



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$400 for the recovery of \$200 for a strata fine, \$100 for a move-out fee, plus the \$100 filing fee.

The landlord and the tenant attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing. The parties were also advised that the decision would be emailed to the parties.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed term tenancy began on October 1, 2021 and was scheduled to convert to a month-to-month tenancy after October 1, 2022.

The landlord has claimed the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Strata fine (illegal move-out)	\$200
2. Move-out fee	\$100
3. Filing fee	\$100
TOTAL	\$400

Regarding item 1, the landlord has claimed \$200 against the tenant for a \$200 fine assessed to the landlord due to what the landlord describes as an “illegal move out.” The landlord was asked if the tenant signed a Form K, which is the Notice of Tenant’s Responsibilities regarding the current bylaws and rules from the strata corporation (Form K). The landlord claims the tenant signed a Form K but that a copy was not submitted in evidence. The tenant vehemently disagreed with the landlord and testified that they were not served with a Form K and have not signed any such document, nor have they been provided a copy of the bylaws and rules.

Regarding item 2, the landlord has claimed \$100 for a move-out fee charged to the landlord. Consistent with item 1 above, the landlord failed to submit a signed Form K in support of this portion of their claim.

Regarding item 3, the filing fee will be addressed later in this decision.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

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

In the matter before me, the landlord bears the burden of proof to prove all 4 parts of the above-noted test for damages or loss. Given the above and the fact that the landlord bears the burden of proof, I find the landlord has failed to meet all four parts of the 4-part test for damages or loss described above as the landlord failed to submit a signed Form K for my consideration. Accordingly, I find the landlord has provided insufficient evidence that the tenant was aware of the bylaws and rules, and agreed that they would comply with the bylaws and rules by signing the Form K.

Given the lack of a signed Form K for my consideration, I prefer the testimony of the tenant over the landlord as the tenant testified that they were never provided with the bylaws or rules or asked to sign a Form K. Therefore, I dismiss the landlord's application without leave to reapply, due to insufficient evidence.

As the landlord's claim has no merit and has been dismissed, I decline to grant the filing fee.

Conclusion

The landlord's application has no merit and is dismissed in its entirety.

The filing fee is not granted.

This decision will be emailed to both parties.

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: December 14, 2022

Residential Tenancy Branch