they signed the tenancy agreement. It was not until 6 months later that the Tenant found out about this through text messages, at the end of the tenancy.

Analysis

The Landlord's written submission, signed on July 27, 2021, deals with another matter concerning the return of personal property to the Tenant. The Landlord in the hearing advised this was in response to a claim from the Tenant, in a separate hearing matter scheduled in the future. Below, I am concerned with portions of the Landlord's evidence *only* addressing their claim for compensation from the Tenant.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the claim from the Landlord is not valid. There is no insufficient evidence from the Landlord to show they communicated the need for a completed form to the Tenant in a timely manner. Minus this proof, I accept the Tenant's version of events as more likely: that they did not hear about the need for a completed strata form until months after the initial request was made, and this at the end of the tenancy. The Landlord appears to have not forwarded a completed form to the strata until July 2021, some six months after the tenancy had ended.

I find it more likely than not the Tenant was not made aware of other fines imposed by the strata for noise or other infractions.

The Landlord was not able to provide a succinct summary of the accumulation of fine amounts imposed by the strata along with the way. There is insufficient evidence of what the amount claimed consists of. I am not satisfied the Landlord was even sure the amount was \$200 for each infraction. There was no record of the accumulation or balance from the strata of that amount. Without the record of amounts, and dates, it's also entirely plausible that fines were imposed for an entirely different reason, even after the Tenant here moved out.

I find the Landlord did not mitigate their loss, with no record to show they requested a completed form from the Tenant during the tenancy. Further, the Landlord has not proven the value of the loss to them, with no clear accounting of the fines imposed by the strata. For these reasons, I dismiss this claim from the Landlord, without leave to reapply.

I accept the Landlord's testimony that the Tenant abandoned the rental unit at the end of the tenancy. The Landlord made no claim for damage to the rental unit; rather, their sole issue in this hearing was compensation for strata fines they paid because of the Tenant. I have dismissed this claim, so without any other claim against the deposit for damages of any kind, I order the return of the security deposit to the Tenant in full.

Because they were not successful in this Application, I make no award for recompense of the Application filing fee.

Conclusion

I dismiss the Landlord's Application in its entirety, without leave to reapply.

I grant the Tenant a monetary order in the amount of \$850, for the return of the security deposit they paid. I provide the Tenant with this Order in the above terms, and they must serve this monetary order to the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: February 18, 2022

Residential Tenancy Branch