



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Wynn Real Estate Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on September 16, 2022 seeking compensation for two particular items. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded to a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 13, 2023.

Both the Landlord’s agent (hereinafter, the “Landlord”) and one of the Tenants (the “Tenant”) attended the teleconference hearing. At the start, the Tenant confirmed they received the Notice of Dispute Resolution Proceeding, and the Landlord’s prepared documentary evidence. On this basis, the hearing proceeded at the scheduled time.

Issues to be Decided

Is the Landlord entitled to compensation for money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement and the participants in the hearing agreed on the basic terms therein. The parties signed the agreement on February 2, 2022 for the tenancy starting on February 4, 2022. The agreement was a fixed-term through to February 2023, then reverting to a month-to-month agreement after that.

The monthly rent amount was \$4,000 and the Tenant paid a security deposit amount of \$2,000.

The addendum to the agreement sets out:

- the Tenant was responsible for “any and all strata fines regarding the strata rules & bylaw infractions during their residence.” This sets out the Tenant “will pay entire amounts of fines no later than 7 days from receipt of the notice.”
- the Tenant would “be liable for all costs including but not limited to Agent’s commission for rental” before the rental period expiry date.

The Landlord described the one-half month rent amount (equal to \$2,000) as “standard” that includes a placement fee. This is for admin work involving new tenants, for a credit check, showings, and other fees.

In this matter, the tenancy ended on August 31, 2022. This was prior to the expiry of the initial one-year fixed term. The Landlord presented that they obtained new tenants for the rental unit on September 1, 2022.

a. placement fee for new tenants, \$2,100

Via email on August 18, 2022, the Landlord notified the Tenant of the need for a sub-tenant “to take over the remainder of [the Tenant’s] fixed term. The Landlord sent a notice/agreement dated August 23 to the Tenant, and the Tenant signed this agreement. This sets out the option of either the Tenant finding a new sub-tenant, or the Landlord finding a new tenant, “with the cost of half month rent which is our standard tenant placement fee.”

In the hearing the Tenant stated that, at that time, they were working on finding a Tenant on their own. The other Tenant might have had the discussion with the Landlord regarding the amount; however, the Tenant present in the hearing did not agree to pay \$2,000.

On the final condition inspection report from the meeting on August 31, unsigned by the Tenant, the Landlord gave the notation:

... tenants have asked us to terminate the fixed-term tenancy and find a new tenant, and agreed to pay us for the work. However, the Tenant has to pay us an additional \$1,300, excluding the \$800 from the deposit, because the remaining deposit is not enough to pay us

On September 9, the Landlord communicated with the Tenant via email again, to clarify: “The agreed tenant placement cost amount of \$2,000 + GST (total \$2,100) needs to be transferred then we’ll release the remainder of your deposit amount of \$800 or you can send us \$1,300 to clear the transaction.”

Following this, the Landlord applied to the Residential Tenancy Branch on September 16, 2022.

b. strata fines, \$1,200

In their evidence, the Landlord included a record of the ongoing payments to the strata council. These show 6 separate incurred charges for bylaw fines as follows:

- March 11, 2022: \$200
- April 26, 2022: \$200
- May 30, 2022: \$200
- August 17, 2022: \$200
- August 17, 2022: \$200
- August 17, 2023: \$200

The Landlord paid this total in full on February 1, 2023.

The Landlord stated they would forward letters notifying them of bylaw infractions to the Tenant as made known to them. This includes individual letters that show the Tenant copied via email on each document. In the record, this includes notification from the strata on March 18, 2022 advising of a \$200 fine, April 14, 2022, July 14, 2022, and August 2, 2022 noting 2 separate incidents.

The Tenant presented that they knew only about the first three instances of fines involving noise infractions and agreed to pay these. They were not aware of the final three until they were moving.

Analysis

I find the tenancy agreement in place between the parties conferred rights and obligations. Special considerations were set out in the addendum to the agreement.

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 s. 7 and s. 67 of the *Act*.

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.

a. placement fee for new tenants, \$2,100

Co-tenants are jointly and severally liable for any debts relating to the tenancy, and in this present case the tenancy agreement does not state otherwise. The two Tenants here are jointly responsible for dividing any amount owing to the Landlord among themselves.

This same rationale is in place for one of the Tenants accepting that the tenancy ended early and signing that they agreed to the Landlord finding a new tenant with the cost of one-half month's rent. I find the Tenant accepted this arrangement, and signed their agreement to this, on August 23, 2022. The other Tenant stated their disagreement with the amount; however, as per the tenancy agreement addendum, and especially the August 23 agreement, the Tenant accepted this arrangement. This was with the condition that the Tenant would find a sub-tenant to take over the remainder of the tenancy agreement, and the Tenant in the hearing did not present that they arranged for that, thereby waiving the requirement to pay the agreed-upon fee.

I find the Tenant agreed to this amount; therefore, I grant the Landlord compensation in the amount of \$2,100.

b. strata fines, \$1,200

I find the addendum also provided for the strata fines. The Tenant signed to this arrangement as part of the tenancy agreement.

The Landlord's evidence contained the information that the Tenant was proceeding with a dispute with the strata; however, there was no evidence from the Tenant about the result of that dispute and I find it more likely than not the Landlord/Tenant was not absolved of the bylaw-imposed penalties.

The Tenant raised the issue that they weren't informed of strata-imposed penalties in relation to incidents. I find the record shows they were copied on correspondence from the strata to the Landlord regarding specific incidents. As per the addendum, the Tenant was responsible for paying those amounts.

Minus this information, I find the Landlord paid the total of fines owing to the strata, in February 2023. That amount was \$1,200, and the Landlord should properly be compensated this amount by the Tenant.

In sum, I find the Landlord incurred a monetary loss as a result of the Tenant ending the tenancy early. Additionally, they incurred a loss because of the Tenant's breach of the addendum, where the Tenant did not pay penalties owing to the strata for their own bylaw infractions. In total, I find the Landlord is entitled to the amount of \$3,300.

Because they were successful in their claim, I grant the Landlord reimbursement of \$100 of the Application filing fee. The sum total of the award to the Landlord is \$3,400.

The Act s. 72(2) gives an arbitrator the authority to make a deduction from any deposit held by a landlord. The Landlord has established a claim of \$3,400. After setting off the security deposit amount of \$2,000, there is a balance of \$1,400. I am authorizing the Landlord to keep the security deposit amount and grant a monetary order to the Landlord for the balance of \$1,400.

Conclusion

Pursuant to s. 67 and 72 of the Act, I grant the Landlord a Monetary Order in the amount of \$1,400. I provide the Landlord with this Order, and they must serve this Order to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order with 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: June 14, 2023

Residential Tenancy Branch