



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent of \$6,600.00; a monetary order of \$200.00 for damages for the Landlord; a monetary order of \$557.50 for damage or compensation under the Act, retaining the security deposit to apply to these claims; and to recover her \$100.00 Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing, the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application and Notice of Hearing. The Landlord testified that she served the Tenant with the Notice of Hearing documents and her evidence by Canada Post registered mail, sent on March 23, 2022, and on October 4, 2022. The Landlord provided Canada Post tracking numbers as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and she confirmed hers in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised the Landlord that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord confirmed in the hearing, that the fixed term tenancy began on December 1, 2021, and was to run to November 30, 2022, and then operate as a periodic tenancy. She said that the tenancy agreement requires the Tenant to pay her a monthly rent of \$2,200.00, due on the first day of each month. The Landlord said that the Tenant paid her a security deposit of \$1,100.00, and no pet damage deposit. The Landlord said that the tenancy ended on February 18, 2022 when the Tenant moved out, and that she received the Tenant's forwarding address on March 2, 2022, by text.

#1 RECOVER UNPAID RENT → \$6,600.00

The Landlord said that the Tenant failed to pay rent in February 2022, and so the Landlord gave him a 10 Day Notice to End Tenancy for Unpaid Rent dated February 7, 2022 ("10 Day Notice"). Section 46 (4) of the Act gives a tenant five days from the date they received the 10 Day Notice to pay the overdue rent or to dispute the 10 Day Notice by applying for RTB dispute resolution. However, the Landlord said that the Tenant did neither, but that he moved out and still has not paid rent for February.

The Landlord said that she advertised the rental unit on a national advertising platform, and on social media, as soon as possible after she discovered the Tenant had moved out, but she was unable to find a new tenant until May 2022. As such, the Landlord is claiming rent from the Tenant for February, March, and April 2022, since he illegally ended the fixed term tenancy early.

#2 COMPENSATION FOR DAMAGE → \$200.00

The Landlord explained this claim as for damage to the wall done by the Tenant's television. The Landlord submitted a text exchange she had with the Tenant, in which he accepted responsibility for this damage. The Tenant said:

The strata can apply fines and dispute for hearing, not the landlord. I have signed an agreement for the unit itself with you not for the whole building. So the deposit was paid for the unit, and only the wall was damaged from tv so you have the right to take the portion of the repair out of the deposit.

Regards,

[Tenant]

The Landlord submitted a copy of a receipt for the wall repair dated February 24, 2022 for a total of \$200.00.

#3 COMP. FOR MONETARY LOSS OR OTHER MONEY OWED → \$557.50

The Landlord said that this claim is for Strata Bylaw fines. The Landlord said that she texted the Tenant about these fines every month, but he ignored her, therefore, she had to pay the fines. The Landlord submitted a receipt for the e-transfer she made to the Strata Council to pay for the Tenant's fines.

The Landlord submitted a letter from the Strata Council dated March 8, 2022, in which an agent for the Council set out the fines that have been imposed against the Landlord's Tenant. The infractions that the Tenant committed, included:

- Improper item storage;
- Noise complaint and property damage;
- Illegal storage and parking;
- Gate closure warning;
- Unscheduled move out; and
- Illegal dumping.

The Strata Council charged the Tenant a total of \$557.50, which matches the amount the Landlord e-transferred to the Strata.

The Landlord did not direct me to, and I could not find evidence that the Tenant has been made aware of the Strata Bylaws and possible fines for breaching those Bylaws.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Landlord testified, I let her know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

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

("Test")

#1 RECOVER UNPAID RENT → \$6,600.00

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

The Landlord's undisputed evidence is that the Tenant failed to pay rent in February 2022, and that he abandoned the rental unit after the Landlord served him with a 10 Day Notice. The Parties had a fixed-term tenancy agreement binding them to their rights and obligations to each other. Policy Guideline #30, "Fixed Term Tenancies", states:

During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties, or under section F below (Early Termination for Family or Household Violence or Long-Term Care).

A landlord may end the tenancy if the tenant fails to pay the rent when due by serving a Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30) on the tenant. Alternatively, a landlord may end the tenancy for cause by serving a One Month Notice to End Tenancy for Cause (form RTB-33) on the tenant.

I find that the Tenant breached section 26 of the Act, and the tenancy agreement by not paying rent in February through April 2022. I find that the Tenant breached the fixed term tenancy agreement by moving out before the end of the tenancy. Given that the Landlord was unable to find another tenant until May 2022, I find that the Tenant is responsible for compensating the Landlord for these months.

