Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

The Landlords seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- A monetary order under s. 67 for damages to the rental unit caused by the tenant;
- A monetary order under s. 67 for compensation for monetary loss or other money owed; and
- Return of their filing fee pursuant to s. 72.

The Landlords advance their claims under s. 67 of the *Act* by claiming against the security deposit.

P.N. appeared as agent for the Landlord. A.S. appeared as assistant to P.N. and provided no evidence during the hearing. B.K. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlords' agent advises that the Tenant was served with the Notice of Dispute Resolution and evidence by way of registered mail sent on September 24, 2021. The Tenant acknowledges receipt of the Landlord's application materials, indicating he retrieved it sometime in November 2021. I find that the Landlords served their application materials in accordance with s. 89 of the *Act* and was received by the Tenant as acknowledged at the hearing.

The Tenant confirmed that he served no documentary evidence in response to the Landlords' application.

Preliminary Issue – Partial Settlement of the Landlords' Claim

At the outset of the hearing, the parties advised that there was an agreement with respect to the Landlords' claim for monetary compensation related to damages to the rental unit that were said to be caused by the Tenant. The total of this portion of the claim was $420.00. I specifically confirmed with the Tenant that he understood that by consenting to this portion of the claim, I would be ordering that the Landlords retain this amount from the security deposit. The Tenant confirmed that he understood and advised that he consented to the same.

Accordingly, as there was a partial settlement of the Landlords' claim related to compensation for damages to the rental unit, I need not address it in these reasons. The Landlords shall retain this portion of their claim, being a total of $420.00, from the security deposit.

Issue(s) to be Decided

1) Are the Landlords entitled to compensation for monetary loss or other money owed?
2) Are the Landlords entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on April 27, 2019.
- The Landlord obtained vacant possession of the rental unit on September 1, 2021.
- Rent of $1,900.00 was due on the first day of each month.
- The Landlord held a security deposit of $950.00 from the Tenant as part of the tenancy.
- An additional deposit for keys and a FOB was paid by the Tenant in the amount of $120.00.

A letter dated September 14, 2021 put into evidence by the Landlords indicates a further $75.00 was taken as a deposit for a parking pass.

A copy of the written tenancy agreement was put into evidence by the Landlords. The tenancy agreement has two clauses, 30 and 34, relating to the Tenant's use of common areas and Tenant's agreement to comply with the rules and regulations imposed by the strata council.

A copy of condition inspection report in the standard form was put into evidence indicating a move-in inspection was completed on May 2, 2019 and a move-out inspection was completed on September 1, 2021. The parties signed the inspection report and the Tenant provided his forwarding address to the Landlords as indicated in the condition inspection report. The parties confirmed the forwarding address was provided on September 1, 2021.

At the hearing, the Landlords' agent advised that the monetary claim for money owed related to strata fees paid by the Landlords in the total amount of $400.00. I was told that the fees imposed by the strata on the Landlords were the result of the Tenant's conduct. Specifically, the following fees were assessed by the strata, as confirmed by the Landlord's agent at the hearing:

- $50.00 – Fee imposed due to the Tenant parking in a loading zone at the property for an extended period of time.
- $50.00 – Fee imposed due to the Tenant using a gym at the property beyond his scheduled time and getting into an argument with another occupant.
- $200.00 – Fee imposed due to the Tenant leaving personal furniture and belongings in the common areas of the property at the end of the tenancy.
- $100.00 – Fee imposed to remove the Tenant's personal belongings from the common areas of the property.

The Landlords provide three copies of letters from the strata agent, dated September 9, 2021 and two dated September 2, 2021, outlining the infractions alleged by the strata council. It appears from the letters that all the alleged infractions occurred at or near to the end of the tenancy on September 1, 2021. The Landlords' evidence includes an email sent by the Landlord's agent to the Tenant on September 8, 2021 where the notices of infraction were forwarded to the Tenant.

The Tenant argues that that he did not have an opportunity to have a hearing to dispute the fees imposed by the strata council. The Tenant attempted to argue the substantive

aspects of the infractions. However, the Residential Tenancy Branch does not have jurisdiction to determine whether the strata acted properly in assessing the fines that it did.

The Tenant argues that the Landlords, as the owners, had to advise the strata council that he wanted a hearing with respect to the infractions. The notices of infraction, specifically the two related to the parking infraction and the gym, outline that there is a two-week window in which to provide written response and to advise if an in-person hearing would be required. The notice of infraction further states the following in bold and italicised lettering:

> Please be advised that both the owner and the tenant are receiving this letter. If the tenant wishes to have a hearing with the Strata Council, the tenant must contact the Owner and the Owner must contact the Strata Agent. The Owner must be present at the hearing with the tenant.

The Landlord's agent argued that the September 8, 2021 email where the notices of infraction were forwarded to the Tenant explained that there were two weeks to provide written explanation or to ask for a hearing. The Tenant directed me to a reply email he sent to the Landlord's agent on September 11, 2021, which indicates the following:

> Please be advised that I shall be insisting on a hearing into this matter, and proceeding directly to dispute resolution with the Residential Tenancy Branch to accord me my procedural fairness rights.
>
> In the meantime, kindly observe the following:
>
> (1) I was a resident of W1 until the end of day on September 1, 2021 - there were **no** infractions committed by me on September 2.
>
> (2) Concierge themselves did not move any "personal furniture" of mine. The available security footage will reveal as much-and I shall be insisting on a proper investigation so that the extent of the alleged infraction is discovered, including but obviously not limited to filing a police report into Concierge/Strata under the *Mail Receptacles Regulations* (or another pertinent authority), and so that Strata can provide timely access to said security footage.
>
> (3) I shall **not** pay for arbitrary fees levied against me.