Pursuant to section 7 of the Act, a party who does not comply with the Act, regulation or tenancy agreement must compensate the other party for the resulting damage or loss. Pursuant to Policy Guideline #16, damage or loss is not limited to physical property only, but also includes less tangible impacts, such as loss of rental income that was to be received under a tenancy agreement.

Based on the evidence before me, I find that the Landlord provided sufficient evidence to establish that the Tenant owes the Landlord **\$2,200.00** in monthly rent for February through April 2022, as the Landlord was unable to find a new tenant until May 2022. I, therefore, **award the Landlord** with **\$6,600.00** from the Tenant, pursuant to sections 26 and 67 of the Act.

#2 COMPENSATION FOR DAMAGE → \$200.00

Section 37 of the Act states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the Landlord has provided sufficient evidence to fulfill her burden of proof on a balance of probabilities. The Landlord submitted the Tenant's text, in which he accepted responsibility for the damage to the wall, and that the cost to repair it should be taken out of his security deposit.

Based on the evidence before me, I **award the Landlord** with **\$200.00** from the Tenant, pursuant to sections 37 and 67 of the Act.

#3 COMP. FOR MONETARY LOSS OR OTHER MONEY OWED → \$557.50

In this dispute, the Landlord seeks compensation for Strata Bylaw fines she said were incurred by the Tenant. However, in order for a tenant to be found liable for the incurring of such fines there must be clear and cogent evidence that the tenant was provided with a copy of the Strata Bylaws. Such evidence is usually provided by way of a copy of a signed Form K that must be included in a tenancy agreement where the rental unit is in a strata-regulated residential property.

Under the Strata Property Regulation, B.C. Reg. 43/200, a Form K: Notice of Tenant's Responsibilities includes the following statement (bold font in original):

- 1 Under the *Strata Property Act*, a tenant in a strata corporation **must** comply with the bylaws and rules of the strata corporation that are in force from time to time (current bylaws and rules attached).
- 2 The current bylaws and rules may be changed by the strata corporation, and if they are changed, the tenant **must** comply with the changed bylaws and rules.
- 3 If a tenant or occupant of the strata lot, or a person visiting the tenant or admitted by the tenant for any reason, contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, denial of access to recreational facilities, and if the strata corporation incurs costs for remedying a contravention, payment of those costs.

I can think of no document more important respecting a tenant's awareness of their legal obligations to comply with Strata Bylaws than a Form K. Yet, there is no copy of any Form K before me. Nor is there any evidence before me that the Landlord provided a copy of the Bylaws to the Tenant. Indeed, that the tenancy agreement indicates no addendum is an indication that no such document was ever provided to the Tenant.

Ultimately, a tenant cannot be found in breach of a tenancy agreement - including strata bylaws that form part of that tenancy agreement - if they are not aware of the potential bylaw fines for various infractions. Thus, in the absence of any such evidence I do not find that the tenant breached the tenancy agreement from which damages may flow. Therefore, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has not met the onus of proving her claim for compensation in respect of Strata Bylaw fines. This claim is **dismissed without leave**, pursuant to section 62 of the Act.

The Landlord is encouraged to obtain and use Form Ks from the Strata Council to give to her tenants for their signature and her records.

Summary and Offset

I find that this Application meets the criteria under section 72 (2) (b) of the Act to be

offset against the Tenant's \$1,100.00 security deposit of in partial satisfaction of the Landlord's monetary awards.

Given that the Landlord was predominantly successful, I also award the Landlord with recovery of her \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act.

\$6,600.00	-award for unpaid rent;
200.00	-compensation for damage;
0.00	-Strata fines not awarded
<u>100.00</u>	-RTB filing fee
<u>\$6,900.00</u>	Total Awards

The Landlord is authorized to retain the Tenant's **\$1,100.00** security deposit in partial satisfaction of the awards. I grant the Landlord a **Monetary Order** of **\$5,800.00** for the remaining amount of the awards owing, pursuant to sections 67 and 72 of the Act.

Conclusion

The Landlord is predominantly successful in her claim for compensation from the Tenant, as she provided sufficient evidence to meet the burden of proof on two of her three claims. The Landlord is awarded **\$6,800.00** from the Tenant for compensation under the Act. The Landlord is also awarded her **\$100.00** Application filing fee.

The Landlord is authorized to retain the Tenant's **\$1,100.00** security deposit in partial satisfaction of her monetary awards. The Landlord is granted a Monetary Order from the Tenant of **\$5,800.00** for the remaining amount of her awards owing. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 30, 2022

Residential Tenancy Branch