No hearing was conducted, nor does it appear the Landlords forwarded the Tenant's request for a hearing to the strata council. The Landlords' agent confirmed that the fees imposed by the strata were paid by the Landlords. I was further advised that the amounts related to the parking infraction and the gym were originally assessed as a total of $150.00, though when imposed by the strata a total fine of $100.00 was levied for the two infractions.

The Landlords' agent confirmed that two portions of the Tenant's deposits were returned: $275.00 on September 14, 2021 and $50.00 on January 18, 2022. The Tenant did not dispute the Landlords' evidence with respect to the security deposit that was returned.

Analysis

The Landlords seek compensation from the Tenant related to a series of fines assessed by the strata. The Landlord advances this claim against the security deposit.

I have reviewed the application and upon consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlords filed their application on September 14, 2021. Further, the condition inspection reports were conducted in compliance with the *Act* and the Regulations such that neither party's right to the security deposit were extinguished under ss. 24 or 36 of the *Act*. Having regard to the 15-day timeline imposed by s. 38(1) of the *Act*, I find that the Landlord filed its claim against the security deposit in time such that the doubling provision of s. 38(6) of the *Act* does not apply.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

As mentioned above, I have no jurisdiction to determine whether the strata council was correct in assessing the fines. The Residential Tenancy Branch is not the correct forum in which to address any arguments with respect to fairness arising from fines imposed by a strata corporation. It is not disputed that $400.00 was eventually fined by the strata and paid for by the Landlords.

Here, the Landlords claim that they are out of pocket for fines assessed by the strata council due to the Tenant's activity. Clause 34 of the tenancy agreement imposes an obligation on the Tenant to comply with the rules and regulations of the strata corporation.

I have reviewed the email sent by the Landlords' agent on September 8, 2021, the Tenant's responding email of September 11, 2021, and the notices of infraction. It is clear that the responsibility of initiating a dispute hearing before the strata council rests with the Landlords as owners for the rental unit.

The Tenant argues that he wished to dispute the fines imposed by the strata as indicated in his email of September 11, 2021. He appeared to be under a misapprehension that the proper forum for disputing the fines was the Residential Tenancy Branch. I do not find that the Tenant's misunderstanding on the proper forum is relevant as the Tenant's email is unequivocal: he disputed the fines, asked for a hearing and argued the fees were arbitrarily levied against him. The Landlords, rather than initiate the dispute process with the strata council, took no action, which all but ensured the fines would be imposed by default.

The Landlords have an obligation to mitigate their damages. This is imposed by s. 7(2) of the *Act* and requires them to do whatever is reasonable to minimize their damage or loss. I find that the Landlords failed to mitigate their damages as they failed to inform the strata council that the Tenant wished to dispute the fines. Some or all of the fines imposed by the strata council may not have been imposed at all had the Tenant been permitted to argue their case. By failing to initiate the dispute process as requested by the Tenant, the Landlords ensured that they would be fined as the owners for the rental unit as per the strata bylaws.

It is the Landlords application. They bear the burden of proving their claim on a balance of probabilities. I find that the Landlords have failed to do so as they failed to mitigate their losses. They may not have occurred losses at all had the dispute process with the strata council been initiated. Accordingly, I dismiss this portion of the Landlords claim without leave to reapply.

Policy Guideline 17 provides guidance with respect to claims dealing with the return of deposits. It states the following:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
    - a landlord's application to retain all or part of the security deposit; or
    - a tenant's application for the return of the deposit.

    unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

I order the Landlord return the security deposit taking the following into account:

Item	**Amount**
Security Deposit	$950.00
FOB and Key Deposit	$120.00
Parking Pass Deposit	$75.00
Amount retained by the Landlords as per the parties' partial settlement	-$420.00
Return of Deposit on September 14, 2021	-$275.00
Return of Deposit on January 18, 2022	-$50.00
Total to be returned to the Tenant	**$400.00**

Conclusion

The parties consented to the Landlords withholding $420.00 from the security deposit in compensation for damages to the rental unit. Pursuant to the partial settlement and ss. 63, 67, and 72(2) of the *Act*, I direct that the Landlord withhold $420.00 from the security deposit.

I find that the Landlord failed to mitigate their losses with respect to the strata fines and this portion of the claim is dismissed without leave to reapply.

The Landlords were unsuccessful in their application at the hearing as the only portion of their claim that was disputed, being the strata fines, was dismissed without leave to reapply. I find that the Landlords are not entitled to the return of their filing fee and shall bear their own costs for their application. I dismiss their claim under s. 72(1) of the *Act* without leave to reapply.

Pursuant to ss. 38 and 67 of the *Act*, I order that the Landlord return the remaining security deposit of $400.00 to the Tenant. The Tenant shall have a monetary order in that amount.

It is the Tenant's obligation to serve the monetary order on the Landlords. If the Landlords do not comply with the monetary order, it may be filed with 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: May 25, 2022

Residential Tenancy Branch